

**SECOND AMENDMENT TO MASTER LEASE AND DEVELOPMENT AGREEMENT  
FOR LAS COLONIAS BUSINESS AND RECREATION PARK**

THIS SECOND AMENDMENT TO MASTER LEASE AND DEVELOPMENT AGREEMENT FOR LAS COLONIAS BUSINESS AND RECREATION PARK (“Lease Amendment”) is made and entered into this 17 day May 2024 by and between the City of Grand Junction, a Colorado home rule municipal corporation (“the City”), and the Las Colonias Development Corporation, a Colorado nonprofit corporation (“LCDC”) collectively “Parties.”

RECITALS

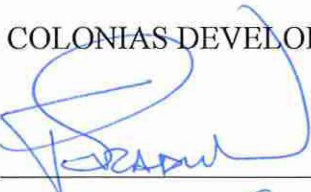
- A. The City and the LCDC entered into that certain Master Lease and Development Agreement for Las Colonias Business and Recreation Park (“Master Lease”) on or about March 22, 2018 in which the City leased certain premises described therein (the Premises) for a term of 25 years to the LCDC for the purpose of developing a recreation and business park on such premises upon the terms and conditions described therein.
- B. On November 5, 2019, the voters of the City of Grand Junction authorized the City to lease Las Colonias properties, including the Premises, for a term of up to 99 years.
- C. Thereafter the Master Lease was amended (“First Amendment”) to:
  - a. increase the term of the Master Lease from 25 to 99 years;
  - b. clarify the process for the LCDC to review, approve and recommend development plans;
  - c. clarify that in the event of conflicts between any covenants, conditions and restrictions running with the land and the City’s zoning and development requirements, regulations, and/or restrictions, the greater restriction shall control;
  - d. clarify the process for certification of compliance for subleases;
  - e. clarify the “campus” nature of the Business and Recreation Park and the application of zoning and development requirements to site plans for individual pad sites; and,
  - f. clarify the right of the LCDC to amend covenants, conditions and restrictions running with the land.
- D. On April 17, 2024, the City Council approved Ordinance 5216, which Ordinance amended Ordinance 4991 regarding the Master Lease (“Second Amendment”). With the approval of Ordinance 5216 the City Council authorized and approved a revision to the description of Lease Parcel M for the purposes of the Master Lease and in turn a sublease from LCDC to Oak Star Bank for the development of Lease Parcel M.

WHEREFORE, the Parties do amend the Master Lease as amended to revise and replace the description of Lease Parcel M in Exhibit A as the same is attached hereto and incorporated herein by this reference as if fully set forth.


ALL OTHER provisions of the Master Lease as amended not expressly stated herein shall remain in full force and effect and unmodified hereby.

ENTERED INTO effective the day and year first set forth above.

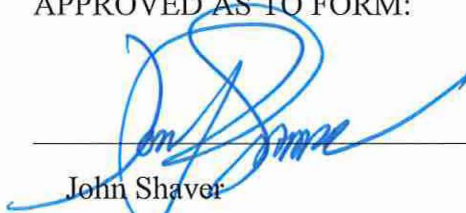
LAS COLONIAS DEVELOPMENT CORPORATION

By:   
\_\_\_\_\_  
Thaddeus Shradler  
President of the LCDC Board of Directors

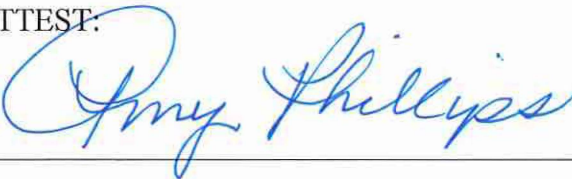
CITY OF GRAND JUNCTION

By:   
\_\_\_\_\_  
Anna M. Stout  
President of the City Council

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John Shaver  
City Attorney

ATTEST:

  
\_\_\_\_\_  
Amy Phillips  
City Clerk

**FIRST AMENDMENT TO MASTER LEASE AND DEVELOPMENT AGREEMENT  
FOR LAS COLONIAS BUSINESS AND RECREATION PARK**

THIS FIRST AMENDMENT TO MASTER LEASE AND DEVELOPMENT AGREEMENT FOR LAS COLONIAS BUSINESS AND RECREATION PARK ("Lease Amendment") is made and entered into this 22 day January 2020 by and between the City of Grand Junction, a Colorado home rule municipal corporation ("the City"), and the Las Colonias Development Corporation, a Colorado nonprofit corporation ("LCDC") collectively "Parties."

RECITALS

- A. The City and the LCDC entered into that certain Master Lease and Development Agreement for Las Colonias Business and Recreation Park ("Master Lease") on or about March 22, 2018 in which the City leased certain premises described therein (the Premises) for a term of 25 years to the LCDC for the purpose of developing a recreation and business park on such premises upon the terms and conditions described therein.
- B. On November 5, 2019, the voters of the City of Grand Junction authorized the City to lease Las Colonias properties, including the Premises, for a term of up to 99 years.
- C. After some experience with site plan review and application of the various standards for development of individual pad sites by Subtenants, the Parties desire to clarify some of the provisions governing land use approval and other interactions between and/or among the LCDC, the City, and Subtenant(s).
- D. The Parties choose to amend the Master Lease for the following purposes:
  - a. to increase the term of the Master Lease from 25 to 99 years;
  - b. to clarify the process for the LCDC to review, approve and recommend development plans;
  - c. to clarify that in the event of conflicts between any covenants, conditions and restrictions running with the land and the City's zoning and development requirements, regulations, and/or restrictions, the greater restriction shall control;
  - d. to clarify the process for certification of compliance for subleases;
  - e. to clarify the "campus" nature of the Business and Recreation Park and the application of zoning and development requirements to site plans for individual pad sites; and,
  - f. to clarify the right of the LCDC to amend covenants, conditions and restrictions running with the land.



WHEREFORE, the Parties amend the Master Lease to replace certain terms thereof as follows. Terms of the Master Lease not expressly included below shall remain in full force and effect and unmodified hereby.

### 1.03 TRANSFER OF DECLARANT RIGHTS

The City's grant and transfer to the LCDC of its rights to establish protective covenants that run with the land for the Term of the Master Lease shall include the right to amend such covenants subject to acknowledgement in writing by the City.

### 3.05 LCDC AND CITY REVIEW OF SITE PLANS

Subtenants of the LCDC shall submit site plans ("Application" or "Applications") directly to the City's Community Development Department ("City Planning"). The LCDC's certification to the City pursuant to Section 10.03 herein shall constitute sufficient verification that a Subtenant has authority to submit an Application for development of a given pad site to the City's Community Development Department. No other action shall be required of the LCDC with respect to site plan review; however, the LCDC shall be considered an "outside review agency" for purposes of the City's site plan review process, and the City planner shall provide application materials and comments to the LCDC and receive comments on the Application(s) from the LCDC. The LCDC may, but shall not be obligated to, provide comments on an Application(s).

It shall be the responsibility of the City, and not the LCDC, to interpret and apply all City planning, zoning and building requirements, regulations and restrictions ("City Code") to an Application(s) and to determine whether there are any conflicts between City Code and any covenants, conditions and restrictions running with the land and how, if at all, such conflicts will be resolved.

In reviewing an Application(s), City Planning shall consider the landscaping, parking, access, and other amenities in the Business and Recreation Park as a whole, and in relation to a pad site Application(s). The purpose of the Business and Recreation Park, and the campus nature thereof, is to provide features throughout the Park that can be used by and for the benefit of all the pad sites, and accordingly each pad site Application(s) does not need to meet all the City's zoning and development requirements as a stand-alone site. The determination of the sufficiency of an Application(s) shall be made by the City in its sole discretion.

### 4.01 TERM

The Term of the Master Lease shall be 99 years commencing March 22, 2018, ("Commencement Date") and expiring at noon on the date which is 99 years thereafter ("Expiration Date.")



6.09 RESTRICTIONS ON ALTERATION AND REUSE

D. DELETED. (This subsection now governed by Section 3.05).

10.03 CERTIFICATION OF COMPLIANCE

Promptly upon entering into a Sublease with a Subtenant, the LCDC shall certify in writing to the City that all of the conditions of 10.02 have been met, and the City shall promptly, in writing, acknowledge the certification to the LCDC.

ALL OTHER provisions of the Master Lease not included and modified above shall remain in full force and effect.

ENTERED INTO effective the day and year first set forth above.

LAS COLONIAS DEVELOPMENT CORPORATION

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

Robin Brown  
President of the LCDC Board of Directors

CITY OF GRAND JUNCTION

APPROVED AS TO FORM:

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

J. Merrick Taggart  
President of the City Council

  
\_\_\_\_\_

John Shaver  
City Attorney

ATTEST:

 \_\_\_\_\_

Selestina Sandoval  
Deputy City Clerk

**MASTER LEASE AND DEVELOPMENT AGREEMENT  
FOR LAS COLONIAS BUSINESS AND RECREATION PARK**

THIS MASTER LEASE AND DEVELOPMENT AGREEMENT ("Agreement", "this Agreement" or "the Agreement") is made and entered into this 22<sup>nd</sup> day of MARCH 2018 by and between the Las Colonias Development Corporation, a Colorado nonprofit corporation ("LCDC") and the City of Grand Junction, a Colorado home rule municipal corporation, ("City" or "the City").

**RECITALS:**

- A. The City is the owner of approximately 147-acre site ("Property") on which the former Climax uranium mill and ancillary operations were conducted for nearly three decades. The activities on and use of the Property included the stockpiling of uranium mill tailings. The mill operations ceased in 1970 and tailings piles remained until the Property was remediated in 1988 pursuant to the 1978 Federal Uranium Mill Tailings Remediation Act (UMTRA). Upon completion of the remediation, the Property was conveyed to the State of Colorado and in turn the State conveyed it to the City in 1997. The use of the Property, subject to the terms of the conveyance is, restricted by environmental covenants ("Environmental Covenants"), which have posed a significant impediment to the redevelopment of the Property and accordingly it has been unused/underused for more than 20 years.
- B. Following completion of the mill tailings clean-up, and pursuant to the Environmental Covenants, the City improved the Property with the addition of a pedestrian/bike trail, a pedestrian bridge across the Colorado River, a restroom and small playground and recently began construction of an amphitheater. The Property has been master-planned; however, the plan will be expensive to implement and the economy in the City has suffered, and continues to suffer, from the Great Recession.
- C. In late 2015 Bonsai Design, ("Bonsai") a local manufacturer of outdoor aerial adventure systems equipment approached the City, through the Grand Junction Economic Partnership ("GJEP"), about the possibility of constructing a demonstration area for its products, together with an office and research and development facility on a small portion (approximately 4 acres) of the Property. Bonsai further suggested that the City explore the possibility of similarly developing some of the Property for additional outdoor recreation oriented businesses.
- D. Since the articulation of the concept, Bonsai, GJEP and City staff have developed the concept further, which effort includes but is not limited to drawing schematic plans, preparing preliminary cost estimates for necessary infrastructure improvements, and meeting with State and Federal agencies concerning the



Environmental Covenants and how those may be satisfied and allow the concept plans can be made a reality.

- E. On March 15, 2017 the Grand Junction City Council considered a conceptual plan (Conceptual Plan) and heard a report on the efforts to date to develop that plan. The City Council unanimously endorsed the concepts of the conceptual plan and charged City staff, with the continuing support from GJEP and Bonsai, to proceed with planning and development in accordance with the Conceptual Plan. That endorsement also included direction to take steps to develop an operational structure and business model for the development of the Property as an outdoor recreation business park including development of certain outdoor park amenities, features and attractions, as generally described and depicted in the conceptual plan beginning with establishing a location for the Bonsai office and facilities and installation of the aerial adventure contributions by Bonsai.
- F. In furtherance of the City Council's direction to create a management structure, the City Council approved the formation of the Las Colonias Development Corporation ("LCDC") on November 15, 2017. LCDC is authorized to implement the concept plan for the redevelopment of Las Colonias Park to include the outdoor recreation business park together with certain amenities such as towers, zip line(s), a boat ramp, interactive play and wellness features and other concepts consistent with and generally shown in the conceptual plan.
- G. On May 3, 2017, the City Council adopted Ordinance No. 4746 zoning the Premises planned development (PD), and approved an Outline Development Plan for the Premises. The parties have also developed Exhibit B and Exhibit C in accordance with the Conceptual Plan, the PD zoning ordinance and the ODP. Together these guiding documents are referred to herein as the Plan.
- H. Upon formation of LCDC, the City intends to lease a portion of the Property described in the attached Exhibit A and depicted on attached Exhibit B (referred to herein as the Premises) to LCDC and to charge LCDC, in accordance with this Agreement, to develop the Premises in accordance with the Plan and this Agreement.

## **SECTION 1 – GENERAL**

### **1.01 CONSIDERATION FOR AND PURPOSE OF THIS AGREEMENT**

The Parties enter into this Agreement for and in consideration of the lease of the Premises by the City to LCDC and the performance and observance by LCDC of the covenants and agreements set forth herein, including without limitation, LCDC's covenant and agreement to develop the Premises in accordance with the Plan.



## 1.02 INCORPORATION OF ATTACHED EXHIBITS AND ADDENDA

The Exhibits and Addenda attached to this Agreement shall be deemed incorporated in this Agreement by reference.

## 1.03 TRANSFER OF DECLARANT RIGHTS

By this Agreement, the City grants and transfers to LCDC its rights to establish protective covenants that run with the land for the Term of the lease. This right is not exclusive of the City; the City reserves the right to create and establish easements and other covenants benefitting and burdening the Property, and the Premises.

## SECTION 2 – DEFINITIONS

Words and terms used in this Agreement shall mean as follows:

**Improvements** shall mean and refer to any and all buildings, parking areas, fences, screening, retaining walls, stairs, decks, hedges, windbreaks, plants, trees, shrubs, berms, ponds, trails, recreational facilities including zip line facilities, boat houses, storage houses or units, covered storage areas, signs, objects of art, mailboxes, delivery areas, drainage and irrigations facilities (including pumps, pipelines, drip lines, sprinklers) and other structures or landscaping of every type and kind situated on the Premises.

**Lender Agreement** shall mean an agreement requested by a mortgagee or prospective mortgagee of a Subtenant or prospective Subtenant that describes the rights and obligations of the parties thereto in the event of LCDC's breach of this Agreement or a Subtenant's breach of a Sublease.

**Plan** shall mean and refer to the Planned Development Zoning Ordinance, the approved Outline Development Plan, all approved Final Plan(s), and the attached Exhibit B.

**Premises** shall mean and refer to the land that is leased to LCDC by this Agreement, as described on Exhibit A and depicted on Exhibit B.

**Property** shall mean and refer to the 147 acre Las Colonias Park.

**Public Use Areas** shall mean and refer to those areas so designated on Exhibit B, which areas may include lakes, water features, public trails and walkways, and other park-like and/or pedestrian amenities.

**Pad Site** shall mean and refer to a subarea of the Premises designated by letter (A through H) on Exhibit B and which are intended to be developed for a particular purpose and leased to Subtenants. Exhibit B is a general depiction of the Pad Sites included in the Premises; LCDC shall have the authority to lease up to 15 acres in total of the Premises, to be allocated among Pad Sites as determined by LCDC.

**Site** shall mean and refer to a subarea of the Premises developed for a particular purpose.

**Subtenant** means any entity or individual that is leasing a Pad Site of the Premises from LCDC pursuant to LCDC's rights and obligations under this Agreement.

**Tenant** shall refer to LCDC, which shall be the only primary tenant of the Property during the Term of this Agreement.

## SECTION 3 – LEASE

### 3.01 LEASE GRANTED

A. The City leases to LCDC the Premises consistent with and subject to all terms of this Agreement. At such time, and from time to time, as the legal description of the Premises is(are) changed by platting, subleasing or selling, the definition and description of the Premises shall be amended to reflect the then applicable definition.

B. The current (metes and bounds) description of the Premises is attached. LCDC understands and agrees that as the Premises is(are) platted an easement acceptable to the City providing access to and from the public street(s) shall be established and that such easement(s) shall be the means of access to and from any and all lots.

### 3.02 CONDITION OF LEASED PREMISES

LCDC covenants and agrees that upon taking possession of the Premises, LCDC shall be deemed to have accepted the Premises "as is" and subject to existing covenants, conditions, restrictions, easements and encumbrances affecting the same. Further, upon taking possession of the Premises, LCDC shall be deemed to have waived any warranty of suitability or fitness for a particular purpose or merchantability, express or implied, relating to the Premises.

### 3.03 CITY RIGHT OF ENTRY

The City retains full right of entry into the Premises for any purpose necessary or incidental to its role as landowner and as a governmental entity effectuating its police powers and other governmental functions. Such purposes include but are not limited to (i) constructing improvements, (ii) stockpiling materials for work on the Premises after consultation with LCDC with respect to the location and duration of the same, and (iii) conducting inspections it deems necessary. Except in the event of an emergency, the City agrees to exercise good faith in notifying or attempting to notify LCDC within a reasonable time, in advance, of any entry. The City's right of entry includes access for City employees, agents, contractors and other third party(ies) acting with permission or other authority of the City. The City shall endeavor to minimize interference with LCDC and/or the business and operations of any Subtenant.



### 3.04 EASEMENTS

The City reserves to itself the right to install utilities and other infrastructure, above and below ground, upon the Property or grant easements over the Property as the City deems necessary or desirable, provided that such use and/or grant does not substantially interfere with the business and operations of LCDC (as tenant of the Premises) or any Subtenant.

### 3.05 LCDC REVIEW OF SITE PLANS

LCDC shall review all Site Plans proposed by Subtenants in accordance with this Agreement and with the protective covenants and, if and once approved, promptly submit the Site Plan with LCDC's recommendation to the City.

### 3.06 FUTURE OBLIGATIONS OF LCDC – ASSIGNMENT OF OBLIGATIONS BY CITY

On and after the commencement of this Agreement LCDC agrees to fully and faithfully assume and discharge the obligations of this Agreement. Furthermore, LCDC understand and agrees that the City may assign additional obligations to LCDC, contingent upon available funding sources, and such assignment shall not be deemed a breach of this Agreement.

## **SECTION 4 – TERM**

### 4.01 TERM

The Term of this agreement shall be 25 years commencing on 3/22/2018 ("Commencement Date") and expiring at noon on the date which is 25 years thereafter ("Expiration Date") unless sooner renewed for an Additional Term(s), the duration of which will be established by the City and LCDC.

### 4.02 SURRENDER OF LEASED PREMISES

Upon expiration of the Term, or this Agreement or on any date specified in any demand for possession by the City after default(s) by LCDC which is not cured as provided in Section 14.01 hereof, LCDC shall return the Premises, together with any and all Improvements, to the City.

### 4.03 HOLDING OVER

Nothing herein shall be construed to give LCDC a right to hold over in the event of its default under this Agreement nor upon expiration of any Term hereof. The City may exercise any and all remedies at law or in equity to recover possession of the Premises and Improvements as well any damages incurred by the City. By entering into this Agreement, LCDC agrees that it shall not assert any right to hold over upon expiration of the lease Term or upon its material breach or default hereunder.



#### 4.04 RENEWAL

LCDC acknowledges that the Term is for a fixed term and that the City is not and shall not be legally obligated to renew; however, the City does agree that it will consider and may grant rights to extend or renew for an Additional Term(s) and/or otherwise allow LCDC to remain on the Premises following the Expiration Date or any subsequent Expiration Date(s) that follow an Additional Term(s).

### **SECTION 5 – RENT**

#### 5.01 RENT

Beginning January 1, 2020, LCDC shall pay rent to the City in the amount of \$10,000.00 per annum, payable in equal annual installments (Flat Rent) plus no less than 50% of the Sublease rental amounts charged by LCDC to all Subtenants of the Premises up to \$100,000.00, and 100% of all Sublease rental amounts over \$100,000.00 up to \$950,000.00 and 50% of all Sublease rental amounts over \$950,000.00 paid to LCDC by all Subtenants all payable on a monthly basis to the City (Percentage Rent.)

#### 5.02 NET LEASE – POSSESSORY INTEREST TAXES OTHER EXPENSES

LCDC for itself and for and Tenant(s) or Subtenant(s) shall acknowledge and agree that the City shall not be liable for, required to pay or be claimed to owe any costs or expenses of rent, utilities, taxes or other charges of or for the work, business or activities of LCDC or any Tenant or Subtenant using or occupying the Leased Premises.

### **SECTION 6 – USE OF PREMISES**

#### 6.01 USE OF LEASED PREMISES

LCDC shall use the Premises only for the lawful uses identified in the Planned Development Zoning Ordinance, the approved Outline Development Plan and Final Plan(s) and the restrictive covenants running with the land. Any and all subleases of sites on the Premises shall be expressly subject to those same limitations.

#### 6.02 PUBLIC USE AREAS

Public Use Areas shall be open to public use and shall not be subleased by LCDC or otherwise committed to the exclusive use of any private person(s) or entity(ies). LCDC shall be responsible for maintenance of Public Use Areas in accordance with Section 11.04 below. LCDC may subject the use of such areas by the public to reasonable rules and regulations as provided in Section 11 below.

Nothing in this Agreement shall be construed to create a public forum in the Public Use Areas or any other part of the Premises. The Premises are intended to be limited and special use premises, even though some recreational use by the general public is anticipated and promoted.

### 6.03 USE OF PAD SITES

All use of Pad Sites shall conform to and be consistent with the Planned Development Zoning Ordinance, Outline Development Plan, Final Plan(s), approved Site Plan(s), and Declaration of Covenants, Conditions and Restrictions established for the Premises and or for any specific Site. LCDC shall include such limitations, restrictions, requirements and covenants in each and every Sublease of any Site or part of the Premises and shall require Sublessees to conform to the same.

### 6.04 NO OBLIGATION TO REMEDIATE FOR SUBTENANTS

Neither LCDC nor the City shall by virtue of this Agreement have obligation to undertake any environmental remediation of Hazardous Materials on the Premises if: (i) such Hazardous Materials existed on the Property prior to the Commencement Date and LCDC and/or the City did not cause, permit or contribute to the presence of the Hazardous Materials or (ii) such Hazardous Materials have been dumped or otherwise migrated onto the Property from a source other than one under the control of LCDC and/or the City. Notwithstanding that neither LCDC nor the City are obligated, after consultation about and characterization of the Hazardous Materials and written agreement in advance, the City and/or LCDC may voluntarily undertake remediation effort with the cost and liability therefor to be determined in the separate written agreement.

### 6.05 COMPLIANCE WITH ENVIRONMENTAL COVENANTS

LCDC, in conducting any activity on the Property, and in leasing any part of the Property, shall comply with all applicable local, state and federal environmental rules, regulations, statutes, laws or orders including but not limited to the Environmental Covenants.

A. LCDC, in conducting any activity on the Property, shall comply with all applicable local, state or federal rules, regulations, statutes, laws or orders, as amended from time to time (collectively "Environmental Requirements"), including but not limited to the Environmental Covenants and any and all others regarding the storage, use and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. For purposes of this Lease the terms "Hazardous Materials" shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), used oil or any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the



Toxic Substances Control Act, and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

B. In connection with any activities of LCDC or its Subtenants, LCDC shall acquire or cause its Subtenants to acquire all necessary federal, state and local permits and comply with all applicable federal, state and local environmental permit requirements relating to LCDC's or its Subtenants' use of the Premises.

C. LCDC will not cause and it will prohibit any discharge or disposal of any Hazardous Materials to the Premises, including through, in or onto floors, floor drains, storm or sanitary sewer systems, surface or ground water, or land.

D. In the case of a discharge, release, spill or leak of Hazardous Materials as a result of LCDC activities or that of any Subtenant, LCDC shall immediately control and remediate all contaminated media to applicable federal, state and local standards. LCDC shall reimburse the City for any penalties and all costs and expenses, including without limitation reasonable attorney's fees, incurred by the City as a result of the release or disposal by LCDC or any Subtenant of any Hazardous Materials on City property. LCDC shall immediately notify the City in writing of the release, spill or leak, the control and remediation response actions taken by LCDC and any responses, notifications or actions taken by any federal, state or local agency with regard to such release, spill or leak.

E. LCDC shall make available for the City's review and approval all documents and materials that LCDC prepares pursuant to any requirement under this section. The City's approval shall be required prior to LCDC submitting any such documents or materials to any governmental agency, except where such prior approval would prevent it from complying in a timely manner with any requirement to file any notice or report regarding any release or threatened release or exposure to or of Hazardous Materials at, on, under or about the Premises. LCDC shall provide to the City copies of all such notices and reports of regulated contacts, releases or threatened releases when filed with the appropriate governmental agency.

F. LCDC shall provide timely notification to the City of any spills of Hazardous Materials that it discovers and each Sublease shall contain a covenant by each Subtenant to provide timely notice to LCDC and the City of any spills of Hazardous Materials that it knows of or should know of and/or discovers.

#### 6.05 COMPLIANCE WITH ALL LAWS AND REGULATIONS

During the term, LCDC shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives covenants, easements, zoning and land use regulations and restrictions of record permits, building codes and the requirements of any applicable fire and flood insurance underwriter or rating bureau, now in effect or which may hereafter come in to effect including, without limitation, the Americans with



Disabilities Act and laws regulating hazardous substances (collectively "Laws".) LCDC shall inspect the condition of the Property at LCDC's sole cost and expense and shall comply with all Laws relating to the proposed uses of the Property, and shall require the same of each and every tenant to whom LCDC subleases any part of the Property.

LCDC agrees not to use or permit the Premises to be used for any purpose prohibited by the laws of the United States, the State of Colorado or the ordinances of the City, or not authorized hereunder, and it further agrees that it will use the Premises in accordance with all applicable federal, state and local laws and all general rules and regulations, as amended and adopted by the City. LCDC further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from LCDC or which the City may reasonably request relating to LCDC'S operations.

Use contingent upon obtaining development and land use permits and approvals.

LCDC's right to use or develop the Premises and to permit the use or development of any part of the Premises by any Subtenant(s) is contingent upon obtaining all of the certificates, permits and other land use and development approvals that may be required by any federal, state or local authority, including those of the City of Grand Junction. LCDC agrees not to develop or use the Premises or to allow any Subtenant to develop or use the Premises, in whole or in part, without obtaining all such required approvals.

Construction, warranty and acceptance of public infrastructure on the Premises.

Construction and installation of public infrastructure on the Premises shall be subject to all the requirements of the City Zoning and Development Code, including but not limited to posting of security, applicable City standards, warranties and other obligations. Nothing in this Agreement effects or constitutes a waiver of such requirements by the City.

6.06 HAZARDOUS USE

LCDC agrees that nothing shall be done or kept at the Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Premises which might be unsafe or hazardous to any person or property. Further, LCDC shall not do or permit to be done any act or thing upon the Premises which will invalidate, suspend or increase the rate of any insurance policy required under this Agreement, or carried by the City, covering the Premises or which, in the opinion of the City may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by LCDC to comply with the provisions of this section, after receipt of notice in writing from the City, any insurance rate on the Premises or on the Buildings or Improvements, shall at any time be higher than it normally would be, then LCDC shall pay the City, on demand, that part of all insurance premiums paid by the City which have been charged because of such violation or failure of LCDC provided, that nothing herein shall preclude LCDC from bringing, keeping or using on or about the Premises such materials, supplies,



equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

#### 6.07 PROECTION OF UTILITIES AND ROADS

LCDC agrees that nothing shall be done or kept on the Premises and no Improvements, changes, alterations, additions, maintenance or repairs shall be made to the Premises which might impair the structural soundness of the water, sewer, gas and electric lines or the roads or result in an overload of any of the same.

#### 6.08 NOISE, ODOR, VIBRATION BY USERS

LCDC shall conduct its operations and ensure that the Subtenants conduct their operations in an orderly and proper manner so as not to commit any nuisance on the Premises or annoy, disturb or be offensive to others in the vicinity of the Premises and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate or mitigate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations.

#### 6.09 RESTRICTIONS ON ALTERATION AND REUSE

A. LCDC agrees not to construct any Improvement or improve, change, alter, add to, remove or demolish any Improvements on the Premises without the prior written consent of the City. LCDC must comply with all conditions which may be imposed by the City. Full and complete specifications for all work and Improvements, along with a statement of the time required to complete such work shall be submitted to and approved in writing by LCDC before construction work commences.

B. First class standards of design and construction will be required in connection with all such work, facilities and improvements, and all Improvements shall conform with applicable statutes, ordinances, buildings codes, regulations and other general requirements of the City.

C. With regard to the construction or alteration of Improvements on the Premises, approval of Site Plans by LCDC shall extend to and include consideration of architectural and aesthetic matters; LCDC expressly reserves the right to reject any designs submitted and to require Subtenants to resubmit designs and layout proposals until they meet with LCDC'S approval. LCDC shall act promptly upon a request for approval of such plans and/or revisions thereto.

D. Once approved by LCDC, Site Plans shall be submitted to the City for review in accordance with the Zoning and Development Code and with protective covenants.

#### 6.10 TITLE TO IMPROVEMENTS

LCDC agrees that all Improvements to the Premises, including approved changes and renovations, but except Improvements made by Subtenants, which are affixed to the realty, shall become the property of the City upon their completion and

acceptance by the City. If the City refuses to accept title to any such Improvements that have been constructed LCDC shall remove such Improvements upon the termination or expiration of this Agreement.

#### 6.11 NO LIENS ON PROPERTY

A. LCDC shall not agree to the imposition of any mortgage, deed of trust, lien or encumbrance on the Premises without the written consent of the City; provided, however, that a Subtenant shall have the right to mortgage or encumber its leasehold interest in a Pad Site in connection with development of such Pad Site.

B. LCDC acknowledges and agrees that it has no authority to mortgage or encumber the City's fee interest in the Premises without written consent, in advance.

#### 6.12 COVENANTS, CONDITIONS AND RESTRICTIONS

The City authorizes the covenants, conditions and restrictions attached hereto as Exhibit C and incorporated by this reference as if fully set forth to be imposed on and recorded against the Premises, and, for the term of the lease, transfers declarant rights as set forth therein to LCDC.

#### 6.13 NON-INTERFERENCE

LCDC shall take all reasonable precautions to avoid interference with or damage to any environmental remediation, habitat conservation and/or flood prevention/control performed by or on behalf of the City and/or remediation and/or habitat conservation equipment or improvements on the Premises.

### **SECTION 7 – UTILITY AND MAINTENANCE**

#### 7.01 UTILITY CHARGES

LCDC covenants and agrees to pay or arrange for its Subtenants to pay fees and charges for water, sewer, electricity, gas, telephone and communications services as may be required for the use of the Leased Premises.

#### 7.02 MAINTENANCE OF IMPROVEMENTS

Irrigation systems and landscaping on the Premises, including those on subleased sites, shall be maintained by LCDC. LCDC may contract for the performance of such maintenance with the City under separate written agreement.

LCDC shall be responsible for maintenance of all Public Use Areas of the Premises. LCDC may contract with the City for performance of such maintenance, but any such arrangement shall be by and in accordance with a separate, written and duly executed agreement.

The City agrees to pay all costs and expenses for maintenance of public improvements undertaken by LCDC that are dedicated to and accepted by the City.



LCDC shall require all subtenants to maintain in neat, clean and working condition all structures and other Improvements on Pad Sites, except as otherwise provided in this Section 7.

## **SECTION 8 – INDEMNITY, INSURANCE AND LIMITATION OF LIABILITY**

### **8.01 INDEMNITY**

LCDC agrees to release, indemnify and hold harmless the City and its officers and employees from and against any and all loss of or damage to persons or property arising out of LCDC's operations in connection herewith, LCDC's activities in management of Leases and its other activities on the Premises. This indemnity is not limited to third party claims.

### **8.02 INSURANCE AND SUBROGATION**

LCDC shall procure and maintain insurance, at LCDC's sole cost and expense, insuring both the City and LCDC against all claims, demands or actions arising out of or in connection with LCDC's use or occupancy of the Premises, or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$1,000,000 in respect of injuries to or death of any one person, and in an amount not less than \$1,000,000 in respect of any one accident or disaster, and in an amount not less than \$1,000,000 in respect of property damaged or destroyed, and to be written by insurance companies qualified to do business in the State of Colorado and shall be in a form acceptable to the City. Evidence of coverage shall be furnished to the City on or the anniversary date of this Agreement each year during the Term, along with a copy of the insurance policy. The policy shall provide for 30 days' notice to the City before cancellation.

The City and LCDC each waive any right of subrogation that either may have with respect to insurance proceeds received by the other.

### **8.03 TAXES, LIENS AND FEES**

Development fees related to development of the pad sites shall be paid by LCDC and/or in accordance with the terms of a Sublease by the Subtenant. Development fees related to the Public Use Areas shall be paid by the DDA.

LCDC, as a nonprofit corporation, intends that its interest in the Premises will be exempt from all real and personal property taxes; however, the interests of Subtenants will not be exempt. Subleases shall obligate the Subtenants to pay all taxes assessed on their respective leasehold interests and improvements.

LCDC agrees, in the event it is determined that it owes taxes or that a Subtenant does not pay, that it will pay all taxes, if any, legally imposed on LCDC or its interest in the Premises, including without limitation real and personal property taxes. LCDC further agrees not to permit any of said taxes to become delinquent. LCDC also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be

foreclosed on the Premises, or any part thereof, by reason of any work or labor performed or materials furnished to LCDC for use on the Premises. LCDC agrees to promptly pay when due, all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Premises or improvements thereon which will in any way impair the rights of the City.

#### 8.04 LIMITATION OF LIABILITY

Neither Party shall be liable to the other, or to any of their respective agents, officers, representatives or employees for any lost revenue, lost profits, loss of opportunity, or incidental, punitive, indirect, special or consequential damages, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. Each sublease of the Premises shall contain a provision to this same effect.

### **SECTION 9 – DAMAGE, DESTRUCTION OR LOSS**

#### 9.01 DAMAGE TO LEASED PREMISES

Neither LCDC nor the City shall have any obligation to rebuild or repair any buildings or improvements belonging to or made by any Sub-tenant unless damage is directly caused by LCDC or the City. The City and/or LCDC may insure at its/their sole discretion some or all of the Premises amenities and to the extent that insurance is obtained and damage occurs and a claim is made, the proceeds of any such insurance shall be paid to the City.

#### 9.02 COOPERATION IN THE EVENT OF LOSS

The City and LCDC shall cooperate with each other and the insurance carriers in the insuring of any and claim(s)/collection(s) of any insurance proceeds which may be payable in the event of any loss or damage.

### **SECTION 10 – ASSIGNMENT AND SUBLEASE**

#### 10.01 ASSIGNMENT

LCDC covenants and agrees not to assign, pledge or transfer its rights and/or obligations under this Agreement, in whole or in part, without the prior written consent of the City. "Transfer" by LCDC includes an assignment of this Agreement, or any assignment, transfer, mortgage, pledge or encumbrance of all or any part of LCDC's interest or obligations under this Agreement or its interest in the Premises, by operation of law or otherwise.

#### 10.02 SUBLEASE

LCDC shall have the right to enter into Subleases with Subtenants of those portions of the Premises designated for development in the attached Exhibit B, provided that the terms of the Sublease shall be in accordance with and not less restrictive than



this Agreement, the limitations and restrictions of the Planned Development Zoning Ordinance, approved Outline Development Plan, Final Plan(s), and protective covenants that run with the land.

LCDC shall charge reasonable rent for the sublease of sites. In determining the reasonableness of rent to Subtenants, LCDC may consider commercial lease rates in the Grand Junction metropolitan statistical area (MSA), any anticipated economic benefit of a particular Sublessee locating in the Riverfront Park, current economic conditions in the Grand Junction statistical metropolitan area, lease rates in communities that the City is competing with in terms of attracting businesses, and LCDC may also charge, in addition to rent, fees for security and for maintenance of parking areas, landscaping, irrigation, Public Use Areas and for provision of security.

LCDC may also assess Subtenants for repairs of these areas, Improvements and features on the Premises.

All subleases shall be in writing and require/include the following:

- (a) Rental rate
- (b) Fees (if any)
- (c) Assessments (if any)
- (d) Insurance
- (e) Term
- (f) No Liens against the property
- (g) Compliance with restrictive covenants
- (h) No building construction or alteration without approval
- (i) No Improvements with prior written approval
- (j) Indemnity of LCDC and City (environmental hazards/radon and gamma rad)
- (k) Right of LCDC and/or City to acquire Improvements installed by Subtenant upon termination of Sublease
- (l) Compliance with use and other restrictions and requirements contained in the Planned Development Zoning Ordinance, Outline Development Plan, approved Final Plans and approved Site Plans.

#### 10.03 CERTIFICATION OF COMPLIANCE

Prior to entering into each Sublease with a Subtenant, LCDC shall certify in writing to the City that all of the conditions of 10.02 have been met. No Sublease shall be valid or enforceable until the City has approved the certification in writing.

#### 10.04 LENDER AGREEMENTS

The City and LCDC may enter into Lender Agreements with the lenders of Subtenants in order to facilitate financing of Subtenant Improvements on Pad Sites.

## 10.05 ESTOPPEL CERTIFICATES

The parties agree, at any time and from time to time on or before ten (10) days after written request by the other party, to execute, acknowledge and deliver to the other party an estoppel certificate certifying (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified, and stating the modifications), (b) to the actual knowledge of the certifying party, that there have been no defaults by the City or by LCDC (or, if there have been defaults, describing the default), (c) the date to which Rent and other charges have been paid in advance, if any, (d) such other matters as may be reasonably required by the City, LCDC, or any mortgagee or prospective mortgagee or any purchaser or potential purchaser of the Premises or any portion thereof. Any such statement delivered pursuant to this section may be relied upon by any purchaser or prospective purchaser of all or any portion of Subtenant's interest in the Premises, or by any mortgagee or prospective mortgagee.

## **SECTION 11 – PUBLIC USE AREAS**

### 11.01 RIGHTS OF ACCESS TO PUBLIC USE AREAS

Public Use Areas shall be open to and available to and accessible by the general public, subject to reasonable rules and regulations as provide herein below.

### 11.02 OWNERSHIP OF PUBLIC USE AREAS AND IMPROVEMENTS THEREON –

Public Use Areas shall be owned by the LCDC.

Improvements located in the Public Use Areas (such as lakes, ponds, zip lines, passive and active recreation features and amenities) may be installed by the City, the DDA, LCDC or by a Subtenant. LCDC shall ensure that all Subleases grant to LCDC and the City the right acquire any Improvements installed by a Subtenant(s) at such time as the lease with that Subtenant is terminated.

### 11.03 RESTRICTIONS ON PUBLIC USE AREAS

LCDC may subject the use of the Public Use Areas to reasonable rules and regulations limiting hours of use and restricting activities to those which enhance the value and overall character of the Premises and/or the Property and protect or enhance the property of Subtenants. Such rules and regulations shall be subject to the approval of the City and the DDA, and shall be posted so as to be reasonable visible by the visiting public.

LCDC may, but is not required to, contract for provision of security for the Public Use Areas.

### 11.04 MAINTENANCE OF PUBLIC USE AREAS

LCDC shall be responsible for the maintenance of the Public Use Areas and all Improvements thereon. Public Use Areas and Improvements thereon shall be



maintained in a neat, functional, reasonably safe and aesthetically pleasing condition at all times.

LCDC shall be responsible for marking and preventing the use by the public of all hazards and features or equipment that are defective or under repair.

LCDC may contract with the City for the performance of such maintenance under separate written agreement.

## **SECTION 12 – OPTION TO SELL DEVELOPMENT SITE(S)**

### **12.01 GRANT OF OPTION SUBJECT TO CITY COUNCIL AND VOTER APPROVAL**

During the term of this agreement, as is consistent with the Charter and every term, provision and condition of applicable law, the City Council may refer a question to the ballot, at either a municipal or general election, to sell, convey or otherwise dispose or all or a portion of the property, even though subject to this agreement.

### **12.02 NOTICE OF INTENT TO EXERCISE SALE OPTION**

If the City Council refers a question(s) to the ballot it shall provide 45 days' advance written notice to LCDC. Notice shall contain the proposed ballot language and the price, terms and consideration for the sale, which shall be established in the ballot (s) as provided by law.

### **12.03 CALCULATION OF SALE/PURCHASE PRICE**

The purchase price/sale price of each lot or a specific portion of the property shall be determined by appraisal.

### **12.04 TITLE/DEED RESTRICTIONS IF SOLD**

The City shall cooperate with LCDC and any Subtenant(s) in providing all title information in its possession or control concerning the property offered for sale. The City will make no representations or warranties concerning the nature, quality or marketability of its title to the property but recognizes that the ability to deliver good and marketable title to purchasers is crucial to the success of the Riverfront Park.

## **SECTION 13 – LCDC'S USE OF FUNDS**

### **13.01 MANAGEMENT OF SUBLEASE RENTS**

LCDC covenants that it will pay over a portion of the Sublease rents to the City in accordance with Section 4.01 and that and remaining amounts shall be used for: a) direct maintenance of the Premises, and b) for operating overhead.

### **13.02 NO CONFLICT OF INTEREST**

No LCDC board member may act for or on behalf of LCDC other than as authorized by the board and in a way(s) that benefits the development of the property.

### 13.03 FUNDS FROM OTHER THAN THE CITY

LCDC covenants that all funds and other consideration from sources other than the Sublease rents shall be used only to enhance the Premises.

## **SECTION 14 – DEFAULT, CURE AND REMEDIES**

### 14.01 DEFAULT

In the event there is a breach by either party with respect to any of its obligations under this Agreement, including but not limited to the payment of rent, written notice of the breach shall be given. After receipt of such notice, the breaching party shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any nonmonetary breach, provided that the party shall have such extended period as may be agreed to in writing by both parties, and further provided that if the noticed nonmonetary breach cannot be cured within the thirty (30) day period, (or, if such default is not subject to cure within 30 days, the breaching party may have such longer period as may be required to effect a cure, provided that the defaulting party initiates curative action within 30 days and continues such action until the default is cured). The parties may not maintain any action or effect any remedies for default unless and until the breaching party has failed to cure the breach within the time periods provided.

### 14.02 REMEDIES

Upon a default, the non-defaulting party may at its option, but without obligation to do so, perform the defaulting party's duty or obligation on the defaulting party's behalf. The costs and expenses of any such performance by the non-defaulting party shall be due and payable by the defaulting party upon invoice therefor. Non-payment by the defaulting party of undisputed amounts shall be subject to interest at a rate of ten percent (10%) per annum. In the event of a default by either party with respect to a material provision of this Agreement, without limiting the non-defaulting party in the exercise of any right or remedy which the non-defaulting party may have by reason of such default, the non-defaulting party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting party under the laws or judicial decisions of the state of Colorado. Parties shall use reasonable efforts to mitigate damages in connection with any default by either party.

### 14.03 REMEDIES CUMULATIVE

Remedies provided in this Agreement are cumulative and not exclusive. Exercise of one remedy does not exclude or preclude exercise of any other remedy, and any party shall have the right to exercise any remedy in addition to any other remedy provided herein, at law or in equity, cumulatively.



#### 14.04 WAIVER

Failure of any party to enforce any provision of this Agreement shall not constitute a waiver of any right to enforce the same provision in any other instance or to enforce other provisions hereof. Failure of any party to pursue any remedy authorized hereunder shall not constitute a waiver of the right to pursue said remedy in the future or any other remedy authorized hereunder.

#### 14.05 NO PERSONAL LIABILITY

Nothing in this Agreement shall be construed to create a cause of action against an individual employee, agent, or officer of the City or LCDC.

#### 14.06 GOVERNMENTAL IMMUNITY

Nothing in this Agreement shall waive, in whole or in part, the City's common law or statutory privileges or immunities as a governmental entity, and no party hereto shall assert that this Agreement or any provision thereof constitutes, in any manner, such waiver.

### **SECTION 15 – TERMINATION**

#### 15.01 25 YEAR TERM UNLESS EXTENDED

Pursuant to paragraph 124 of the City Charter no lease to use property of the City shall be granted, except as provided by the Charter and for no longer than a period of 25 years unless duly and lawfully extended.

#### 15.02 TERMINATION

Subject to the terms of any Lender Agreements, this Master Lease may be terminated by the City without liability to LCDC or to any Subtenant under the following circumstances:

- a. Failure of LCDC to effectuate the development of the Premises in accordance with the Plan within five (5) years from the date of execution of this Lease.
- b. Sale by the City of all or part of the Premises to another person or entity.
- c. Failure of LCDC to timely and reasonably abate any unlawful use of the Premises or any use of the Premises that is not allowed by restrictive or protective covenant(s).

Termination of this Master Lease shall be undertaken subject to Subleases in effect on the Premises as provided in the Lender Agreements.

### **SECTION 16 – AUDIT AND RECORDS**

#### 16.01 ANNUAL AUDIT

LCDC shall maintain financial and accounting records pertaining to this Lease and to each and every sublease of the Premises including but not limited to rental revenues and

expenditures thereunder and/or performance thereof in accordance with generally accepted accounting principles and other procedures specified by the City. These records must be made available at all reasonable times to the City, and its designees, including but not limited to, the City Auditor and/or the City Manager or his/her designee, during the Lease Term and any extension thereof and for three (3) years from the date of final payment or expenditure. LCDC shall permit the City and or its designee to perform an annual audit of said accounting records.

#### 16.02 OPEN RECORDS ACT APPLICABLE

The Parties acknowledge that the City is a governmental entity subject to the Colorado Open Records Act, C.R.S. §24-72-200 et seq, (the Act) and that therefore this Agreement and other documents relating to the matters pertaining to this Agreement and activities conducted pursuant to it are or may be public records. The City will use reasonable efforts to protect documents which may be confidential or privileged under the Act, but cannot guarantee nondisclosure of any such. LCDC, on its own behalf and on behalf of its Subtenants, waives any claim against the City relating to disclosure of documents relating to this Agreement and to activities undertaken pursuant to this Agreement.

### **SECTION 17 - MISCELLANEOUS**

#### 17.01 CONTROLLING LAW AND VENUE

This Agreement and the performance thereof shall be governed, interpreted and construed in accordance with and by the laws of the State of Colorado. Venue for any dispute arising out of or under this Agreement or the performance or non-performance thereof shall be in the District Court of Mesa County, Colorado.

#### 17.02 FORCE MAJEURE

In the event that performance of or compliance with this Agreement is prevented or significantly hindered by an act of God, war/hostilities, riot or act of terrorism, or other unforeseeable circumstances beyond the control of the parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts, neither party shall be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other party for any losses or damages to the extent prevented or hindered by the force majeure event.

#### 17.03 NOT A JOINT VENTURE OR PARTNERSHIP

The parties to this Agreement are not partners or joint venturers with each other. Nothing contained or set forth in this Agreement shall constitute a partnership or joint venture between them; and nothing herein shall be construed to create a joint venture or partnership between the Parties, or to impose any liability or create any cause of actions on either of them as such.



#### 17.04 NOTICES

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender. Notices shall be addressed as follows, or to any other address that the party to be notified may have designated in writing to the sender by like notice:

TO THE CITY: Office of the City Attorney  
250 N. 5<sup>th</sup> Street  
Grand Junction, Colorado 81501

TO LCDC: Las Colonias Development Corporation  
Attn. President

  
Grand Junction, Colorado 81501

#### 17.05 SEVERABILITY

If any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under this Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

#### 17.06 NO THIRD PARTY BENEFICIARY

This agreement is for the benefit of LCDC and the City and not for the benefit of any third party or person, whether referred to herein or not. No person or entity who or which is not a party to this Agreement shall have any right of action under or be considered in any way a beneficiary of this Agreement or of any provision hereof.

#### 17.07 NONDISCRIMINATION

LCDC shall comply with all applicable City, State and Federal laws, rules and regulations including but not limited to those involving non-discrimination on the basis of race, color, religion, national origin, age, sex or handicap, in the execution of its obligations and responsibilities under this Agreement.

#### 17.08 NO CONTINGENT FEES

LCDC warrants that it has not employed or retained any company or to solicit or secure this Lease and that it has not paid or agreed to pay any person or entity any fee, commission, percentage, brokerage fee, gift or other consideration on a basis that is contingent upon the award of this Lease. For a breach or violation of this warranty, the City shall have the right to annul the Lease without liability or, in its discretion.

#### 17.09 INTEGRATION

It is agreed and understood that this Agreement contains all agreements, promises, and understandings between LCDC and the City and that no statements, inducements, verbal or oral agreements, promises, or understandings shall be binding upon either party in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties with the same formality as this Agreement.

#### 17.10 PRIOR APPROPRIATION – CITY OBLIGATIONS SUBJECT TO ANNUAL APPROPRIATION

This Agreement and the performance thereof by the City involving payment of or promise to pay any funds whatsoever is subject to annual appropriation of the City Council of the City of Grand Junction.

#### 17.11 APPROVAL BY CITY COUNCIL

This Agreement is not effective until it has been approved by Resolution of the City Council.

#### 17.12 ARTICLES OF INCORPORATION AND BYLAWS CONTROL/NO AMENDMENT BY LEASE OR SUBLEASE

Nothing in this Agreement nor in any sublease of the Premises by LCDC shall amend or alter or be construed so as to amend or alter the provisions of the Articles of Incorporation and/or Bylaws of LCDC.

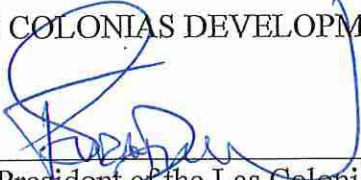
#### 17.13 NO VESTED RIGHTS OR INTERESTS

This Agreement does not guarantee, represent or certify that LCDC or any subtenant thereof is entitled to any land use, building, site plan, development, environmental or any other approval(s) required by the City, relating to use and/or development of the Premises. Such approvals are beyond the scope of this Agreement.




ENTERED into effective the day and year first set forth above.

LAS COLONIAS DEVELOPMENT CORPORATION

By:   
President of the Las Colonias Development Corporation

CITY OF GRAND JUNCTION

By:   
Mayor of the City of Grand Junction

# EXHIBIT A

(12 pages)

Lease Parcel No. 1 – Legal Description (3 pages)

Lease Parcel No. 2 – Legal Description (2 pages)

Lease Parcel No. 3 – Legal Description (2 pages)

Lease Parcel No. 4 – Legal Description (1 page)

Lease Parcel No. 1 – Sketch (1 page)

Lease Parcel No. 2 – Sketch (1 page)

Lease Parcel No. 3 – Sketch (1 page)

Lease Parcel No: 4 – Sketch (1 page)



LEASE PARCEL NO. 1

A certain parcel of land lying in the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) and the Northeast Quarter of the Southwest Quarter (NE 1/4 SW 1/4) of Section 24, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

COMMENCING at the Southwest corner of the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of said Section 24 and assuming the South line of the SE 1/4 NW 1/4 of said Section 24 bears S 89°56'29" W with all other bearings contained herein being relative thereto; thence from said Point of Commencement, N 09°41'10" E, a distance of 110.66 feet to the POINT OF BEGINNING and the beginning of a 656.94 foot radius curve, concave Northwesterly, whose long chord bears N 36°05'36" E with a long chord length of 634.61 feet; thence Northeasterly along the arc of said curve, thru a central angle of 52°01'29", an arc length of 656.94 feet; thence N 10°04'51" E, a distance of 145.92 feet; thence N 32°28'53" E, a distance of 7.98 feet to a point being the beginning of a 100.00 foot radius curve, concave Southeasterly, whose long chord bears N 44°04'36" E with a long chord length of 93.99 feet; thence Northeasterly along the arc of said curve, thru a central angle of 56°03'53", an arc length of 97.85 feet to a point being the beginning of a 28.50 foot radius curve, concave Northwesterly, whose long chord bears N 64°14'30" E with a long chord length of 7.80 feet; thence Northeasterly along the arc of said curve, thru a central angle of 15°44'05", an arc length of 7.83 feet to a point being the beginning of a 61.50 foot radius curve, concave Northwesterly, whose long chord bears N 35°34'03" E with a long chord length of 43.69 feet; thence Northeasterly along the arc of said curve, thru a central angle of 41°36'49", an arc length of 44.67 feet; thence S 75°14'22" E, a distance of 12.00 feet; thence N 58°18'24" E, a distance of 30.83 feet to a point being the beginning of a 207.50 foot radius curve, concave Northerly, whose long chord bears S 84°47'29" E with a long chord length of 35.11 feet; thence Easterly along the arc of said curve, thru a central angle of 09°42'18", an arc length of 35.15 feet to a point being the beginning of a 136.50 foot radius curve, concave Southerly, whose long chord bears S 79°56'27" E with a long chord length of 46.01 feet; thence Easterly along the arc of said curve, thru a central angle of 19°24'21", an arc length of 46.23 feet; thence N 19°45'43" E, a distance of 13.50 feet to a point being the beginning of a 150.00 foot radius curve, concave Southwesterly, whose long chord bears S 40°15'31" E with a long chord length of 149.91 feet; thence Southeasterly along the arc of said curve, thru a central angle of 59°57'31", an arc length of 156.97 feet to a point being the beginning of a 123.69 foot radius curve, concave Westerly, whose long chord bears S 02°29'24" E with a long chord length of 33.53 feet; thence Southerly along the arc of said curve, thru a central angle of 15°34'44", an arc length of 33.63 feet to a point being the beginning of a 160.00 foot radius curve, concave Northwesterly, whose long chord bears S 19°43'19" W with a long chord length of 74.12 feet; thence Southwesterly along the arc of said curve, thru a central angle of 26°47'07", an arc length of 74.80 feet



to a point being the beginning of a 175.00 foot radius curve, concave Northeasterly, whose long chord bears S 29°13'41" E with a long chord length of 310.01 feet; thence Southeasterly along the arc of said curve, thru a central angle of 124°41'07", an arc length of 380.83 feet; thence N 88°34'29" E, a distance of 49.10 feet to a point being the beginning of a 146.48 foot radius curve, concave Southwesterly, whose long chord bears S 58°46'16" E with a long chord length of 132.69 feet; thence Southeasterly along the arc of said curve, thru a central angle of 53°51'57", an arc length of 137.71 feet to a point being the beginning of a 65.00 foot radius curve, concave Southwesterly, whose long chord bears S 17°33'27" E with a long length of 32.07 feet; thence Southeasterly along the arc of said curve, thru a central angle of 28°33'42", an arc length of 32.40 feet to a point being the beginning of a 325.00 foot radius curve, concave Westerly, whose long chord S 00°10'33" W with along chord length of 39.15 feet; thence Southerly along the arc of said curve, thru a central angle of 06°54'19", an arc length of 39.17 feet; thence S 03°37'43" W, a distance of 22.27 feet to a point being the beginning of a 102.00 foot radius curve, concave Westerly, whose long chord bears S 21°17'46" W with a long cord length of 61.91 feet; thence Southwesterly along the arc of said curve, thru a central angle of 35°20'05", an arc length of 62.90 feet to a point being the beginning of a 102.00 foot radius curve, concave Northwesterly, whose long chord bears S 62°10'53" W with a long chord length of 73.41 feet; thence Southwesterly along the arc of said curve, thru a central angle of 42°10'48", an arc length of 75.09 feet to a point being the beginning of a 136.00 foot radius curve, concave Southerly, whose long chord bears S 76°46'11" W with a long chord length of 30.80 feet; thence Westerly along the arc of said curve, thru a central angle of 13°00'12", an arc length of 30.87 feet to a point being the beginning of 477.00 foot radius curve, concave Northerly, whose long chord bears S 77°49'54" W with a long chord length of 125.57 feet; thence Westerly along the arc of said curve, thru a central angle of 15°07'37", an arc length of 125.93 feet; thence S 85°23'42" W, a distance of 95.93 feet; thence N 49°36'18" W, a distance of 29.60 feet to a point being the beginning of a 205.00 foot radius curve, concave Southeasterly, whose long cord bears S 36°28'51" W with a long chord length of 279.90 feet; thence Southwesterly along the arc of said curve, thru a central angle of 86°06'32", an arc length of 208.09 feet to a point being the beginning of a 40.00 foot radius curve, concave Westerly, whose long chord bears S 21°35'12" W with a long chord length of 37.76 feet; thence Southerly along the arc of said curve, thru a central angle of 56°19'15", an arc length of 39.32 feet to a point being the beginning of a 205.00 foot radius curve, concave Southeasterly, whose long chord bears S 40°36'56" W with a long chord length of 65.07 feet; thence Southwesterly along the arc of said curve, thru a central angle of 18°15'48", an arc length of 65.35 feet to a point being the beginning of a 5.00 foot radius curve, concave Northerly, whose long chord bears S 70°09'42" W with a long chord length of 6.25 feet; thence Westerly along the arc of said curve, thru a central angle of 77°21'21", an arc length of 6.75 feet; thence N 71°09'38" W, a distance of 35.82 feet to a point being the beginning of a 40.00 foot radius curve, concave Southerly, whose long chord beard S 72°39'28" W with a long chord length of 47.23 feet; thence Southwesterly along the arc of said curve, thru a central angle of 72°21'49", an arc length of 50.52 feet to a point being the beginning of a 41.30 foot radius curve, concave



Northerly, whose long chord bears N 79°23'49" W with a long chord length of 74.32 feet; thence Westerly along the arc of said curve, thru a central angle of 128°15'15" an arc length of 92.44 feet to a point being the beginning of a 35.55 foot radius curve, concave Southwesterly, whose long chord bears N 46°38'55" W with a long chord length of 37.02 feet; thence Northwesterly along the arc of said curve, thru a central angle of 62°45'27", an arc length of 38.94 feet to a point being the beginning of a 942.43 foot radius curve, concave Southerly, whose long chord bears N 78°51'53" W with a long chord length of 27.55 feet; thence Westerly along the arc of said curve, thru a central angle of 01°40'30", an arc length of 27.55 feet to a point being the beginning of a 44.42 foot radius curve, concave Northeasterly, whose long chord bears N 63°59'19" W with a long chord length of 24.06 feet; thence Northwesterly along the arc of said curve, thru a central angle of 31°25'39", an arc length of 24.37 feet to a point being the beginning of a 447.96 foot radius curve, concave Southwesterly, whose long chord bears N 55°49'43" W with a long chord length of a 117.78 feet; thence Northwesterly along the arc of said curve, thru a central angle of 15°06'28", an arc distance of 118.12 feet to a point being the beginning of a 162.59 foot radius curve, concave Northeasterly, whose long chord bears N 44°41'02" W with a long chord length of 104.25 feet; thence Northwesterly along the arc of said curve, thru a central angle of 37°23'49", an arc distance of 106.12 feet to a point being the beginning of a 55.42 foot radius curve, concave Easterly, whose long chord bears N 10°32'49" W with a long chord length of 29.51 feet; thence Northerly along the arc of said curve, thru a central angle of 30°52'37", an arc length of 29.87 feet to a point being the beginning of a 32.00 foot radius curve, concave Westerly, whose long chord bears N 11°15'50" W with a long chord length of 17.81 feet; thence Northerly along the arc of said curve, thru a central angle of 32°18'38", an arc length of 18.05 feet; thence N 27°25'09" W, a distance of 56.18 feet, more or less, to the Point of Beginning.

CONTAINING 502,807 Square Feet or 11.54 Acres, more or less, as described.

LEASE PARCEL NO. 2

A certain parcel of land lying in the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of Section 24, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

BEGINNING at the Northwest corner of Replat of Pleasant View Subdivision, as same is recorded in Plat Book 8, Page 63, Public Records of Mesa County, Colorado and assuming the North line of the SE 1/4 NW 1/4 of said Section 24 bears S 89°57'55" W with all other bearings contained herein being relative thereto; thence from said Point of Beginning, S 00°07'32" W, along the West line of said Replat of Pleasant View Subdivision, a distance of 493.73 feet; thence N 89°52'23" W, a distance of 4.52 feet to a point being the beginning of a 214.00 foot radius curve, concave Southwesterly, whose long chord bears N 40°13'57" W with a long chord length of 165.55 feet; thence Northwesterly along the arc of said curve, thru a central angle of 45°30'41", an arc length of 169.99 feet; thence N 68°35'54" W, a distance of 17.66 feet to a point being the beginning of a 213.00 foot radius curve, concave Southerly, whose long chord bears N 73°53'57" W with a long chord length of a 45.85 feet; thence Northwesterly along the arc of said curve, thru a central angle of 12°21'27", an arc length of 45.94 feet to a point being the beginning of a 5.00 foot radius curve, concave Northeasterly, whose long chord bears N 35°55'01" W with a long chord length of 6.97 feet; thence Northwesterly along the arc of said curve, thru a central angle of 88°19'18", an arc length of 7.71 feet; thence N 86°05'41" W, a distance of 10.03 feet to a point being the beginning of a 20.00 foot radius curve, concave Northwesterly, whose long chord bears S 48°45'11" W with a long chord length of 25.98 feet; thence Southwesterly along the arc of said curve, thru a central angle of 81°01'07", an arc length of 28.28 feet to a point being the beginning of a 136.00 foot radius curve, concave Northerly, whose long chord bears N 87°04'19" W with a long chord length of 17.39 feet; thence Westerly along the arc of said curve, thru a central angle of 07°19'51", an arc length of 17.40 feet to a point being the beginning of a 20.00 foot radius curve, concave Northerly, whose long chord bears N 78°27'34" W with a long cord length of 3.45 feet; thence Westerly along the arc of said curve, thru a central angle of 09°53'39", an arc length of 3.45 feet; thence N 73°30'44" W, a distance of 23.78 feet to a point being the beginning of a 124.15 foot radius curve, concave Northeasterly, whose long chord bears N 64°39'40" W with a long chord length of 28.31 feet; thence Northwesterly along the arc of said curve, thru a central angle of 13°05'42", an arc length of 28.37 feet to a point being the beginning of a 100.32 foot radius curve, concave Southwesterly, whose long chord bears N 66°21'31" W with a long chord length of 28.77 feet; thence Northwesterly along the arc of said curve, thru a central angle of 16°29'25", an arc distance of 28.87 feet; thence N 74°36'13" W, a distance of 86.92 feet to a point being the beginning of a 30.00 foot radius curve, concave Southerly, whose long chord bears N 86°00'37" W with a long chord length of 11.87 feet; thence Westerly along the arc of said curve, thru a central angle of 22°48'47", an arc distance of 11.94 feet to a



point being the beginning of a 5.00 foot radius curve, concave Northeasterly, whose long chord bears N 61°22'40" W with a long chord length of 5.88 feet; thence Northwesterly along the arc of said curve, thru a central angle of 72°04'42", an arc length of 6.29 feet; thence N 25°20'19" W, a distance of 4.53 feet, thence N 10°04'51" E, a distance of 300.61 feet, more or less, to a point on the North line of the SE 1/4 NW 1/4 of said Section 24; thence N 89°57'55" E, along said North line, a distance of 352.28 feet, more or less, to the Point of Beginning.

CONTAINING 137,447 Square Feet or 3.16 Acres, more or less, as described.

LEASE PARCEL NO. 3

A certain parcel of land lying in the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of Section 24, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

BEGINNING at the Southeast corner of Replat of Pleasant View Subdivision, as same is recorded in Plat Book 8, Page 63, Public Records of Mesa County, Colorado and assuming the East line of the SE 1/4 NW 1/4 of said Section 24 bears S 00°07'58" W with all other bearings contained herein being relative thereto; thence from said Point of Beginning, S 00°07'58" W along the West right of way for 27-1/2 Road, as same is described in Book 111, Page 145, Public Records of Mesa County, Colorado and being a line 12.50 feet West of and parallel with, the West line of the SE 1/4 NW 1/4 of said Section 24, a distance of 428.46 feet to a point being the beginning of a 30.00 foot radius curve, concave Northwesterly, whose long chord bears S 66°41'53" W with a long chord length of 40.84 feet; thence Southwesterly along the arc of said curve, thru a central angle of 85°47'39", an arc length of 44.92 feet to a point being the beginning of a 480.00 foot radius curve, concave Northeast, whose long chord bears N 62°25'58" W with a long chord length of 133.14 feet; thence Northwesterly along the arc of said curve, thru a central angle of 15°56'39", an arc length of 133.57 feet; thence N 31°22'30" E, a distance of 10.26 feet to a point being the beginning of a 3.00 foot radius curve, concave Southwesterly, whose long chord bears N 12°24'07" W with a long chord length of 4.15 feet; thence Northwesterly along the arc of said curve, thru a central angle of 87°33'13", an arc distance of 4.58 feet to a point being the beginning of a 89.00 foot radius curve, concave Northeasterly, whose long chord bears N 37°16'48" W with a long chord length of 57.65 feet; thence Northwesterly along the arc of said curve, thru a central angle of 37°47'50", an arc length of 58.71 feet to a point being the beginning of a 73.00 foot radius curve, concave Southwesterly, whose long chord bears N 29°23'32" W with a long chord length of 27.89 feet; thence Northwesterly along the arc of said curve, thru a central angle of 22°01'18", an arc length of 28.06 feet to a point being the beginning of a 89.00 foot radius curve, concave Northeasterly, whose long chord bears N 21°07'55" W with a long chord length of 58.75 feet; thence Northwesterly along the arc of said curve, thru a central angle of 38°32'32", an arc length of 59.87 feet to a point being the beginning of a 3.00 foot radius curve, concave Southwesterly, whose long chord bears N 49°02'08" W with a long chord length of 4.40 feet; thence Northwesterly along the arc of said curve, thru a central angle of 94°20'57", an arc distance of 4.94 feet; thence S 83°47'23" W, a distance of 7.77 feet to a point being the beginning of a 898.55 foot radius curve, concave Easterly, whose long chord bears N 02°25'28" E with a long chord length of 27.15 feet; thence Northerly along the arc of said curve, thru a central angle of 01°43'52", an arc length of 27.15 feet to a point being the beginning of a 70.18 foot radius curve, concave Westerly, whose long chord bears N 07°24'41" W with a long cord length of 26.06 feet; thence Northerly along the arc of said curve, thru a central angle of 21°24'08", an arc



length of 26.21 feet to a point being the beginning of a 208.91 foot radius curve, concave Southwesterly, whose long chord bears N 29°16'19" W with a long chord length of 80.86 feet; thence Northwesterly along the arc of said curve, thru a central angle of 22°19'08", an arc length of 81.38 feet to a point being the beginning of a 170.44 foot radius curve, concave Southwesterly, whose long chord bears N 49°55'50" W with a long chord length of 56.26 feet; thence Northwesterly along the arc of said curve, thru a central angle of 18°59'55", an arc length of 56.51 feet to a point being the beginning of a 30.00 foot radius curve, concave Easterly, whose long chord bears N 23°00'06" W with a long chord length of 35.63 feet; thence Northerly along the arc of said curve, thru a central angle of 72°51'23", an arc length of 38.15 feet to a point being the beginning of a 182.00 foot radius curve, concave Westerly, whose long chord bears N 06°46'41" E with a long chord length of 42.14 feet; thence Northerly along the arc of said curve, thru a central angle of 13°17'49", an arc length of 42.24 feet; thence N 00°07'46" E, a distance of 9.33 feet, more or less, to a point on the South line of said Replat of Pleasant View Subdivision; thence S 89°54'34" E, along said South line, a distance of 326.64 feet, more or less, to the Point of Beginning.

CONTAINING 101,157 Square Feet or 2.32 Acres, more or less, as described.

LEASE PARCEL NO. 4

A certain parcel of land lying in the Northwest Quarter of the Southwest Quarter (NW 1/4 SW 1/4) of Section 24, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

COMMENCING at the Southwest corner of the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of said Section 24 and assuming the South line of the SE 1/4 NW 1/4 of said Section 24 bears S 89°56'29" W with all other bearings contained herein being relative thereto; thence from said Point of Commencement, S 84°08'03" W a distance of 266.05 feet to the POINT OF BEGINNING; thence from said Point of Beginning, S 16°35'43" E, a distance of 337.24 feet to a point being the beginning of a 1,324.49 foot radius curve, concave Southeast, whose long chord bears S 62°36'19" W with a long chord length of 13.99 feet; thence Southwesterly along the arc of said curve, thru a central angle of 00°36'19", an arc length of 13.99 feet to a point being the beginning of a 188.00 foot radius curve, concave Northerly, whose long chord bears S 89°56'31" W with a long chord length of 174.43 feet; thence Westerly along the arc of said curve, thru a central angle of 55°16'42", an arc length of 181.38 feet; thence N 62°25'08" W, a distance of 253.05 feet to a point being the beginning of a 100.00 foot radius curve, concave Southerly, whose long chord bears N 76°12'11" W with a long chord length of 47.65 feet; thence Westerly along the arc of said curve, thru a central angle of 27°34'05", an arc length of 48.12 feet; thence N 89°59'13" W, a distance of 67.15 feet; thence N 16°53'32" E, a distance of 113.60 feet to a point being the beginning of a 411.08 foot radius curve, concave Southwesterly, whose long chord bears N 72°19'15" W with a long chord length of 101.60 feet; thence Northwesterly along the arc of said curve, thru a central angle of 14°11'52", an arc length of 101.86 feet; thence N 12°07'01" E, a distance of 74.99 feet to a point being the beginning of a 484.27 foot radius curve, concave Southwesterly, whose long chord bears S 71°33'01" E with a long chord length of 129.36 feet; thence Southeasterly along the arc of said curve, thru a central angle of 15°21'05", an arc length of 129.75 feet; thence N 26°07'31" E, a distance of 5.00 feet to a point being the beginning of a 299.12 foot radius curve, concave North, whose long chord bears N 89°21'25" E with a long chord length of 269.41 feet; thence Easterly along the arc of said curve, thru a central angle of 53°31'53", an arc length of 279.46 feet to a point being the beginning of a 86.00 foot radius curve, concave Southeasterly, whose long chord bears N 70°09'32" E with a long chord length of 22.66 feet; thence Northeasterly along the arc of said curve, thru a central angle of 15°08'28", an arc length of 22.73 feet; thence N 76°53'38" E, a distance of 62.31 feet, more or less, to the Point of Beginning.

CONTAINING 120,692 Square Feet or 2.77 Acres, more or less, as described.



**DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
RIVERFRONT AT LAS COLONIAS  
BUSINESS AND RECREATION PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the Riverfront at Las Colonias Business and Recreation Park (the "Declaration"), is hereby declared effective on the date executed below by **the Las Colonias Development Corporation**, a Colorado nonprofit corporation, hereafter referred to as "Declarant," which has acquired declarant rights pursuant to a Master Lease with the property owner, the City of Grand Junction (City).

RECITALS

A. The City is the owner of, and the Las Colonias Development Corporation is leasing from the City, that certain real property situated within the City of Grand Junction, County of Mesa, Colorado, described in the attached Exhibit A, and hereinafter referred to as the Property. The Property is held by the City as a part of a public park, known as Las Colonias Park.

B. The City has leased the Property to the Declarant and charged the Declarant with development of the Property as a business and recreation park in that certain Master Lease and Development Agreement for the Riverfront at Las Colonias Business and Recreation Park ("Master Lease"). Accordingly, the City has granted to the Declarant the right to create and cause to run with the Property protective covenants, conditions and restrictions on the use and development of the Property.

C. The City intends that the Property will initially be leased to the Las Colonias Development Corporation for a period of twenty-five (25) years, with possibility of renewal for a second twenty-five (25) year term, in accordance with the provisions of the Master Lease. The City also intends to ask the voters of the City to allow the sale of all or part of the Property by placing the question on a ballot in a regular or special election.

D. The City intends for the Declarant to develop the Property as a business and recreation park in accordance with a common plan of development that has been or will have been reviewed and approved by the City of Grand Junction Community Development Department and adopted by the City Council in connection with the Planned Development (PD) zoning of the Property, in the form of a Planned Development Zoning Ordinance, an Outline Development Plan and/or one or more Final Plan, all of which are collectively referred to herein as the Plan.

E. The City intends to subdivide and plat the Property at some future time, but intends for the Property to be developed in accordance with the Plan and with the restrictive covenants established by the Declarant regardless of whether or not such subdivision is accomplished.

F. The land comprising Las Colonias Park was once used for stockpiling uranium mill tailings, but has been remediated pursuant to the Uranium Mill Tailings Remediation Act. The City has since improved Las Colonias Park by adding a pedestrian/bike trail, a pedestrian bridge across the Colorado River, a restroom and small playground, and an amphitheater. The Park is subject to environmental covenants referenced in the conveyance instrument(s) by which the City took title from the State of Colorado in 1997 ("Environmental Covenants"). Therefore, development of the Property, including but not limited to construction of structures by the LCDC and/or its Tenants, is subject to the Environmental Covenants, and construction plans must be approved by the Colorado Department of Public Health and Environment. The City will cooperate with and assist the LCDC and/or its Tenant(s) in obtaining such approval, but has no obligation to remediate any Pad Site or any other part of the Property in the event that adverse environmental conditions are found.

G. Declarant desires and intends that the Property will be developed and improved under a common plan of development under the name and style of Riverfront at Las Colonias Business and Recreation Park (Riverfront Park), and to subject the Property to the covenants, conditions and restrictions set forth herein.

H. Declarant desires to establish beneficial covenants, conditions and restriction upon the Property with respect to the proper use, occupancy, improvement and enjoyment thereof, all for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property.

**NOW, THEREFORE**, for the purposes set forth above and herein, Declarant for itself and its and the City's successors and assigns hereby declares that the Property subject to this Declaration, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, improved, altered, maintained, utilized and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, liens, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be pursuant to, and in furtherance of a common and general plan of development, all of which shall run with the land and be binding upon and inure to the benefit of the Property and every part thereof. This Declaration shall be recorded in Mesa County, Colorado.

## **ARTICLE I GENERAL DECLARATION**

### **2.1 General Purposes.**

Riverfront at Las Colonias Business and Recreation Park will be developed and maintained as a harmonious, multi-use development park with an attractive park-like setting and high-quality buildings and features integrated into the natural landscaped river area environment. To that end, the purposes of these protective covenants are:



- a. To ensure proper use, development and maintenance of the Property and each Lot and Tract therein;
- b. To enhance, protect and preserve the long-term values of the Property and each Lot and Tract therein;
- c. To enhance the Riverfront Park and the public amenities located therein and in its vicinity;
- d. To protect and enhance the natural environment;
- e. To guard against the erection of improper, unsuitable structures and uses;
- f. To avoid incompatible and unsightly uses, buildings, structures, fencing, signs and other installations;
- g. To ensure consistent development of the Property in keeping with the overall high-quality development goals of these protective covenants;
- h. To promote compatible development and use of Pad Sites and Common Areas within the Riverfront Park with the integrity, beauty, and character of the environment;
- i. To encourage and ensure the erection of attractively designed permanent improvements appropriately located within the Property so as to achieve harmonious appearance and function;
- j. To establish and preserve public open spaces for the enjoyment and benefits of occupants, tenants, owners and the public;
- k. To protect the health and safety of the general public;
- l. To attract quality, image-conscious companies and businesses to the Riverfront Park.

2.2 **Estate Subject to Declaration.** Declarant does hereby subject the Property to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, right, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to, touching and concerning and running with the land and shall at all times insure to the benefit of and be binding upon any Person having at any time any interest or estate in the Property, and their respective heirs, successors, representatives or assigns.

2.3 **Life.** This Declaration shall run with the land and shall be binding on all parties and all persons claiming them for a period of 25 years from the date of recording of this Declaration, after which time the restrictions and covenants then in force and effect shall be automatically extended for successive periods of 10 years each, unless an instrument terminating such restrictions and covenants by the Declarant or the owner(s) of the Property in accordance with the provisions regarding amendment and termination in this Declaration.

2.4 **Applicability and Effect.** These protective covenants are applicable to all of the Property and shall become effective and in full force upon recordation with the Mesa County Clerk and Recorder.

2.5 **Leases Subject to Declaration.** Each Pad Site shall be leased subject to the restrictions and covenants set forth herein.

## ARTICLE II

## DEFINITIONS

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

**Building Envelope** shall mean and refer to that portion of a Pad Site which may be depicted and designated as a "Building Envelope" on the Plan or on a Plat of all or part of the Property; a Pad Site may be coterminous with a Building Envelope in some cases.

**City** shall mean the City of Grand Junction, a home rule municipal corporation.

**Common Areas** shall mean and refer to those areas designated as Common Areas on Exhibit C which may include public trails, open space, active and passive recreation areas and features, landscaping, pedestrian-scale amenities such as benches, tables, art, fountains, lakes or other water features, or other park-like amenities.

**Declarant** shall mean the Las Colonias Development Corporation (LCDC), its successors, assigns and affiliates. A person or entity shall be deemed to be a successor or assign of Declarant if specifically designated in a duly Recorded instrument as a successor or assign of Declarant signed by the Owner of the Property and shall be considered a Declarant only as to the particular rights or interests specifically designated in that written instrument.

**Declaration** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Riverfront at Las Colonias Business and Recreation Park and any properly enacted amendments hereto.

**Design Standards** shall mean the rules, procedures, standards, guidelines, requirements and restrictions for site and structure design set forth in this Declaration.

**Front or front yard** shall mean the side of a building or structure facing a public street.

**Improvements** shall mean and refer to any and all buildings, parking areas, fences, screening, retaining walls, stairs, decks, hedges, windbreaks, plants, trees, shrubs, berms, ponds, trails, recreational facilities including zip line facilities, boat houses, storage houses or units, covered storage areas, signs, objects of art, mailboxes, delivery areas, drainage and irrigations facilities (including pumps, pipelines, drip lines, sprinklers) and other structures or landscaping of every type and kind situated on the Property.

**LCDC** shall mean and refer to the Las Colonias Development Corporation, who is the Declarant but who also has other obligations and authority related to the Property pursuant to the Master Lease.

**Lease or Sublease** shall mean and refer to any agreement for the leasing, rental, use or occupancy of any Pad Site or Lot or any structure located on a Pad Site or Lot within the Property.



**Tenant** shall mean and refer to a person or entity who is leasing a Pad Site pursuant to a sublease with the LCDC, but shall not refer to the Declarant/LCDC.

**Lot** shall mean and refer to that part of the Property shown on any Plat of all or part of the Property.

**Master Lease** shall refer to that certain written agreement between the City of Grand Junction and the Las Colonias Development Corporation entitled Master Lease and Development Agreement for the Riverfront at Las Colonias Business and Recreation Park.

**Owner** shall mean the owner of a platted lot of the Property.

**Pad Site** shall mean and refer to subareas of the Property that are conceptually delineated on Exhibit B and which are leased by the Declarant to Tenants or otherwise developed for the purpose of leasing to a Tenant.

**Person** shall mean a natural person, a corporation, a partnership, a limited liability company, a trust, or any other entity capable of holding title to real property pursuant to the laws of the State of Colorado.

**Plan** shall mean and refer to the plan(s) approved by the City Council in connection with the Planned Development (PD) zoning of the Property, which includes the PD zoning ordinance and any duly adopted amendments thereto, the Outline Development Plan (ODP) and any Final Plan, as those terms are defined in the Grand Junction Zoning and Development Code, and Exhibit B attached hereto.

**Plat** shall mean and refer to a recorded plat of the Property and any subsequent replats of all or part of the Property.

**Record or Recorded** shall refer to the act of recording an instrument with the office of the Clerk and Recorder of Mesa County or to an instrument so recorded.

**Riverfront Park** shall mean and refer to the Riverfront at Las Colonias Business and Recreation Park.

**Rules and Regulations** shall mean rules and regulations for use of the Property adopted from time to time by the Declarant's Board.

**Site** shall mean and refer to a subarea of the Riverfront Park developed for a particular purpose.

**Site Plan** shall mean the Declarant- and City-approved site-specific plan for the development of any Site.

### **ARTICLE III EASEMENTS**

A permanent and perpetual easement over the areas shown on Exhibit C as Common Areas is hereby reserved for the general public, subject to the reasonable rules and regulations governing public use established by the LCDC. This area shall include improved walking paths, passive and active recreation areas, water features and other pedestrian amenities. This area shall be maintained by and at the expense of the LCDC, but the LCDC may, by separate agreement, contract with the City for performance thereof, and may assess Tenants fees or dues for such maintenance expenses, or may include maintenance costs in rents charged to Tenants.

All easements burdening the Property or any part thereof shall include the right of ingress and egress that is reasonably necessary for any construction, maintenance, inspection, repair or improvement contemplated by the terms of the easement.

#### ARTICLE IV LAND USE

The Property shall be used only in a manner or manners which are consistent with the Plan, and with the following.

4.1 **Permitted uses – Pad Sites.** Pad Sites may be improved, occupied and used only for the following:

- a. Light manufacturing, assembly, fabricating and processing or packaging of goods, materials and products.
- b. Research, development and testing laboratories, facilities and services.
- c. Wholesaling of products.
- d. Office.
- e. Retail sale of products manufactured on site and clearly an accessory use to the primary use of the site, which primary use must be among a, b, and c above.
- f. Retail sale of outdoor recreational products and/or services (such as outfitters), excluding sales of motorboats, automobiles or recreational vehicles.
- g. Other uses substantially similar in nature to the uses listed above.
- h. Only on the pad sites designated as J, K, L, and M on Exhibit B, restaurant, bar/tavern or other food sales are also allowed.
- i. Only on the pad site designated as I on Exhibit B, indoor storage and warehousing are also allowed.
- j. Hotel/motel.
- k. **Accessory uses** in conjunction with the foregoing primary uses are limited to the following: office operations that are integral to a permitted use; retail sale of products



manufactured on site; food, coffee or beverage sales; and substantially similar accessory uses.

**4.2 Permitted uses – Common Areas.** The areas designated as Common Areas as shown in Exhibit C may be improved and used only for the following:

- a. Public trails
- b. Open space
- c. Access
- d. Landscaping
- e. Public, pedestrian-scale amenities such as benches, tables, art, fountains, ponds, swimming and other water features.
- f. Outdoor recreation – public (this may include but is not limited to non-motorized watercraft rentals and launch areas, exercise circuits, playgrounds).
- g. Drainage and/or irrigation facilities
- h. Other uses and improvements substantially similar to the foregoing.

Common areas shall not be subleased by the LCDC to any Tenant or third party. Nothing in these restrictive covenants shall be deemed or construed to create a public forum in or out of the Common Areas or any other part of the Property. The Declarant may subject the use of Common Areas by the public to reasonable rules and regulations limiting hours of use and restricting activities to those which enhance the value and overall character of the Property and the Riverfront Park and protect or enhance the property and business activities of Tenants.

**4.3 Prohibited uses.** The following uses are prohibited on the Property:

- a. Uses which would cause a nuisance per Article VII of this Declaration.
- b. Outdoor storage yards, and any outdoor storage that is not merely incidental to the primary use.
- c. Storage warehouses, mini-warehouses or similar storage facilities for non-business uses.
- d. Manufacture or sale of ceramics or ceramic products.
- e. Gasoline stations or related uses.
- f. Gasoline, oil or other fuel production, storage or distribution operations.
- g. Ammunition, ordnance or explosives production, distribution or storage operations.
- h. Insecticide or pesticide production, distribution, or storage. (Small amounts of materials for rodent or insect control on site may be kept on a site where such keeping is only incidental to an otherwise permitted use.)

- i. Asphalt plants.
- j. Glue or acid manufacture or distribution operations.
- k. Cement, lime or gypsum or related manufacturing operations.
- l. Junk or salvage yards.
- m. Used auto parts sales.
- n. Waste processing, waste incineration, and recycling businesses (recycling and waste bins incidental to permitted uses are allowed if maintained in accordance with the Design Standards herein).
- o. Residential uses of any kind.
- p. Mobile homes, trailers.
- q. Camping and/or RV sites.
- r. Retail sales of automobiles, recreational vehicles, motorized recreational watercraft, motorboats, guns, secondhand goods,
- s. Pawn shops.
- t. Paid parking lots.
- u. Gravel pits, mining, or other oil, gas or mineral extraction operations.
- v. Cabinet, furniture and upholstery shops.
- w. Rendering or slaughtering of animals or processing of animals or animal byproducts.
- x. Cemeteries, funeral homes or cremation facilities.
- y. Marijuana businesses of any kind, whether retail, wholesale, production, manufacturing, testing, laboratory or other marijuana related business.
- z. Adult entertainment, including but not limited to gentlemen's clubs and adult book stores.

4.4 **Interpretation of permitted and prohibited uses.** When it is unclear whether a proposed use is permitted, the City shall make the determination before the use may be allowed. The LCDC may make a recommendation to the City as to the appropriate classification of a use under these protective covenants and/or whether a use should be permitted or prohibited hereunder.

## ARTICLE V DESIGN STANDARDS

5.1 **General.** It is the intent of this section that all structures, sites, features and amenities shall be designed and constructed in such a manner as to provide an aesthetically pleasing appearance and be harmonious with the overall development of the Property. A basic harmony of architecture shall prevail among all development and Improvements so that no improvement shall detract from the appearance of the Business Park overall. Individuality and creativity are encouraged provided that blending of design into the surrounding context is achieved. The general design context must reflect a high quality image.



Nothing contained herein shall nullify any of the requirements of federal, state or local laws, regulations or ordinances. In instances where applicable laws, regulations or ordinances and these protective covenants conflict, the more restrictive shall apply.

**5.2 Site plan submittal, review and approval.** A Site Plan for development and/or improvement of each Pad Site or leasehold area shall, prior to any construction, grading or other site work, be prepared and submitted for approval to the Declarant and the City of Grand Junction Community Development Department. No building, improvement, or use shall be erected, placed, commenced or altered on any Pad Site unless and until a site plan has been approved by the Declarant and the City of Grand Junction.

The Site Plan must address all the standards and requirements set forth in these protective covenants and applicable requirements of the City's Zoning and Development Code.

The Declarant, through its Board of Directors, shall review the site plan site and shall ensure that the Site and structure design comply with the Plan and with the Design Guidelines set forth herein. The Declarant shall then make a recommendation to the City for approval, denial or approval with conditions.

Site Plans shall be prepared, submitted and reviewed by the City in accordance with the City of Grand Junction Zoning and Development Code and with the Comprehensive Plan (including any subarea plans) as may be amended from time to time, and with these protective covenants.

**5.3 Subdivision.** No lease or subdivision of land or lot line adjustment shall occur without the prior written approval of the Declarant and the City.

#### **5.4 Materials.**

5.4.1 Intent. It is the intent of these provisions governing materials that all structures shall be designed and constructed in such a manner as to provide an aesthetically pleasing appearance and be harmonious with the overall development of the Riverfront Park. In addition, exterior building materials should be durable, well maintained and of a quality that will retain a pleasing appearance over time.

5.4.2 Building materials. A mix of or variation of materials should be used on exterior facades to break up large building forms and walls. Facing shall be designed to create visual interest and appeal. Facades shall be finished in an attractive manner in keeping with the character of the Riverfront Park. Colors, materials, finishes and building forms for all buildings shall be coordinated in a consistent and harmonious manner on all elevations, facades and sides.

5.4.3 Roof. Roofs shall have a maximum pitch of 5/12. All roofing surfaces shall be of a consistent design and material. All roof-mounted mechanical equipment, roof structures, and the like shall be shielded or screened from view from Riverside Parkway

and from the Common Areas. Materials used for shielding or screening shall be harmonious with materials and colors used in roof.

5.4.4 Fencing. All fencing on or within the Property shall be made of either wood, vinyl, wrought iron or masonry wall materials. No chain link or wire fencing of any kind is allowed, except that a chain link fence may be allowed on Pad Site E and Pad Site I, except on any side of the Site which faces and abuts a public street or right-of-way.

## 5.5 Architectural standards.

Structures shall have at least three of the following elements in combination in order to create and increase visual interest and reduce the appearance of mass and scale:

- Façade articulation/modulation (recessed and projected elements) at a minimum of every 30 feet
- Roofline variations that add interest to and reduce the scale of buildings or expanses of blank wall, such as overhang/eaves, recesses/projections, raised cornice parapets over doors or bays and peaked roof forms.
- Design details which emphasize architectural features, such as
  - Columns and pilasters that help break up a horizontal plane of a building
  - Change of material such as on an exterior wainscoting panel
  - Accent colors that help define and/or accentuate architectural features
- Defined entry: façade feature that emphasizes the primary building entrance through projecting or recessed forms, detail, color and/or materials
- Window sizes and shapes which break up the façade and provide visual variety and provide a pedestrian and customer friendly character
- Awnings and porticos that provide visual and/or architectural interest
- Variation in materials, material modules, expressed joints and details, surface relief and texture that break up building forms and wall surfaces (such as sills, headers, belt courses, reveals, pilasters, window bays or similar features)

5.6 Outdoor storage. No outdoor storage of unusable equipment, material for recycling, raw materials, damaged finished materials and products, machinery, parts or other equipment is permitted anywhere on the Property, except on Pad Site E and Pad Site I, and on those Pad Sites any such outdoor storage must be only accessory and necessary to the primary use of the Site.

Transformers or similar above-ground equipment, dumpsters, recycling equipment and containers, compactors, bailers and other waste management equipment and waste containers shall be located on or below grade and screened from view in an attractive manner.



Refuse containers, including dumpsters, must be enclosed and concealed from view using materials that match the building façade and provide an opaque visual screen. Enclosures shall be maintained so as to present a good appearance at all times.

**5.7 Minimum parcel size.** Each Pad Site shall be at least ½ acre in size, including lots designated for future development. No lease or subdivision of Property shall result in the creation of a Pad Site or Lot less than ½ acre in size.

**5.8 Parking, circulation and loading areas.** On-street parking is encouraged. Parking will be shared among and used in support of use the Riverfront Park and its amenities as a whole. Parking, except in designated on-street parking areas or lots is not allowed within the Riverfront Park and non-vehicular/multi-modal transportation is encouraged. Additional parking required to meet a Tenant's or Owner's needs should be located under the building.

Parking areas, driveways, drive aisles, and loading areas shall be paved with concrete or asphalt; no other surfaces are allowed, including but not limited to recycled tire products and gravel.

Loading areas shall maximize the use of areas already paved, except that loading shall not be conducted so as to interfere with traffic circulation in the Riverfront Park (on drive aisles or in or not streets). Loading areas may be shared among Tenants. Loading areas shall be oriented so as to minimize the impact on the public view corridor and areas open for public enjoyment.

The LCDC may create rules and regulations governing parking in the designated parking areas on the Property, which may include designating specific parking spaces for the use of a specific Tenant during business hours.

**5.9 Building envelope.** If a Lot contains a Building Envelope noted on a plat of the Property, all Improvements on that Lot must be located entirely within the Building Envelope, including but not limited to buildings, structures, out-buildings, storage units, and/or covered storage areas, but excluding roof overhangs, access driveways, underground utilities, at-grade patios, landscaping, fences, irrigation facilities and drainage facilities.

**5.10 Maintenance.** Each owner, tenant, or occupant of any Pad Site shall maintain the buildings, sidewalks, and improvements on such Pad Site in a safe, neat, clean, and well-maintained condition and shall comply in all respects with all governmental statutes, ordinances, regulations, and health, building and fire codes.

Each owner, tenant or occupant must remove at its own expense any rubbish or trash which may accumulate on its leased site. Rubbish, trash, garbage, or other waste shall be kept only in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean, neat and sanitary condition. Rubbish and trash shall not be disposed of on the premises by burning or incineration.

No open burning shall be permitted on the Property at any time, including for weed control.

**5.11 Signs.**

**5.11.1 Permitted signage.** The only allowed sign types on any Pad Site are wall-mounted and monument signs. Wall-mounted signage shall be limited in size to no larger than 100

square feet. On a single building that is larger than 10,000 square feet in size, a sign of larger than 100 square feet may be approved by the LCDC and the City, but in no even shall such sign be larger than 200 square feet. Monument signage shall be limited to one sign per Pad Site not to exceed 48 square feet in size.

5.11.2 Sign lighting. Sign lighting, if desired, must only illuminate the sign face and shall not produce glare. Individual letters used in the sign may be internally illuminated, but full backlit, cabinet signs are not allowed.

5.11.3 Prohibited signs: Off-premise advertising signs, digital and neon signs, and roof mounted signs of any type are not permitted.

5.11.4. Approval of signage. Signage must be depicted on the site plan and approved therewith.

5.12 Landscaping. The Riverfront Park is intended to have a park-like setting with a strong emphasis on the natural environment. This emphasis will provide an overall visual continuity throughout the Property and will serve as a backdrop for the development of each individual Pad Site. The design of each Site shall be harmonious with the surrounding site components including site context, open space, landmarks, views and vistas, streetscapes and vegetation.

All areas on any site not used for building, storage, parking, walks, access roads, and loading areas shall be suitably graded and drained, seeded or sodded, and maintained in grass and landscaped areas with groundcover, flowers, trees and shrubs.

Required landscaping on each Pad Site must be completed within 6 months of building completion.

The LCDC shall be responsible for maintenance of the landscaping throughout the Property, except in those areas that are on a Pad Site and fenced off by a Tenant. The LCDC may contract, by separate agreement, with the City for such maintenance. The LCDC may assess Tenants fees or dues for such maintenance and/or include maintenance costs in rental rates charged to Tenants.

5.13 Amenities. Maintenance of the Common Areas shall be the responsibility of the LCDC, which may by separate agreement contract with the City for performance thereof. The LCDC may assess Tenants fees or dues for such maintenance and/or include maintenance expenses in rental rates charged to Tenants. It is intended that the Common Areas and amenities thereon be developed and maintained for the use and benefit of the general public as well as the owners, occupants and tenants, but the LCDC may develop reasonable rules and regulations governing such use in order to protect the developed environment while encouraging public use.

5.14 Building and structure height.

The maximum building and structure height including roof top equipment shall be 65 feet, or that height specified in the Plan, whichever is more restrictive.



**5.15 Setbacks and Pad Site coverage.** Setbacks and Pad Site coverage (the amount of the Pad Site that can be occupied by a building) shall be determined by the LCDC in conformance with the Plan and with Exhibit B, and shall be set forth in the lease to each Tenant. LCDC has a responsibility under the Master Lease to limit the developed area to a total of 15 acres, which shall be distributed among Tenants as determined by the LCDC.

**5.16 Utilities.** All utility lines shall be located underground and shall not be located underneath buildings or other structures. Associated equipment and facilities which are appurtenant to underground electric and communications systems, such as but not limited to, substations, pad-mounted transformers, pad-mounted switches, equipment boxes and pedestal boxes may be located above ground but shall be screened from view. Temporary overhead facilities may be installed to serve a construction site, but must be removed promptly upon completion of construction. Where necessary to serve neighboring lots, easements shall be granted and recorded for utility facilities and the utility facilities shall be located entirely within the easement area.

**5.17 Drainage and Irrigation.** All surface water created by roofs, parking lots, or other man-made structures shall be collected and discharged directly into the storm drainage system shown on the approved Site Plan or otherwise approved by the City.

5.17.1 Control. No area within the Property shall be developed, and no use shall be permitted, that results in the flooding, erosion or sedimentation of adjacent properties, drainage facilities or water ways. Erosion control measures must be taken during and after construction. All runoff shall be properly channeled into a storm drain, watercourse, storage area, or other storm water management facility in conformance with the approved Site Plan. The rate of runoff from a project site shall not exceed the predevelopment rate of runoff from the site. To effectuate this requirement, if necessary, surface runoff shall be stored in an on-site storm drainage system.

5.17.2 Maintenance. All elements of the drainage control system shall be constructed and maintained in accordance with the Plan. The LCDC shall be responsible for the maintenance of drainage control and irrigation systems on the Property.

5.17.3 No contamination. Each Tenant and owner shall take the necessary precautions to ensure that storm drainage from their site is not contaminated with motor vehicle fuels and lubricants, scale or other chemical compounds that are detrimental to aquatic life.

**5.18 Site Grading.**

Initial grading of the Property as a whole will be the responsibility of the City. Each Tenant shall grade his/her/its Pad Site to establish and maintain grade(s) as shown on the Plan. The cost of such grading shall be borne by the Tenant.

Utility easements shown on the approved Site Plan shall be graded to within 6 inches of final grade prior to the installation of underground electric and/or communications facilities. After such facilities have been installed, said final grade shall not be altered by more than 6 inches by

the Tenant or by subsequent Tenants on the Pad Sites or Lots on which utility easements are located, except with written consent of the utility(ies) involved and the City Engineer.

#### 5.19 Fencing.

Individual fencing on a Pad Site is discouraged but may be allowed for specific reasons such as public safety or protection of equipment and materials. Fencing in the Common Areas may be installed in the sole discretion of the City. Fencing in this area shall be maintained by the LCDC.

The maximum height of any fence is 8 feet.

Fences must be kept in good repair and condition at all times. Maintenance of fencing on a Pad Site shall be the responsibility of the Pad Site owner or tenant on which the fencing is located. If fencing is on a lot line, the maintenance responsibility may be equally borne by the adjoining owners/tenants.

### ARTICLE VI MAINTENANCE

Each Tenant or Owner shall keep its Pad Site including all drainage and easement areas in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- The removal of all litter, trash, refuse and wastes.
- Maintenance of exterior lighting, signs and mechanical facilities.
- Keeping all exterior building surfaces in a clean, well-maintained condition.
- Snow and ice removal in building entrance and exit areas and from unreasonable roof accumulation.
- Sidewalk maintenance and repair.
- Maintenance of landscaping within any fenced area(s) on the Pad Site.

The City will maintain public streets and public infrastructure that has been accepted in writing by the City.

During construction, it shall be the responsibility of each Tenant or Owner to ensure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials; and that construction materials, trailers and the like are kept in a neat and orderly manner. Burning of excess or scrap construction materials is prohibited. Construction site erosion control practices shall be implemented to prevent erosion, sedimentation and pollution of air or water during construction.

The LCDC shall maintain all undeveloped, unleased Pad Sites free of rubbish, noxious weeds and mosquito breeding pond conditions.



LCDC is also responsible for maintenance of landscaping on those areas of Pad Sites that are not fenced in by a Tenant.

Common Areas shall be maintained by the LCDC in a neat, functional and aesthetically pleasing manner at all times.

## ARTICLE VII

### NUISANCE CONTROL

Any activity within the Property must be performed or carried out in a manner that will not cause or produce a nuisance detrimental to adjacent sites or to their users. No operation, process, activity, or building use on the Property shall produce or create noise, light, glare, odor, smoke, fumes, vapors, dust, gas, vibration, heat, waste, toxic material or other measurable external nuisance.

**Fire and Explosive Hazards.** All activities involving the manufacturing, utilization, processing, or storage of flammable and explosive materials or the use of processes that involve the possibility of burning, shall be provided with adequate safety devices against the hazards of fire and explosion and with adequate fire-fighting and fire-suppression equipment and devices that are standard in the industry. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in completely enclosed buildings which have incombustible exterior walls and an automatic fire-extinguishing system.

**Glare and Heat.** No activity shall emit glare or heat that is visible or measurable outside its premises except activities which may emit indirect or sky-reflected glare which shall not be visible outside the Property. All operations producing intense glare or heat shall be conducted within a completely enclosed building. Exposed sources of light shall be shielded so as not to be visible outside their premises.

**Water Quality Protection.** No activity shall store or discharge, or permit the discharge of, any treated, untreated, or inadequately treated liquid, gaseous or solid materials of such nature, quantity obnoxiousness, toxicity or temperature that might run off, seep, percolate or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as oil or scum; objectionable color, odor, taste; unsightliness; or be harmful to human, animal, plant or aquatic life.

## ARTICLE VIII

### ENFORCEMENT, LIENS AND CHARGES

8.1 **Abatement, Injunction and Suit.** Violation or breach of any restriction or covenant herein contained shall give to any and every owner of property within the Property the right to prosecute a proceeding at law or in equity against the person or persons who have violated or attempted to violate any of these restrictions and covenants to enjoin or prevent them from doing so, and to cause said violation to be removed or remedied and to recover damages for said violation, including the attorney's fees of the prevailing party or parties, and such amount as may be fixed by the Court in such proceedings.

8.2 **Landscaping, noxious weeds, trash.** Should any landscaping improvements such as grass, weeds or other shrubs and trees or decorative materials, become overgrown, infested with noxious weeds, or littered with accumulation trash or junk, the LCDC may require that such area be trimmed, mowed, cleared, groomed or cleaned within 48 hours by written or verbal request. If after 48 hours have passed, the Owner or Tenant neglects to take such actions requested, the LCDC or its contractor may enter the Property and take such actions as are necessary, and assess such costs as a special assessment charge against the Pad Site and the Owner of Tenant thereof.

8.3 **Abandonment.** The LCDC or its contractor may enter upon the premises that have been vacated or abandoned for 90 days or more for the purpose of performing such maintenance as may be necessary to prevent the exterior of any buildings and grounds from deteriorating, becoming unsightly or otherwise detracting from the appearance and general character of the Riverfront Park. Any expense incurred by the LCDC hereunder shall be charged against the property abandoned and it shall be the obligation of the Tenant to pay such expense to the LCDC.

8.4 The failure of LCDC to enforce this Declaration or any provision hereof shall not be deemed a waiver of the right to do so for a subsequent breach or failure or of the right to enforce an other provision of this Declaration or to take action to enforce the same.

8.5 All remedies under this Declaration shall be cumulative and not exclusive.

8.6 The City, as long as it owns the Property or any part thereof, shall have the right, but not the obligation, to enforce any provision of this Declaration in the event that the LCDC declines or refuses to do so.

## ARTICLE IX

### AMENDMENT OR TERMINATION OF DECLARATION

This Declaration and the protective covenants herein may be amended only by the Declarant or by the City as long as the Property is wholly owned by the City, or by a 2/3 majority of all the Owners of the Property. The restrictions and covenants set forth herein may be amended only upon the execution and recording of a written instrument to said effect by the City, as owner of the Property, or by the LCDC as evidenced by a resolution duly adopted by at least two-thirds favorable vote of all members of the LCDC Board, or by an instrument executed by at least two-thirds of all the Owners of the Property. Amendments hereto are effective only if recorded with the Mesa County Clerk & Recorder.

## ARTICLE X

### RECAPTURE AND RESALE OF PROPERTY AND IMPROVEMENT

If an owner does not commence construction of a principal building or principal buildings on its Lot within 24 months after the date of purchase and complete the construction of a building or buildings thereon within 3 years after the date of purchase, the City shall have the option to repurchase the property. Such option shall be exercisable upon delivery in writing of a notice to the buyer within 6 months after the expiration of such 24 month or 3 year period. Closing shall take place within 60 days following the exercise of such option on such date as shall be



designated by the City specified in such notice. The purchase price to be paid by the City upon the exercise of such option shall be the sum of the following:

- The purchase price paid for the land by the buyer.
- The current market value of all improvements, if any, thereon made by the buyer.
- All special assessments which have been paid by the buyer or levied against the premises during the period of such buyer's ownership;

less the sum of the following:

- Unpaid real estate taxes.
- Proration of current year's real estate taxes to date of closing.
- Title insurance policy premium.
- Liens and encumbrances on the property of a definite or ascertainable amount.
- The cost of any environmental audit and/or clean-up deemed necessary by the City to have performed on the Lot.

Conveyance shall be by warranty deed, free and clear of all liens and encumbrances except those in existence prior to the buyer's ownership of the property, and subject to municipal and zoning and land division ordinances, recorded easements for public utilities, and recorded Declaration of Restrictions and Covenants and amendments thereto. Seller shall furnish title insurance policy at seller's expense for full amount of purchase price.

In the event a buyer elects to sell all or any part of any Lot which is vacant, the same shall first be offered for sale, in writing, to the City at a price per acre computed as set forth in Subsection A above. The City shall have 60 days from the receipt of such offer to accept or reject same. Acceptance or rejection of such offer shall be effected by resolution adopted by the City Council. Upon acceptance by the City, conveyance shall be by warranty deed free and clear of all liens and encumbrances except those in existence prior to the buyer's ownership of the property, and subject to municipal and zoning and land division ordinances, easements for public utilities, and building restrictions and ordinances. The seller shall furnish title insurance policy at seller's expense.

If the City fails to timely exercise the option described in Subsection B above or rejects said offer, buyer may then sell such property to any other buyer and the City shall have no further interest therein, except that any use of said property by any subsequent buyer shall be subject to applicable zoning and land division ordinances, restrictions, and regulations of the City related to the use of said property at the time of such sale and to the provisions of this Declaration, as amended from time to time.

Nothing contained herein shall be deemed to give the City a right of first refusal or option in the event that a buyer of a Lot who has improved the same by construction of a building or buildings thereon shall propose to sell all of such property as one Lot together with the improvements thereon, it being intended that the provisions of this shall apply only to the resale of vacant Lot or Lots with incomplete structures/buildings/improvements.

ARTICLE XI  
MISCELLANEOUS PROVISIONS

11.1 **Severability.**

Invalidation of any one of the restrictions or covenants contained within this Declaration of Restrictions and Covenants, by judgment or court order, shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

11.2 **Applicable Laws.**

11.2.1 Notwithstanding the provisions contained herein this Declaration of Restrictions and Covenants, all development and use of the Property or any part thereof shall be in accordance with all applicable local, state and federal laws, rules and regulations.

11.2.2 Litigation or legal interpretation of this Declaration shall be in accordance with/under/subject to Colorado law, with venue in Mesa County.

11.3 **Waiver.** Notwithstanding any covenant, condition, or term contained in this Declaration to the contrary and notwithstanding any provision of applicable law to the contrary, the Declarant shall not have any liability to any Owner or Tenant arising or resulting from any act or omission of LCDC taken or omitted pursuant to this Declaration. Each Owner by accepting a conveyance to any portion of the Property, and each Tenant by leasing any portion of the Property, shall be deemed to have unconditionally and irrevocably waived all claims against the LCDC arising or resulting from acts or omission of the LCDC taken or omitted pursuant to this Declaration. This waiver does not apply to rights that a tenant may have pursuant to the terms of a lease with the LCDC.

DECLARANT: LAS COLONIAS DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
as President of the Las Colonias Development Corporation

State of Colorado            )  
County of Mesa             )ss.

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_, as President of the Las Colonias Development Corporation.

ACKNOWLEDGEMENT BY OWNER: CITY OF GRAND JUNCTION

By: \_\_\_\_\_  
as Mayor of the City of Grand Junction



REFERENCE:

- Resolution Authorizing Lease of Property and Transfer of Declarant Rights to Las Colonias Development Corporation
- Ordinance No. 4767, Planned Development Zoning Ordinance
- Outline Development Plan for the Property

**ERRATA / CORRECTION SHEET**  
**FOR**  
**MASTER LEASE AND DEVELOPMENT AGREEMENT**  
**FOR LAS COLOINAS BUSINESS AND RECREATION PARK**

Page 15, Section 11.02, OWNERSHIP OF PUBLIC USE AREAS AND IMPROVEMENTS THEREON –

Error:

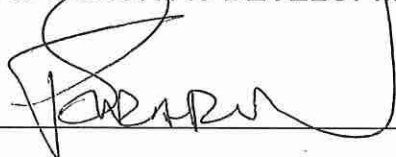
“Public Use Areas shall be owned by the LCDC.”

Correction:

“Improvements on Public Use Areas shall be owned by the LCDC.”

Ratified:

LAS COLONIAS DEVELOPMENT CORPORATION



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Thaddeus Shrader, President

CITY OF GRAND JUNCTION



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Rick Taggart, Mayor