

**FIRST AMENDED DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF
SUNDOWN VILLAGE SUBDIVISION**

RECITALS

THIS INSTRUMENT is made and adopted as of Feb 13, 2020 the First Amended Declaration of Covenants, Conditions, and Restrictions for Sundown Village Subdivision, and is based on the following recitals:

WITNESSETH:

WHEREAS, the original Declaration of Covenants, Conditions and Restrictions for Sundown Village Subdivision ("Original Declaration") was recorded on November 17, 1993, in Book 2025 at Page 626 in the records of the Mesa County Clerk and Recorder; and

WHEREAS, due to changes in the law since the Original Declaration was recorded, certain sections of the Original Declaration do not comply with the Colorado Common Interest Ownership Act ("CCIOA"), which regulates the operation and governance of homeowner's associations in the State of Colorado; and

WHEREAS, the Owners of at least two thirds (2/3) of the Lots within Sundown Village Subdivision have voted to revoke the Original Declaration and readopt and restate it as provided for herein and to bring such Declaration into compliance with CCIOA.

NOW THEREFORE, based on the vote of the requisite number of Owners necessary to amend the Declaration, the Declaration of Covenants, Conditions and Restrictions for Sundown Village Subdivision is hereby revoked in its entirety and made null and void and the following is substituted in its place as the First Amended Declaration of Covenants, Conditions, and Restrictions for Sundown Village Subdivision.

**ARTICLE I
DEFINITIONS**

Section 1. Allocated Interests shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in this Declaration.

Section 2. Architectural Control Committee also referred to herein as the "ACC" shall mean and refer to the Architectural Control Committee referred to in Article IV, Section 7 of this Declaration.

Section 3. Articles shall mean and refer to the Articles of Incorporation of Sundown Village Homeowners Association, Inc.

Section 4. Assessment shall refer to that portion of a common expense or other charges assessed against an Owner.

Section 5. Association shall mean and refer to Sundown Village Homeowners Association, Inc., a Colorado nonprofit corporation, formed for the purpose of being and constituting the entity for the furtherance of the interests of the Owners of property in Sundown Village Subdivision and enforcing the restrictions set forth in this Declaration.

Section 6. Board shall mean and refer to the Board of Directors of the Association.

Section 7. Building shall mean and refer to any Building, including all fixtures and improvements thereto, situated on the Properties.

Section 8. Bylaws shall mean and refer to the Bylaws of the Association.

Section 9. Common Elements shall mean and refer to all of the real estate within the planned community owned by the Association other than the Lots as shown on the maps and plats as described in the plat books of the Mesa County Clerk and Recorder. Such common elements are not subject to partition and are to be used for the purposes as described on the plat and for other purposes as determined by the Association not otherwise inconsistent with the plat.

Section 10. Common Expense shall mean an expenditure made or liability incurred by or on behalf of the Association, together with any allocations to reserves.

Section 11. Common Interest Community shall mean Sundown Village Subdivision, which is a planned community as defined in CRS § 38-33.3-103(8) and (22).

Section 12. Declaration shall mean and refer to this First Amended Declaration of Covenants, Conditions, and Restrictions of Sundown Village Subdivision, as the same may be amended from time to time.

Section 13. Family shall mean one or more natural persons, each related to the other by blood, marriage, or adoption, or a group of not more than three (3) natural persons not at all so related who maintain a common household on a Lot.

Section 14. Fiscal Year shall mean the time period for each annual accounting for Association funds the fiscal year of the Association shall end on December 31 of each calendar year.

Section 15. First Mortgage shall mean and refer to any unpaid and outstanding mortgage, deed of trust, or other security instrument encumbering a Lot recorded in the records of the office of the Clerk and Recorder of Mesa County, Colorado, having priority of record over all other

recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 16. First Mortgagee shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 17. Governing Documents shall relate to the Declaration, the Articles, Bylaws, Policies, and any other documents that regulate or govern the Association

Section 18. Improvements shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, storm water retention/detention and irrigation water system, irrigation facilities such as pumps, pipelines, and sprinklers, and other structures or landscaping of every type and kind situated on the Properties.

Section 19. Limited Common Elements shall mean those areas, if any, specifically designed on the plat for which the benefit thereof is limited to certain Owners.

Section 20. Lot shall mean and refer to that part of the Properties owned in fee simple by the Owners. The boundaries of each Lot, and an identifying number for each Lot, are reflected on the maps and plats as described in the plat books of the Mesa County Clerk and Recorder.

Section 21. Member shall mean and refer to a person or entity which is a member of the Association by virtue of his/her/its ownership of a Lot within Sundown Village Subdivision.

Section 22. Occupant shall mean any person occupying a residence on a Lot within the Sundown Village Subdivision whether or not an Owner.

Section 23. Owner shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 24. Plat shall mean and refer to that plat of Sundown Village Subdivision recorded in the records of the Mesa County Clerk and Recorder, which has the following legal description: The E½ of the West 30 acres of the NE1/4 NW1/4 of Section 15, Township 1S, Range 1E, of the Ute Meridian, Mesa County, Colorado.

Section 25. Properties shall mean and refer to all of the real estate situated within the area described on the maps and plats as described in the records of the Mesa County Clerk and Recorder.

Section 26. Special Assessment shall mean assessments charged to all Owners other than a regular Assessment. It shall also include any assessment charged against the Owner or Owners of an individual Lot which is not charged equally against the Owners of all Lots. Such Special

Assessment may include charges directly attributable to such Owner due to corrective action performed by the Association pursuant to the provisions of this Declaration, reasonable fines and/or penalties, and any other charges assessed against such Owner.

ARTICLE II GENERAL DECLARATION

Section 1. Intent. By making the Declaration hereunder, the Owner specifically intends to enhance, perfect, and preserve the value, desirability, and attractiveness of the Properties and to provide for the maintenance of the Common Elements, Improvements, and Buildings thereon in a manner beneficial to all Owners.

Section 2. Estate Subject to Declaration. By this Declaration, the Owners expressly intend and do hereby subject the Properties to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved, or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Properties, and their respective heirs, successors, representatives, or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation, or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved, or declared herein as though fully and completely set forth in their entirety in any such document.

Section 3. Owners' Rights in Common Elements. Every Owner shall have a right and easement of enjoyment in and to the Common Elements as provided for herein or on the Plat. Any Owner may delegate, in accordance with the Bylaws, the right of enjoyment to the Common Elements and facilities for the members of such Owner's family, tenants, invitees or guests, occupants, or contract purchasers who reside on the Properties. Such rights shall be subject to the right of the Association to suspend the rights to use the Common Elements and easements of any Owner and any person deriving use therefrom for any period during which the payment of any assessments, fees, or other charges due by such Owner remains delinquent, and for any violation of the governing documents of the Association after notice and hearing, as provided in the Bylaws and/or Policies and Rules and Regulations of the Association. A suspension of such rights shall not constitute a waiver or discharge of the Owner's obligation to pay any assessment, fee, or charge as provided for in the governing documents. The Association may collect a fee for disconnecting any service or facility and reconnecting the same once the payment is made or violation is corrected by the Owner, as the case may be.

Section 4. Recording Data. The recorded easements and licenses, if any, appurtenant to, or included in Sundown Village Subdivision or to which any portion of Sundown Village Subdivision may become subject by virtue of a reservation herein will be found on the Plat recorded in the records of the Mesa County Clerk and Recorder.

ARTICLE III RESTRICTIONS ON USE

Section 1. General Restrictions.

a. No dwelling unit shall be erected, altered, placed or permitted on any Lot within the Properties except for use as a single-family residence and a private garage to be used by one family only.

b. Only new construction shall be permitted within the Properties and no structures for occupancy as residences shall be moved upon Lots within the Properties. No structure shall be built which does not meet or exceed requirements of the Uniform Building Code then in effect at the time of construction.

c. No structure of a temporary character, trailer, teepee, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. No mobile homes, HUD homes, trailer homes, or other moveable structures shall be permitted as dwellings within the Properties.

Section 2. Maintenance of Lots, Buildings, Improvements, and Common Elements.

a. The Owners shall keep, maintain, and repair their Lots, Buildings, and Improvements, including landscaping and vegetation in a neat, clean, cultivated, attractive, and well-maintained condition, free from the accumulation of trash or debris or visual deterioration. In the event the Owners fail to keep, maintain, or repair their Lots, Buildings, or Improvements in accordance herewith, the Association may conduct such maintenance, repairs, or restoration and assess the cost thereof to the Owner(s) on whose Lot, Building, or Improvements the maintenance or repairs were conducted as a reimbursement assessment pursuant to Article V hereof.

b. No Owner shall cause or permit any damage, deterioration, or the accumulation of trash and debris upon the Common Elements.

c. The Common Elements shall be owned by the Association

d. Each Owner shall be entitled to exclusive ownership of his or her Lot. Each Owner may use the General Common Elements in accordance with this Declaration and for the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

e. No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish, or trash shall be allowed to accumulate on any Lot or the Common Elements. All garbage, rubbish, and trash shall be placed and kept in covered containers. All garbage must be removed on regular trash collection days.

f. All utilities shall be buried underground from their primary source adjacent to the lot line at the owner's sole expense.

g. No modifications or alterations shall be made in such manner that will obstruct, divert, or otherwise alter the natural water drainage courses and patterns, and no landscaping or changes to the existing terrain shall be made which shall obstruct, divert, or otherwise alter such drainage except as approved by ACC.

h. No property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

i. Notwithstanding anything to the contrary contained herein, in the event that the need for maintenance or repair of the Common Elements is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses, and fees incurred by the Association for such maintenance, repair, or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board at a hearing after notice to the Owner or pursuant to any policy adopted by the Board.

j. No elevated tanks of any kind, including but not limited to oil, gas, and water tanks, shall be permitted.

k. The Association, upon the failure of the Owner of any Lot, to maintain his/her Lot and Improvements, in a reasonable satisfactory manner as determined by the Association, or upon use by the Owner in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the Lot and/or Improvements, or abate the improper use, and any costs incurred shall be charged against the Owner of said lot and collected in the manner set forth in Article V hereof. Unless it is an emergency, the Association shall notify the Owner in writing thirty (30) days before such action is taken, stating the failure of the Owner to maintain his/her Lot. Any damage caused to the Owner's property in performing such maintenance shall be paid by the Association. An Owner must notify the Association in writing within thirty (30) days of notice of such damage, or any claim against the Association shall be barred. Thereafter, the Association, through the ACC, may investigate such claim and determine if the damage was caused by the Association or whether a pre-existing condition existed which caused the damage before any action was taken by the Association. The ACC shall provide written notice to the Owner of its findings. If the ACC determines that the damage was caused by the Association, it shall pay for such damages. If the ACC determines that a preexisting condition caused the damage, the Owner may thereafter file suit against the Association within thirty (30) days after receipt of such notice if the Owner believes that the damage was caused by the Association. The parties shall first mediate the dispute in accordance with its written policy.

l. Each primary driveway shall have a surface constructed of concrete which shall extend to the street.

Section 3. Home Occupations and Offensive Activities.

a. No Lot or Building may be used for commercial purposes of any type whatsoever excepting for home occupations. For purposes of this section, "home occupations" shall mean an occupation by the resident conducted entirely within the residential building which does not entail the employment of third persons on the premises, does not entail the delivery of goods or services to customers upon the premises, and does not entail visits by customers to the premises. For example, but not by limitation, an insurance agent may use his residence as a personal office so long as his customers are not permitted to come to the residence; however, the establishment of a barber shop or a beauty shop would be prohibited. Fruit stands, machinery repair, and all other occupations requiring external buildings are specifically prohibited. Home occupations are subject to the zoning and development codes and regulations of the City of Grand Junction and/or Mesa County, as applicable.

b. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his own vehicle.

c. No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows, or similar devices shall be discharged on the Properties. No open fires shall be permitted on any Lot (including the burning of trash or debris) except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed fireplace or firepit.

d. No sound shall be emitted on any property which is unreasonably loud or annoying, and no odor shall be emitted on any property which is noxious or offensive to others.

e. No Owner shall obstruct any sidewalk at any time (except for loading and unloading). Each Owner shall be responsible for removing debris, stones, mud, and trash from the sidewalk in front of said Owner's Lot within a reasonable time period after such item accumulates on the sidewalk. All snow shall be removed from such sidewalks within 24 hours. All basketball backboards, jumping ramps, skateboard ramps, and similar items must be removed from the sidewalks and streets immediately after use and not allowed to remain unattended on any sidewalk or street. Each Lot Owner shall be responsible for any damage or injury to any other party or person caused by the failure to remove such item.

Section 4. Restrictions on Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except as provided in this paragraph. Dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for commercial purposes and the keeping of such animal(s) does not violate any local ordinance or law. All pets must be controlled and contained so that they do not become a nuisance to the neighborhood and do not run at large or endanger or harass other animals or wildlife. Any pet off an Owner's property must be on a leash and under the control of the Owner or a responsible person. Notwithstanding the foregoing, the keeping of any animal shall not be allowed if such animal

reasonably disturbs the use and enjoyment of the subdivision by any of the Members thereof, including an animal that makes excessive noise or odor. Owners shall be responsible for keeping their Lot and the subdivision free from any pet waste and shall immediately clean up the same. The Board may adopt Rules and Regulations regarding the keeping of pets and the procedures for handling any complaints relating to pets from any Owner or Occupant, whether a violation has occurred and the appropriate remedy or sanction for such violation. Each Owner agrees to abide by such decisions and agrees to hold the Board and the Association harmless from any and all claims, damages, and injuries of any kind and nature whatsoever, arising from the Board's conduct in addressing such issues. Any such cost, expense, fine, or assessment assessed against an Owner shall be considered as a Special Assessment.

Section 5. Parking. No Lot, driveway, roadway, or street within the subdivision shall be used as parking, storage, or an accommodation area for any type of junk or inoperable vehicles. Those items must be kept in a garage or behind a fence. Temporary parking is limited to 72 hours before and after use to accommodate repairs, cleaning, or packing and unpacking. The Association may take any action as allowed for the violation thereof as well as report the violation of such ordinances and regulations to any appropriate governmental authority.

c. All equipment, heavy, or commercial trucks or vehicles used for business (i.e. other than normal passenger-type vehicles) and dual axle trucks shall not be parked or remain on the streets and roadways within the subdivision, except in compliance with all applicable ordinances and regulations. Such equipment and vehicles may not be stored or garaged on a Lot but may remain on a Lot so long as such equipment or vehicle is actively engaged in delivery or other working function. Although the Association may not enforce such ordinances and regulations, it may report any violation thereof to the appropriate governmental authority.

d. Single axle trucks with dump beds, flat beds, or no bed must be garaged or behind a fence when not in use.

e. The Board may make exceptions to any prohibition relating to parking and operation of vehicles, campers, motor homes, boats, go carts, motorcycles, or similar item on a case by case basis. The Board may adopt Rules and Regulations regarding the parking of vehicles within the subdivision, including the making of assessments and fines against any Owner who violates such rules and/or regulations and may have any vehicle, boat, camper, motor home, motorcycle, go cart, or other similar item towed away. Such assessments, fines, and/or costs shall be considered as Special Assessments against the Owner for violations of such Rules and Regulations by the Owner's Occupant's invitees.

f. Notwithstanding the foregoing provisions, the parking of a motor vehicle by an occupant of a lot on a street or driveway in the subdivision shall be allowed if the vehicle is required to be available at designated periods at the occupant's residence as a condition of the occupant's employments and all of the following criteria are met:

- (1) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

- (2) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire, law enforcement, ambulance, or emergency medical services;
- (3) The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- (4) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants to use streets, driveways and guest parking areas within the subdivision.

Section 6. Landscaping.

a. Landscaping shall be a type complimentary to the residential character of the Properties and be acceptable to the Architectural Control Committee. Desert or "Native plant" landscaping shall be acceptable. Each owner shall keep all shrubs, trees, grass, and plantings of every kind on his Lot, and all planted areas between his Lot and adjacent streets, if any, neatly trimmed, properly cultivated, and free of trash, weeds, and other unsightly materials.

b. Any landscaping which affects more than 25% of a Lot requires approval by the ACC. Minor changes such as replacing or changing a shrub or bush may be made without prior ACC approval. Each Owner shall submit all plans for landscaping required to be approved to the ACC. All grading, landscaping, and planting performed or conducted by the Owner shall be first approved by the ACC, which approval shall be subject to the provisions of Article IV, Section 7. Such plan shall include a schedule of completion not to exceed one (1) year from the date of approval by the ACC. Reasonable extensions for completion of such landscaping may be made by the ACC.

c. During the course of landscaping, the Owner shall take all precautions so as to provide for a minimum disturbance of the land and shall cause all trash and materials to be contained on site. Further, each Owner shall take steps to prevent dust from the site from impacting the surrounding Lots as much as possible. Each Owner shall be responsible for the maintenance and upkeep of the landscape of such Owner's Lot, including the front, side, and rear yards, if any, and all vegetation shall be properly cultivated (including watering) and neatly trimmed. Each Owner shall grade and landscape his Lot in such a manner as to prevent drainage of water onto any other Lot or Common Elements not intended for such purpose. Each Owner shall be responsible for any irrigation system on his or her Lot. Subject to the provisions of Article IV, Section 7, should the Owner of any Lot fail to comply with landscaping guidelines as set forth herein or any rules, policies or standards of the Association, the Association may, at its sole discretion, cause such landscaping to be completed, maintained, or kept up upon such Lot and assess the Owner for all costs incurred.

d. No Owner shall remove, alter, injure, or interfere in any way whatsoever with any tree, shrub, or other landscaping or Improvement placed upon the Common Elements by the Association.

e. No tree, shrub, or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or the Replat such as to hinder or interfere with the purposes for which such easement was created.

f. No owner shall permit anything or condition to exist upon his Lot which shall induce, breed, or harbor infectious plant diseases, noxious weeds, or insects.

Section 7. Signs. Except for political signs, no sign of any kind shall be displayed to the public view on any Lot except a sign advertising the Lot for sale or rent which complies with all applicable ordinances and regulations. Signs on the Common Elements are governed by the Association.

Section 8. Flags. An Owner or Occupant may display the American flag on his or her property, in a window of the Owner's or Occupant's residence, if the American flag is displayed in a manner consistent with the Federal Flag Code, Public Law 94-344; 90 Stat. 810; 4 U.S.C. 4 to 10. The Association may adopt reasonable rules regarding the placement, manner of display of the American flag, and the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole. An Owner or Occupant may display a service flag bearing a star denoting the service of the Owner or Occupant or a member of the Owner's or Occupant's immediate family in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's or Occupant's residence. The maximum dimensions allowed shall be nine inches by sixteen inches.

Section 9. Political Signs. An Owner or Occupant may display a political sign on his or her property or in a window of the Owner's or Occupant's residence; except that no political signs shall be displayed earlier than 45 days before an election and 7 days after an election. One political sign per political office or ballot issue that is contested in a pending election shall be allowed, with the maximum dimensions of such signs being the lesser of the maximum size allowed by a governmental ordinance or regulation, or 36 inches by 48 inches. However, to the extent that the foregoing restrictions are more restrictive than any applicable ordinance, rule, or regulations of the City of Grand Junction or Mesa County, the governmental ordinances, rules, and/or regulations shall control. If no such regulations exist, the limitations contained herein shall control. As used herein, "Political Sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

Section 10. Fences. All fencing must be erected or maintained in compliance with all ACC standards or guidelines.

Section 11. Leases. The term "lease" as used in this Declaration shall include any agreement for the leasing or rental of a Lot or any portion of it, and shall specifically include, without limitation, a month-to-month rental. Any Owner shall have the right to lease his or her Lot under the following conditions:

- a. All leases shall be in writing;

b. All leases and lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations and Policies of the Association. The lessee's failure to comply with any of the above-mentioned documents, in any respect shall be a default under the lease; and

c. No lease shall be for fewer than thirty (30) days.

d. The Owner shall provide a copy of the Declaration to his/her lessee and advise the lessee that the lessee is bound by the governing documents of the Association and that violation of such governing documents shall constitute a breach of the lease. The Association may take any enforcement action against a lessee or such lessee's lessor (Owner) for a violation of the Association's governing documents, including but not limited to the imposition of fines and/or penalties against the lessee, the Owner, or both.

e. The provisions of (b), (c) and (d) above shall be contained in each lease. Even if not so contained, such provisions shall be deemed to be implied terms of each such lease, whether or not actually contained in the lease.

Section 12. Miscellaneous. All Members acknowledge that agricultural land uses and practices are being conducted on properties adjoining the subdivision and that such routine practices of plowing, spraying, and cultivating will occur and will not be objected to by the Members.

Section 13. Limitations on Restrictions by the Association. The Association may not prohibit the use of xeriscape or drought tolerant vegetative landscapes, renewable energy generation devices as defined in C.R.S. § 38-30-168, installation or use of energy efficient measures as defined under C.R.S. § 38-33.3-106.7, or prohibit any Owner from using or installing a Level 1 or Level 2 electric vehicle charging system that complies with the requirements of C.R.S. § 38-33.3-106.8.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS; DIRECTORS AND OFFICERS; MEETINGS; INSURANCE; ARCHITECTURAL CONTROL COMMITTEE

Section 1. Membership. Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot shall be entitled to one vote and the vote for such Lot shall be exercised by the Owner or Owners as they determine. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Lot without a protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If there is no majority agreement among the owners of a Lot, there shall be no vote for such Lot.

a. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the Declaration, Bylaws, or Rules of the Association, appointment of proxies may be made substantially as provided in C.R.S. § 7-127-203.

b. If a Lot is owned by more than one person, any Owner of the Lot may vote or register a protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless it provides otherwise.

c. The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Owner.

d. The Association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

e. Any action of the Association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

f. The Board may suspend the voting rights of any Owner during any period for which an Owner is in default and delinquent in paying any amount owed to the Association or for any violation of any of the governing documents of the Association after notice and hearing pursuant to the Association's enforcement policy. The vote of any Owner whose voting privileges are suspended shall not count towards any quorum requirement or other minimum requirement relating to votes by Members. The suspension of any voting privileges shall not constitute a waiver or discharge of any Owner's obligations to the Association.

Section 2. Directors of the Association. The affairs of this Association shall be managed by a Board of Directors (the "Board") of such number as provided in the Bylaws. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

Section 3. Officers of the Association. The Board shall elect the officers at the annual meeting after the Board election, or within a reasonable time after the annual meeting. Such Board members and officers will take office immediately thereafter. The qualifications and terms of office of the officers of this Association may be as set forth in the Bylaws of the Association.

Section 4. Meetings. Meetings of the Members of the Association shall be held at least once each year. All meetings of the Members, the Board and any committee shall be in compliance with the Association policy regarding the conduct of meetings and Colorado law.

Section 5. Limitations Upon Liability.

a. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action of for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. With regard to the Board's duties relating to the Association's investment of reserve funds, the officers and directors shall be subject to standards set forth on C.R.S. Section 7-128-401 of the Colorado Revised Nonprofit Corporation Code, which requires them to act in good faith with the care an ordinarily prudent person would use in like circumstances in a manner reasonably believed to be in the best interest of the Association. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error, or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

b. Notwithstanding the duty of the Association to maintain and repair the Common Elements, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Common Elements or by the conduct of any Member or other persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

Section 6. Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance so far as such insurance coverage is obtainable:

a. Property insurance on the Common Elements and also on property that must become a Common Element for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

b. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

c. Insurance policies carried pursuant to both immediately preceding subsections of this section must provide that:

(1) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(2) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

(3) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

d. Workers' Compensation coverage upon employees.

Section 7. Architectural Control Committee.

a. No Building or exterior Improvement (structure) of any kind shall be erected, placed, or altered on any Lot until the construction plans and specifications, and a plan showing the location of the structure or Improvement, have been approved by the Architectural Control Committee (ACC) as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finished grade elevation all to be in conformity with this Declaration, including, but not limited to, the requirements set forth in Article III.

b. The Architectural Control Committee shall consist of three (3) or more persons to be on the Board or sub lesser number as are willing to serve on such committee. The members the Architectural Control Committee shall be Members of the Association. The number, method, and manner of the Architectural Control Committee's appointment, replacement, and removal, as well as method of operation, to the extent not provided herein, shall be as set forth in the Articles and Bylaws of the Association or as determined by the Board.

c. No Improvement, including a modification or change of more than 25% of the landscaping of a Lot shall be made, installed, erected, or altered within the Properties except upon the prior written consent and approval of the Architectural Control Committee, which shall be subject to Colorado law.

d. Duplicate copies of plans and specifications relating to an Improvement shall be submitted to the Architectural Control Committee for review and final approval. Plans and specifications shall contain, without limitation, the plot plans showing layout, including setbacks, flow, and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows, and exterior materials and colors, and a perspective sketch if requested, and other details necessary to explain any feature or component of the Improvements.

e. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner within the Properties, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to such request. The actions of the Architectural Control Committee shall be deemed conclusively binding upon the Owners.

f. Neither the members of the Architectural Control Committee, nor such representatives as it may designate, shall be entitled to any compensation for services performed pursuant to this Declaration.

g. The Architectural Control Committee shall consider the aesthetic and functional considerations of any design submitted to it; the overall nature and character of the site and appearance of the structure, including orientation with regard to sun, wind, view, and privacy; the grading of building sites to allow natural drainage; the use of earthen tone colors and the discouragement of bright colors, especially when an Owner seeks to change or alter the existing color of the structure; the installation of patio structures designed such that they will blend and compliment the appurtenant structure; the use of landscaping, plantings, and lawn complimentary to the residential nature of the subdivision in a desert style motif. In addition to all the other criteria herein set forth, the Architectural Control Committee shall generally determine whether the proposed Improvement will protect the then value and future values of the Properties then located in the subdivision and to be erected therein. The Architectural Control Committee shall, in the exercise of its judgment and determination, use reason and good faith. Among the other considerations applied, the Architectural Control Committee will determine and base its approval or rejection upon the fact of whether said proposed Improvements are reasonably compatible with other Improvements erected and planned in the subdivision. The Architectural Control Committee shall evaluate the proposed construction as to location on the Lot, harmony of exterior design, materials, and colors with existing dwellings and surroundings, finished grade evaluation, and other criteria as it deems necessary for the purposes set forth in this paragraph.

h. Neither the Association nor the Architectural Control Committee may adopt a restrictive covenant that prohibits or limits xeriscape landscaping, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass.

i. The Association or Architectural Control Committee may take enforcement action against an Owner who allows his or her existing landscaping to die; except that:

(1) Such enforcement action shall be suspended during a period of water use restrictions or guidelines declared by the jurisdiction in which the Association is located, and the Owner complies with any watering restrictions or guidelines imposed by the water provider for the Association;

(2) Enforcement shall be consistent within the community and not arbitrary or capricious; and

(3) Once the drought emergency is lifted, the Owner shall be allowed a reasonable and practical opportunity, as defined by the Association's Board, with consideration of applicable local growing seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod or xeriscape landscaping or drought tolerant vegetative landscaping.

(4) The Association may require proof that an Owner is watering in compliance with any water restrictions or guidelines.

j. If applicable, an Owner may remove trees, shrubs, or other vegetation to create a defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado State Forest Service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable Association standards regarding slash removal, stump height, revegetation, and contractor regulations.

k. Notwithstanding any provision in the Declaration, Bylaws, or Rules and Regulations of the Association to the contrary, the Association shall not require the use of cedar shakes or other flammable roofing materials.

l. The Architectural Control Committee shall approve or disapprove all requests for architectural control approval in writing within thirty (30) days after the complete submission of copies of all plans, specifications, and other materials which the Architectural Control Committee may require in conjunction therewith. In the event that the Architectural Control Committee fails to approve any request within thirty (30) days after the complete submission of all plans, specifications, materials, and other information with respect thereto, the proposed improvement shall be deemed approved. If the Architectural Control Committee determines that the materials submitted are not complete, it shall notify the Owner thereof, in writing, of the additional materials needed. Thereafter, the time period for approval shall be extended to thirty (30) days after receipt of such materials. Unless notified in writing by the Architectural Control Committee that the materials submitted are incomplete, the materials submitted by an Owner shall be deemed to be complete.

m. Inspection of work after approval and correction of defects therein shall proceed as follows:

(1) The Committee or its duly authorized representative may at any time inspect any Improvement for which approval of plans is required under this Article IV. However, the Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the Improvement has been completed and the respective Owner(s) has given written notice of its completion to the

Committee. The Committee's right of inspection shall not terminate pursuant to this paragraph if plans for the proposed Improvement have not previously been submitted to and approved by the Committee. If, as a result of such inspection, the Committee finds that the Improvement was done without obtaining approval of the plans therefore or was not done in substantial compliance with the plans approved by the Committee, it shall notify the Owner(s) in writing of failure to comply with this Article IV within sixty (60) days from the inspection, specifying the particulars of noncompliance. The Committee shall have the authority to require the Owner(s) to take such action as may be necessary to remedy the noncompliance.

(2) If upon the expiration of sixty (60) days from the date of such notification the Owner(s) has failed to remedy the noncompliance, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws or policies of the Association, the Board shall determine whether there is a noncompliance and, if so, the nature thereof, and the estimated cost of correcting or removing the same if a noncompliance exists, the Owner(s) shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner(s). If the Owner(s) does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of Noncompliance and may peacefully remedy the noncompliance, and the Owner(s) shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner(s) to the Association, the Board shall levy a Special Assessment against the Owner(s) for reimbursement as provided in this Declaration.

(3) If for any reason the Committee fails to notify the Owner of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans.

(4) Owners or parties of interest may appeal decisions of the Committee, which shall be subject to review by the Board of Directors.

n. The following definitions shall apply.

(1) "Restrictive covenant" means any covenant, restriction, bylaw, Board policy or practice, or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.

(2) "Turf grass" means continuous plant coverage consisting of hybridized grasses that, when regularly mowed, form a dense growth of leaf blades and roots.

(3) "Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area,

use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

o. A majority vote of the Architectural Control Committee is required to approve a request for architectural approval pursuant to this Article. Any decisions by the Architectural Control Committee shall be made in accordance with the standards and procedures set forth in the Declaration, Articles, Bylaws, Policies, duly adopted Rules and Regulations, or any other governing document of the Association.

p. An Owner may appeal any decision to the Board. However, any Board member who is a member of the Architectural Control Committee shall be disqualified from voting on such matter. The decision of the Board shall be final.

q. The Association shall have the right to remove a non-complying improvement or otherwise remedy the noncompliance in addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration. Any legal action to enforce or maintain any building restrictions or to compel removal of any improvement shall be commenced within the time period allowed under C.R.S. §38-33.3-123(2), as amended.

r. The Architectural Control Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection pursuant to the Association's policy regarding disclosure and production of records.

s. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by the Declaration on a case by case basis, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in the Declaration. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to other property or improvements within the subdivision and shall not militate against the general intent and purpose hereof. Any variance shall be in writing, signed by a majority of the Architectural Control Committee and shall be effective when recorded with the Mesa County Clerk & Recorder. The granting of a variance shall not operate to waive any of the terms or conditions of this Declaration or other governing documents of the Association for any purpose except as to the particular property for which the variance was granted, nor shall it affect the obligation of the Owner to whom a variance is granted to comply with governmental laws and regulations relating to the Owner's property.

t. The approval or consent of the Architectural Control Committee to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Architectural Control Committee as to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

Section 8. Ownership and Maintenance.

a. The ownership, maintenance, repair, and restoration of the Common Elements, together with improvements thereon, shall be vested solely in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing, and restoring the Common Elements and Improvements thereon shall be borne by the Owners as a regular or special assessment as provided in Article V hereof.

b. The Association may undertake the maintenance, repair, and restoration to any Improvement situated on any Lot provided the Owner thereof fails to repair, restore, or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Article V hereof.

Section 9. Association Water.

a. **Description of Water Rights.** The Association owns ten (10) shares of water in the Grand Valley Irrigation Company. Such water rights shall be held, managed, and distributed for the exclusive use and benefit of the Members of the Association for domestic lawn, landscaping, and related irrigation purposes.

b. **Irrigation Facilities.** The irrigation system for the Properties, including any annexed Properties, consist generally of a storage pond, together with a system of pumps and pipelines situate within easements designated on the recorded plat of the Properties so as to deliver and distribute the irrigation water of the Association under pressure to each Lot.

c. **Obligations of the Association.** It shall be the obligation of the Association to hold and manage the water rights and operate, maintain, and repair the irrigation facilities for the distribution of irrigation water to each Lot of the Properties, the expense thereof to be borne as a Common Expense by all Owners prorated in the form of an assessment levied in the method and manner as provided in Article V hereof. The Association shall have full power and authority to promulgate Rules and Regulations controlling the time, manner, rotation, and allocation of water for use by the Lot Owners. The Association shall be specifically authorized to contract with third parties for the purpose of sharing the costs and expenses of operating, maintaining, and repairing the irrigation facilities, or permitting the utilization of the same for other beneficial purposes, as the Association shall deem appropriate. The obligation of operation, maintenance, and repair hereunder shall extend up to, but not beyond the irrigation line tap provided to each Lot. Each Lot Owner shall bear the costs and expenses of operation, maintenance, and repair of his own Lot sprinkling or watering system.

d. **Irrigation Easement.** The Association shall have an easement across all Lots as reasonably necessary to operate, maintain, and repair the irrigation facilities owned by the Association and shall have the authority to remove or alter any improvement on any Lot that interferes with the ownership, maintenance, and operation of the irrigation facilities, the cost of which shall be borne by the Owner of such Lot.

e. **Rights of Owners.** Each Lot Owner shall be entitled to install one (1) irrigation water pump with a flow restriction limiting flow to 15 gallons per minute. Each Owner shall have the right to use Association water and water facilities.

Section 10. Duty of Association. The Association shall have the duty of maintaining and repairing all of the Common Elements within the subdivision. The cost of all such maintenance shall be a common expense to all of the Members. The Association shall not be required to obtain the prior approval of the Members to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

Section 11. Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges, and liabilities of the Association, as provided under Colorado law and by this Declaration and the Articles of Incorporation and Bylaws, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.

- a. Maintenance, repair, and restoration of the Common Elements, except only as otherwise provided.
- b. The obtaining and maintaining of all required insurance as provided herein.
- c. Collection of assessments for irrigation water and maintenance and repair of the irrigation system.
- d. The right to suspend the voting rights and the right to use the irrigation facilities by an Owner for any period during which any assessment against such Owner and such Owner's Lot remains unpaid, and for any infraction of its governing documents after notice and hearing for a period not to exceed sixty (60) days.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section I. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, and (3) reconstruction assessments, such assessments to be established and collected as hereinafter provided. The annual, special, and reconstruction assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The filing of any lien or foreclosure thereof shall be in compliance with Colorado law. The lien for each unpaid assessment shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs,

and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass from them, and each Owner shall be jointly and severally liable for all assessments, charges, fees, and obligations incurred during the ownership by such Owner. No Owner may be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the unit of a Lot against which the assessments are made. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of Assessments; Agreement With Holder of Mortgage. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the Property and to the extent not performed by any applicable governmental entity, for the maintenance and insurance of the Common Elements, including but not limited to the entryways (signage, walls, and landscaping, if any) and the irrigation water system and any other legal purpose. The Association may enter into an escrow agreement with the holder of an Owner's mortgage so that assessments may be combined with the Owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the Federal Housing Administration, Department of Housing and Urban Development, Veterans' Administration, or other government agency.

Section 3. Maximum Annual Assessment.

a. The Board of Directors shall set the annual assessment for the first fiscal year and every year thereafter.

b. Effective with commencement of the second and each subsequent Association fiscal year hereunder, the Board of Directors shall meet before the annual meeting of the Members to adopt a proposed budget for the Association for the upcoming fiscal year.

c. Within ninety (90) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, e-mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget within a reasonable time after mailing or other delivery of the summary or as allowed for in the Bylaws. The Board shall give notice of the meeting as allowed for in the Bylaws. The budget proposed by the Board shall not require approval from the Owners and shall be deemed approved by the Owners in the absence of a veto of the owners of at least fifty-one percent (51%) of the Lots within the subdivision eligible to vote. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board shall be continued until such time as a subsequent budget proposed by the Board is not vetoed by the Owners.

d. The Association may establish one or more reserve funds for the maintenance, repair and replacement of the Common Elements. The amount of any such fund shall be determined by the Association and shall be funded through annual payment of the common assessments or any other source allowed by law and shall be held by the Association in a separate account or accounts, which shall be an interest-bearing account, to be held in trust for the Members for such purposes.

Section 4. Special Assessments. In addition to the annual assessments authorized in Section 3, the Association may levy, in the Association fiscal year, a special assessment applicable to that year or over multiple years, for the purpose of defraying, in whole or in part, the cost of any extraordinary expense of the Association or for the funding of any operating deficit incurred by the Association.

Section 5. Reconstruction Assessments. In addition to the annual and special assessments authorized in this Article, the Association may levy a reconstruction assessment for the purpose of making capital improvements, or the repair or reconstruction of damaged or destroyed improvements owned by the Association. All such reconstruction assessments shall be equal to the net amount of the cost of repair or reconstruction of such improvements and shall be calculated by subtracting from the total cost of repair or reconstruction the sum of the insurance proceeds awarded for the damage or destruction thereof, if any, and shall be set equally against each Lot unless the provisions of subsection 8 apply.

Section 6. Authority of Board to Make Assessments. The Board may approve and adopt any special assessment or reconstruction assessment upon Member approval.

Section 7. Notice and Quorum for Any Special Assessment. Written notice of any meeting called for the purpose of making a special assessment shall be sent by e-mail, hand delivery, or U.S. Mail, postage prepaid to all Members not less than 10 days or more than 50 days in advance of the meeting. Notice shall also be posted in a conspicuous place within the subdivision. At such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes shall constitute a quorum. If the required quorum is not present, another meeting, or meetings, may be called subject to the same notice requirement. The required quorum at any subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum of the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the date of the preceding meeting. Any special or reconstruction assessments must have the assent of two thirds ($\frac{2}{3}$) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8. Rate of Assessment. All assessments shall be allocated equally among the Lots. Such assessments shall be in an amount sufficient to meet the expected needs of the Association, Notwithstanding the foregoing, in appropriate circumstances, the Association may make an assessment against any Member for damage to any improvement owned by the Association caused by the negligence or willful conduct of any Member, his or her agents, employees, guests invitees or tenants, and shall not require prior approval of the Members.

Section 9. Date of Commencement of Annual Assessments. The initial annual assessment hereunder shall commence on the day this declaration gets recorded, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments shall be made due and payable with such frequency and on such dates as determined by the Board, but no more frequently than monthly. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

Section 10. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Association through the Board. The Association may also assess a monthly late charge thereon. The Association, through the Board of Directors, may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against such Member's Lot, pursuant to Colorado law, and in the event a judgment is obtained, such judgment shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse or an offer to waive the use of the Common Elements or abandonment of his Lot. The provisions of this section are subject to the provisions contained in Article VIII.

Section 11. Lien for Assessments.

a. Under the Colorado Common Interest Ownership Act, the Association has a statutory lien on a Lot for any assessments levied against that Lot and for fines imposed against its Owner from the time each assessment or fine becomes due. In addition, fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to this Declaration or the Colorado Common Interest Ownership Act are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

b. The statutory lien for assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of Declaration; (ii) a security interest which has priority over all other security interests on the property and which was recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the lot. Notwithstanding the foregoing, the statutory lien for assessments is also prior to a security interest on the Lot which has priority over a security interest which has priority over all other security interests on the property and which was recorded before the date on which the assessment sought to be enforced became delinquent to the extent of an amount equal to the assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

c. The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or assessment is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner's Lot as a default assessment.

Section 12. Enforcement of Liens for Assessments. The enforcement of any assessment against a Member shall also be as provided for in the Bylaws, Policies, rules or regulations of the Association and under Colorado law. Any delay or refusal to enforce collecting an assessment by the Association shall not constitute a waiver of its rights to subsequently enforce or collect the same at a later date or in the future.

Section 13. Out-of-State Owners Who Are Not Occupants. In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:

a. Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or

b. Pay the regular assessment pursuant to this Article V hereof in advance by the 10th day of the first month of the fiscal year; or

c. Pay either or both of the immediately preceding amounts.

ARTICLE VI CASUALTY, DAMAGE, AND REPLACEMENT OF IMPROVEMENTS

Section 1. Loss, Damage, or Destruction of Improvements on Common Elements. In the event of loss, damage, or destruction of any Improvement situated upon the Common Elements, the Association shall within ninety (90) days of such loss, damage, or destruction, replace, repair, or restore such improvement with an identical or equivalent Improvement. Notwithstanding the foregoing, if any improvement owned by the Association is damaged or requires maintenance due to the negligence to or willful act of a Member, a member of the Member's family, or a guest invitee or tenant of an Owner, it shall be the responsibility of the Member to pay for such damage or repair. Such a determination shall be made by the Board after a hearing in accordance with Association Policies.

Section 2. Loss, Damage, or Destruction to Buildings. In the event of loss, damage, or destruction of any residential building, the Owner thereof shall repair, restore, or rebuild the same within one year following such damage or destruction. Further, following completion of the repair, restoration, or replacement of the damaged structure, the Owner shall repair, replace, or restore any landscaping or other Improvements involved in the damage, destruction, or loss to the residents within ninety (90) days of completion of the structure. However, in the event

completion is after September 1st of any year, landscaping shall be completed by May 1st of the following calendar year.

ARTICLE VII GENERAL PROVISIONS AND MISCELLANEOUS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce all restrictions, conditions, covenants, and reservations imposed by the provisions of this Declaration in accordance with this Declaration and the governing documents of the Association, including but not limited to the Association's policies regarding enforcement and disputes between Members and the Association. In any civil action to enforce or defend the provisions of this article or of the Declaration, Bylaws, Articles, or Rules and Regulations, the court shall award attorney fees, costs, and costs of collection to the prevailing party, as well as any and all other sums awarded by the court. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition, or restriction herein contained.

a. In connection with any claim in which an Owner is alleged to have violated a provision of this article or of the Declaration, Bylaws, Articles, or Rules and Regulations of the Association and in which the court finds that the Owner prevailed because the Owner did not commit the alleged violation:

(1) The court shall award the Owner reasonable attorney fees and costs incurred in asserting or defending the claim; and

(2) The court shall not award costs or attorney fees to the Association. In addition, the Association shall be precluded from allocating to the Owner's account with the Association any of the Association's costs or attorney fees incurred in asserting or defending the claim.

b. An Owner shall not be deemed to have confessed judgement to attorney fees or collection costs.

c. Any controversy which may be litigated hereunder may be submitted to mediation by either party to the controversy prior to the commencement of any legal proceeding in accordance with any policy relating to disputes between Members or Members and the Association. The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief, and the prevailing party shall be entitled to reasonable attorney's fees.

Section 2. Severability. Invalidation of any of the covenants, restrictions, or other provisions contained in this Declaration by judgment or court order, or by a modification or change in the law, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Easements. Easements for installation and maintenance of utilities, drainage facilities, and irrigation water are reserved as shown on the Plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow, obstruct, or retard the flow of water in and through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except those improvements for which a public authority or one or more utility company is responsible. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 4. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control, unless such provision is contrary to law. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control. Any provision of any governing document that is contrary to Colorado law shall be unenforceable and void.

Section 5. Duration, Extension, and Amendment.

a. Each and every provision of this Declaration shall run with and bind the land for a term of ten (10) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Notwithstanding the foregoing, this Declaration may be amended at any point in time by any instrument approved in writing by a vote or agreement of the Owners of at least two-thirds (2/3) of the Lots within the subdivision. Such amendment shall be effective when duly recorded in Mesa County, Colorado.

b. Notwithstanding the provisions of Section 5(a), the Declaration may be amended by the Board of Directors to correct typographical or scrivener's errors, to correct inconsistent sections or to bring this Declaration into compliance with applicable law without Member approval. The Declaration may also be amended by an order of the District Court for Mesa County, Colorado, pursuant to C.R.S. § 38-33.3-217(7), as amended.

Section 6. Easement for Encroachments. If any portion of a structure owned by the Association encroaches upon any adjoining Lot, or if any portion of the Common Elements encroaches upon any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure owned by the Association subsequent to its damage, destruction, or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 7. Public Disclosures by the Association.

a. The Association shall make any required information available to Owners upon reasonable notice in accordance with the Association's policies and as required under Colorado law.

Section 8. Association Policies. To promote responsible governance, the Association shall:

a. Maintain accurate and complete accounting records, as required by Colorado law and the Association Policies; and

b. Adopt policies, procedures, and Rules and Regulations as required under Colorado law.

Section 9. Lot Owner and Board Education. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Board under Colorado Law. The timing and criteria for compliance with this section shall be determined by the Board. The Board may authorize and account for as a common expense reimbursement for their actual and necessary expense incurred in attending educational meetings and seminars on responsible governance of the homeowner's Association. The course and content of such meetings and seminars shall be specific to Colorado and shall make specific reference to applicable sections of CCIOA.

Section 10. Review or Audits. At the discretion of the Association Board, the books and records of the Association shall be subject to an audit using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant, except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting. An audit shall also be required when the Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000) and an audit is requested by the Owners of at least one third (1/3) of the Lots within the Association. A review also shall be required only when requested by the Owners of at least one-third (1 /3) of the Lots within the Association. Copies of an audit or review shall be made available upon request to any Owner beginning no later than thirty days after its completion.

Section 11. Association Board Conflicts of Interest.

a. The provisions of C.R.S. § 7-128-501 of the Colorado Revised Nonprofit Corporation Code shall apply to conflicts of interest of members of the Board of Directors. Generally speaking, this section provides that a "conflicting interest transaction" involves a contract, transaction, or other financial relationship between the Association and a director or between the Association and a party related to a director or between the Association and an entity in which a director of the Association is also a director officer of has a financial interest. If a Board member knows or reasonably should know of a potential conflict, the member shall so advise the Board in an open meeting, prior to any discussion or action on that issue. After making such declaration, the disinterested members of the board may, in good faith, authorize, approve, or

ratify the conflict of interest transaction or allow the disclosing member to vote on the matter, even if such number of disinterested members is less than a quorum. This section shall not be construed to invalidate any provision of the Declaration, Bylaws, or other documents that more strictly defines conflicts of interest or contains further limits on the participation of Board members who may have conflicts of interest.

b. As used in that section:

- (1) "Corporation or "Nonprofit Corporation" means the Association.
- (2) "Director" means a member of the Association's executive Board.
- (3) "Officer means any person designated as an officer of the Association and any person to whom the Board delegates responsibility under this article, including without limitation, a managing agent, attorney, or accountant employed the Board.

Section 12. Association Records.

a. The Association shall keep financial records sufficiently detailed to enable the Association to comply with C.R.S. §38-33.3-316 (8), as amended, concerning statements of unpaid assessments.

b. In addition to any records specifically defined herein or in the Bylaws or policies of the Association or expressly required by C.R.S. §38-33.3-209.4(2), the Association shall maintain all records described in C.R.S. § 38-33.3-317, as amended, for purposes of document retention and production to owners.

c. The Association shall disclose and produce all Association records to its Members upon written request in accordance with its policy relating thereto and in accordance with Colorado law.

Section 13. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either regular, registered, or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. However, if any Owner fails to so notify the Association of a mailing address, then any notice or demand may be sent to such Owner at the address of such Owner's Lot. Any Owner who leases out his or her residence shall provide the Association with the names and contact information for such tenants, including but not limited to the commencement date of such lease, phone numbers of the tenants and the address of the residence being leased. This information shall be provided by the Owner within 15 days from the commencement of any lease and any change in tenancy.

Section 14. Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one (1) or more co-

owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation or member or manager of a limited liability company shall be deemed delivery to the corporation or limited liability company. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Lot. Such notice shall be deemed delivered seventy-two (72) hours after the time of such mailing, except for notice of a meeting of members or of the Board of Directors, in which case the notice provisions of the Bylaws of the Association shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time by the Association and circulated to all Owners.

Section 15. Rules and Regulations. All Rules and Regulations, together with all policies and resolutions adopted by the Board shall comprise the Rules and Regulations of the Association. The Board may adopt, amend, repeal, and enforce Rules and Regulations as deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the management of the Association by the Board of Directors, the use and enjoyment of the Common Elements, the use of any Lot within the subdivision, and to comply with state and local statutes. Any such Rules and Regulations shall be reasonable and uniformly applied. Such Rules and Regulations shall be effective only upon adoption by the Board of Directors. Notice of adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member upon request. It is the duty of each Owner to ensure that such Owner's guests, invitees, and tenants act in accordance with the Rules and Regulations of the Association.

Section 16. Schedule of Fines. The Board may adopt, amend, repeal, and enforce a Schedule of Fines as may be deemed necessary to cure violations of the provisions of this Declaration, Bylaws, Rules and Regulations, and the use and enjoyment of Common Elements and use of any Lot within the Subdivision. Any fine assessed by application of the Schedule of Fines shall be reasonable and uniformly applied. Such Schedule of Fines shall be effective immediately upon adoption by the Board of Directors. A copy of the Schedule of Fines shall be made available to each Owner upon request. In the event of conflict between the Schedule of Fines and the provisions of this Declaration, the provisions of this Declaration shall prevail.

The undersigned, as Secretary of the Sundown Village Homeowners Association, Inc., does hereby certify that the above and foregoing First Amended Declaration of Covenants, Conditions and Restrictions of Sundown Village Subdivision was duly adopted and approved at a meeting of the Members on Feb 13, 2020, by the Owners of at least two-thirds (2/3) of the Lots within said Association, or as an action by the Members without a meeting, all as reflected in the records of the Association, and that it constitutes the First Amended Declaration of Covenants, Conditions and Restrictions of Sundown Village Subdivision.

Dated Feb 13, 2020

