

*On May 13, 2022, the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Village Center was recorded with the Mesa County Clerk and Recorder at Reception No. 3031045. The preamble of this document contained two errors which are corrected herein as follows:*

*The Declaration of Covenants, Conditions, and Restrictions of Village Center was originally made on ~~April 25, 2019~~ April 4, 2021, and recorded with the Mesa County Clerk and Recorder at Reception No. ~~2019034939~~ 3018902 on February 7, 2022. This Amended and Restated Declaration was made and duly approved at a special meeting of all eligible voters on April 19, 2022, and amends, restates, replaces, and supersedes the original Declaration. Accordingly, upon the filing of this document in the Office of the Clerk and Recorder of Mesa County, Colorado, these Amended and Restated Declaration of Covenants, Conditions and Restrictions with revised Article VI, Section 1, become effective.*

*There are no other changes to the Amended and Restated Declaration recorded at Reception No. 3031045, however, this "corrected" version is being recorded in its entirety for ease of reference, and amends, restates, replaces, and supersedes the original (Reception No. 3018902) and Amended and Restated Declarations (Reception No. 3031045).*

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR VILLAGE CENTER (CORRECTED)**

THIS DECLARATION OF AMENDED AND RESTATED COVENANTS, CONDITIONS, AND RESTRICTIONS OF VILLAGE CENTER (the "Declaration") is made as of \_\_\_\_\_ by Wylie R. Miller and Carrie J. Miller (collectively hereinafter referred to as "Declarant").

The Declarant is the owner of certain real property situated within Mesa County, Colorado containing 32 lots with 41 total living units, situated in the Village Center, Mesa County, Colorado, including the easements and licenses appurtenant to or included in the property, as shown on the plat. There will be 27 Patio Home Lots, and five (5) duplex lots containing a total of seven (7) duplexes.

The Declarant desires to create a planned community under the terms of the Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. § 38-33.3-101 et. seq. on the real property described on Exhibit "A" attached hereto, including the above-described property, and to subject and place upon the property certain covenants, conditions, restrictions, easements, reservations, right-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions protecting the value and desirability of said property and for the purpose of furthering a plan for the improvements, sale and ownership of said property.

NOW THEREFORE, the Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, right-of-ways, obligations, liabilities, charges, and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns and shall inure to the benefit of each owner thereof.

## **ARTICLE 1 DEFINITIONS**

SECTION 1. The following words, when used in the Declaration, unless inconsistent with the contents of this, Declaration shall have the meanings:

- A. "Association" shall mean and refer to Village Center, Inc., a Colorado nonprofit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and Officers. The fiscal year of the Association shall end on December 31 of each year.
- B. "Declarant" shall mean and refer to Wylie R. and Carrie Jane Miller and any successors and assigns as may hereinafter be designated by the Declarant by a written instrument duly recorded in the office of the Clerk and Recorder of Mesa County, Colorado.
- C. "Lot" shall mean and refer to any separate numbered lot or plot of land shown upon any recorded subdivision of the Property or any portion thereof, as the same may be amended from time to time, together with all appurtenances and improvements now or hereafter thereon, with the exception of the Common Area, as defined herein.
- D. "Dwelling Unit" shall mean and refer to any residential improvement constructed with the Village Center.
- E. "Common Area" shall mean the entryways to the Property, and all property owned by the Association for the Common use and enjoyment of the Members, including pipeline irrigation system, fencing, and landscaping.
- F. "Member" shall mean and refer to each Owner of a Unit that is subject to assessment hereunder and Declarant. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Unit.
- G. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- H. "Property" shall mean and refer to that certain real property described in the plat of Village Center, recorded in the County of Mesa real property records, State of Colorado, which is attached as Exhibit "A".

## **ARTICLE II PROPERTY RIGHTS IN THE COMMON AREA**

SECTION 1. OWNER'S RIGHT OF ENJOYMENT. Subject to the provisions of Section 2 of this Article, every Owner shall have a nonexclusive right to enjoy and use the facilities, if any, within the Common Area and such right shall be appurtenant to and shall pass with the title to every lot.

SECTION 2. EXTENT OF OWNER'S RIGHT. The right of enjoyment created hereby shall be subject of the following:

A. The right of the Association to promulgate and publish rules and regulation with which each Member shall strictly comply, including but not limited to the size of all irrigation water pumps and an irrigation water use schedule.

B. The right of the Association, as provided in its Articles and Bylaws, suspend the voting rights of a Member for any period during which any assessments against his unit remains unpaid and, for any period not to exceed sixty (60) days, for any single infraction of its published rules and regulations; and

C. The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS: THE ASSOCIATION**

SECTION 1. MEMBERSHIP. Every Owner of a Unit which is subject to assessment hereunder, shall be entitled and required to be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Unit shall be entitled to one vote and the vote for such Unit shall be exercised by the Owner(s) as they determine.

SECTION 2. DIRECTORS OF THE ASSOCIATION. The affairs of this Association shall be managed by a board of three (3) directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 3 below, the Board shall be managed by three (3) directors. Directors shall meet the qualifications described in the Article of Incorporation and Bylaws of the Association.

SECTION 3. DECLARANT CONTROL. From date of formation of the Association until termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all Officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of 75% of the Units to Owners other than Declarant, or two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association. Or Board a described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective, not later than sixty (60) days after the conveyance of 50% of the Lots to Owners other than Declarant, not less than 33 1/3% of the members of the Board will be elected by Owners other than Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners (including Declarant) shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon election. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items presently codified in Section 303(9) of the Common Interest Act, as it may be subsequently amended from time to time.

SECTION 4. OFFICERS OF THE ASSOCIATION. The officers of this Association shall be as set forth in the Bylaws of the Association.

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS**

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner of any Lot, including Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) annual assessment or charges, (b) special assessments, and (c) 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 Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and 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. 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 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 Area, including but not limited to the entryways (signage, walls and landscaping) and the irrigation water system. 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, Veteran's 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.
- B. Effective with commencement of the second and each subsequent Association fiscal year

hereunder, the Board of Directors shall meet at least 15 days 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, email or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget within a reasonable time after mailing or other delivery of the summary. At such meeting called, the presence of Members or of proxies entitled to cast twenty percent (20%) of the votes shall constitute a quorum, or such amount as provided in the Bylaws. If the required quorum is not present, another meeting may be called subject to the same notice requirement. At such meeting at least a majority of the members in attendance, either in person or by proxy, must vote to approve the budget. In the event that the proposed budget is not approved, the periodic budget last ratified by the Owners shall be continued until such time as the Owners approve a subsequent budget proposed by the Board.

D. The Association may establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through annual payment of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners 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 only, 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 assessments or reconstruction assessment up to \$100.00 per lot must be approved by the membership.

SECTION 7. NOTICE AND QUORUM FOR ANY ASSESSMENT WHICH EXCEEDS \$100.00 PER LOT. Written notice of any meeting called for the purpose of making a special assessment which exceeds \$100.00 per lot which requires a vote of the Members shall be sent by e-mail, hand delivery or U.S. Mail, postage prepaid to all Members not less than 14 days or more than 50 days in advance of the meeting. Notice shall also be posted in a conspicuous place. At such meeting called, the presence of Members or of proxies entitled to cast fifty-one (51%) of the votes shall constitute a quorum. Such if the required quorum is not present, another meeting may be call subject to the same notice requirement. Any special or reconstruction assessments must have the assent of a majority 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. In appropriate circumstances, the Association may make an assessment against any Owner or Owners of any Lot for damage to any improvement owned by the Association caused by the negligence or willful conduct of any Owner or Owners, 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 twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board, and 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 Owner person obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgement 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 the Common Area or abandonment of his Lot. The provisions of this section are subject to the provisions contained in Article VIII. In addition to the foregoing, the Association may take any action or enforce any right allowed to the Association under Colorado law.

#### SECTION 11. LIEN FOR ASSESSMENTS.

A. Under CCIOA, 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, attorney's fee, 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 recorded before the recordation of this Declaration; (ii) a lien of a First Mortgage 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 the lot. Notwithstanding the foregoing, the statutory lien for assessments is also prior to the lien of a first mortgage 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 non-judicial 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 attorney's 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. 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. SURPLUS FUNDS.** Pursuant to C.R.S. § 38-33.3-314, if there are surplus funds remaining after payment of or provision for common expenses and any prepayment of or provision for reserves the association, at the Board's discretion, may retain such funds to offset any unexpected expenses, to add to the reserve funds, or any other reason. Unless the Board takes affirmative action to refund such surplus to the Owners, it shall be deemed that such funds are to be added to the reserve fund.

**SECTION 14. 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 payments 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 either or both of the immediately preceding amounts.

## **ARTICLE V EXTERIOR MAINTENANCE**

**SECTION 1. GENERAL.** Except as otherwise provided herein, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed thereon, and the interior of any fence on the Boundary line of a Common Area and a Lot shall be the responsibility of the Owner(s) thereof.

**SECTION 2. MAINTENANCE OF COMMON AREA(S).** To the extent not performed by the applicable governmental entity or Owner the Association shall be responsible for the maintenance of the Common Area(s) including but not limited to ingress, egress and drainage easements, drainage pond and outlet structure, HOA fencing, landscaping and private storm sewer system as shown on plat. No Owner shall, in whole or in part, change the landscaping, grade or fencing or in any way change the retaining wall on any portion of the Common Area(s).

**SECTION 3. OWNER'S NEGLIGENCE.** Notwithstanding anything to the contrary contained in this Article V, in the event that the need for maintenance or repair of the Common Area is caused by the willful or negligent act or omission of an 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 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 a lien against such Owner's Lot as provided in Article IV of 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 or any Owner, and the amount of the Owner's liability therefore, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

## **ARTICLE VI BUILDING RESTRICTIONS AND ARCHITECTURAL CONTROL**

**SECTION 1. LAND USE AND CONSTRUCTION.** Only single-family dwellings and duplexes, private garages and other outbuildings directly incidental to residential use shall be constructed, altered, placed or permitted to remain of the property. All dwellings shall be of new construction with minimum livable square feet of 1800 square feet for Patio Homes, and approximately 1600 square feet per unit for duplexes, however, due to building constraints the Architectural Control Committee reserves the right to determine and adjust the size of duplexes to conform to final approved buildable space. Any outbuilding shall conform to the exterior design of the residence. Building exteriors will be stucco, brick, stone, or a combination of the approved exterior finishes. Architectural features will be allowed subject to approval of the Architectural Control Committee. No lot shall be used except for residential purposes. Lots 3, 23, and 24 must be developed as one (1) 2-unit duplex per lot, and Lots 29 and 30 must be developed as two (2), 2-unit duplexes per lot.

**SECTION 1.a. NO BUILD ZONE.** Lot 30 has a no build easement that is identified on the Village Center Plat that requires that NO permanent structure be allowed to be constructed or moved on any part of the easement due to an underground stream. Parking, non-permanent movable storage units, car ports and landscaping are potential uses for the easement. Any use requires a submitted plan that requires approval by the Village Center Architectural Control Committee.

**SECTION 2. NO MOBILE OR MODULAR HOMES.** The work of constructing, altering or remodeling any building on any part of the Property shall be pursued diligently from the commencement until the completion thereof. No modular homes, factory-built homes, house trailers, mobile homes, trailers designed for temporary or full-time occupation as dwelling, camp trailers, or tents shall be placed on the property at any time. Dwellings shall be of conventional on-site construction only. No bright, loud or garish colors or color patterns shall be permitted.

**SECTION 3. DRAINAGE AND GRADING.** All plans and specifications for the construction of improvements on a Lot and the actual construction of such improvements, will require an individual lot grading plan per the City of Grand Junction. Further, all grading on a Lot shall be done with a minimum of disruption to the Lot and shall not draining surface water to adjoining Lots or cause soil erosion.

**SECTION 4. PONDS.** Any pond, lake or water storage basin constructed on any portion of the Property shall be lined with a material which is non-permeable by water, and must otherwise be constructed in accordance with all applicable local, state and federal salinity control standards.

**SECTION 5. SITE-SPECIFIC FOUNDATION DESIGN.** All dwelling units shall require a site-specific soils

test and a site-specific foundation design prepared by a Colorado-licensed engineer.

#### SECTION 6. ARCHITECTURAL CONTROL COMMITTEE

A. No building or exterior improvements (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 appointed by the majority of the Board. The 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. If the Board has not established an ACC the Board may serve as the ACC.

C. No improvement, including a modification or change of more than 25% of the landscaping on a Lot shall be made, installed, erected or altered within the Property except upon the prior written consent and approval of the Architectural Control Committee.

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's approval or disapproval as required in this Declaration shall be in writing. In the event the Architectural Control Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after sufficient plans and specifications have been submitted to it, approval will not be required, and the related covenants shall be deemed to have been fully complied with. Any request for additional information or additional time to review the information shall be deemed as a disapproval and the time period for making a decision by the ACC shall not begin to run until the ACC has been provided the requested information or the extension period has lapsed. Two complete sets of finished plans and specifications for construction shall be submitted at time of application, one copy of which will be retained by the ACC for its records. Approval or disapproval as required in this Declaration shall be determined by majority vote of the members of the Architectural Control Committee.

F. 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 Property, 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.

G. 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 unless the Board agrees that such compensation is warranted. Such compensation shall be reasonable. The ACC may assess an Owner for actual costs in reviewing plans and other activities undertaken by the ACC.

H. 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 ACC 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 ACC shall evaluate the proposed construction as to location on the Property, 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.

I. 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.

J. The 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 or modified during a period of water use restrictions declared by the jurisdiction in which the Association is located, in which case the Owner shall comply with any watering restrictions imposed by the water provider for the Association and may be assessed for failing to maintain landscaping under any water restrictions.

(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.

K. 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.

L. Notwithstanding any provision in the Declaration, Bylaws or rules and regulations of the Association

to the contrary, the Association shall not allow the use of cedar shakes or other flammable roofing materials.

M. 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 or disapprove any request within the thirty (30) days after the complete submission of all plans, specifications, materials and other information with respect thereto, approval shall not be required and this Article shall be deemed to have been fully complied with. The ACC shall notify an Owner as soon as practicable that the materials submitted are not complete. Unless notified in writing by the ACC that the materials submitted are incomplete, the materials submitted by an Owner shall be presumed to be complete.

N. The Architectural Control Committee shall not place a procedural step or burden, financial or otherwise, on an Owner who seeks approval for a landscaping change which includes xeriscaping, including but not limited to the following:

- (1). An architect' stamp.
- (2). Preapproval by an architect or landscape architect retained by the Board;
- (3). An analysis of water usage under the proposed new landscape plan or a history of water usage under the Owner's existing landscape plan; and
- (4). The adoption of a landscaping change fee.

O. The following definitions shall apply:

- (1). Restrictive covenant means any covenant, restriction, bylaw, Board policy of 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.

P. 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 documents of the association. An Owner may appeal the decision of the ACC to the Board of Directors, 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. If the Board acts and the ACC and an Owner wants to appeal its

decision, such Owner may file suit in a court of appropriate jurisdiction.

Q. 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 at a reasonable hour of the business day.

R. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by the Declaration, in order to overcome practical difficulties and prevent unnecessary hardship 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 the other properties or improvements within the Property and shall not militate against the general intent and purpose hereof.

S. 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.

## **ARTICLE VII RESTRICTIONS**

SECTION 1. GENERAL PLAN. It is the intention of the Undersigned to establish and impose a general plan for the improvement, development, use and occupancy of the Property, in order to enhance the value, desirability, and attractiveness of the Property and to promote the sale thereof.

SECTION 2. RESTRICTIONS IMPOSED. The undersigned hereby declares that all of the Property shall be held and shall henceforth be sold, conveyed, used, proved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants as well as those contained elsewhere in this Declaration.

### **SECTION 3. USE OF COMMON AREA.**

A. No use shall be made of the Common Area, which will in any manner violate the statutes rules, or regulations of the Association or any governmental authority having jurisdiction over the Common Area.

B. No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members, nor shall any Owner place any structure or fence, except those installed by Declarant or the Undersigned, whatsoever upon the Common Area.

C. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

SECTION 4. LOTS TO BE MAINTAINED. Except during any period of construction or reconstruction each Lot at all times shall be kept in a clean, slightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles. Cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot, so that the same are visible from any neighboring Lot, the Common Area, or any street. If any Owner fails to keep and maintain that Owner's Lot or improvements in accordance with this

provision, the Association may (but is not obligated to) conduct such maintenance, repairs or restoration and assess the costs as a Special Assessment to the Owner of the lot where the repairs or maintenance were conducted. Any unpaid Special Assessment shall attach as a lien on the Owner's lot as provided in this Declaration.

**SECTION 5. NO NOXIOUS OR OFFENSIVE ACTIVITY.** No noxious or offensive activity shall be carried on upon the Property nor shall anything be done or placed on any of the Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

**SECTION 6. NO HAZARDOUS ACTIVITIES.** No activities shall be conducted on the Property or on or within improvements constructed on the Property which are or might be unsafe or hazardous to any person or property.

**SECTION 7. NO ANNOYING LIGHTS, SOUNDS OR ODORS.** No light shall be emitted from any portion of the Property or any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any portion of Property or dwelling unit which is unreasonably offensive to others; and no odor shall be emitted by any Lot or on any portion of the Property or dwelling unit is unreasonably loud or annoying; and no odor shall be emitted on any portion of the Property or dwelling unit which is unreasonably noxious or offensive to others.

**SECTION 8. VEHICLES.** No portion of the Property shall be used for parking, storage or accommodation of any type of junk vehicles or vehicles under repair. Only operational cars and trucks incidental to residential family use will be permitted with the Property. Recreational vehicles and/or trailers will not be permitted to be parked on the lot, driveway, or street for more than a 24 hour period.

**SECTION 9. GARBAGE AND REFUSE DISPOSAL.** No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Area, drainage structures, or any Kit, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All containers shall be removed from the street the same day and returned to its screened area. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. No garage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. All trash receptacles shall be screened as provided in the Architectural Control Committee guidelines.

**SECTION 10. NON-DISTURBANCE.** No nuisance shall be permitted on or within the Property, nor any use, activity or practice which is the source of annoyance or embarrassment to, or which offends or disturbs any residents of any portion of the Property or which interferes with the peaceful enjoyment or possession and proper use of any portion of the Property by its residents. No abusive use of the Property by ATV's, OTV's, motorbikes, etc. on the property will be permitted. No activity shall be conducted on the Property which is or might be unsafe or hazardous to another person on adjacent land or to other property.

**SECTION 11. FENCING.** Tan vinyl fencing is the required fencing for Lots in the subdivision. All other fencing will be considered on a case-by-case basis by the Architectural Control Committee.

**SECTION 12. NO MINING OR DRILLING.** No mining, drilling, quarrying, digging or excavating for the purpose of testing for the existence of, or extracting oil, gas, coal or minerals of any kind shall be performed upon or with the Property.

SECTION 13. IRRIGATION. Due to the concerns regarding water conservation, the Association shall have the exclusive rights to approve all landscaping in the Subdivision. There will be an irrigations system belonging to the Association to water all subdivision common area landscaping that shall be controlled by the Association, under Rules and Regulations adopted by the Village Center, so landscape watering will be with Ute domestic water.

SECTION 14. NOXIOUS WEEDS. Each Lot Owner shall control noxious weeds on Owner's Lot and any limited Common Elements which are dedicated for the benefit of such lot Owner. The Association shall control noxious weeds on all Common Area.

SECTION 15. AGRICULTURAL PRACTICES. The Owner and residents of any Lot shall not in any way interfere with normal agriculture practices on properties which adjoin or are in the vicinity of the Lot, pursuant to the State of Colorado Right to Farm Act (C.R.S. § 35-3.5-101 et seq).

#### **ARTICLE VIII DURATION OF COVENANTS AND AMENDMENT**

SECTION 1. TERM. The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2032, after which time they shall be automatically extended for successive periods of time of 10 years each, subject to the following provisions.

SECTION 2. AMENDMENT. This Declaration, or any provision of it, may be amended at any time by an instrument signed by Owners holding not less than sixty seven percent (67%) of the Lot Owners affected by this Declaration.

#### **ARTICLE IX GENERAL PROVISIONS**

SECTION 1. ENFORCEMENT. The Owner of any of the Property shall have the right to enforce, by any proceeding at law or in equity, all restriction, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2. SEVERABILITY. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect or limit any other provisions which shall remain in full force and effect.

SECTION 3. LEASES. Any lease agreements between an Owner and a lessee for any portion of the Property shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, and that any failure by the lessee to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing.

SECTION 4. PUBLIC DISCLOSURES BY ASSOCIATION.

A. Pursuant to CRS § 38-233.3-303(5), the Association shall make the following information available to

Owners upon reasonable notice in accordance with Colorado law: the name of the Association; the name of the Association's designated agent or management company, if any; a valid physical address and telephone number for both the Association and the designated agent or management company, if any, the name of the subdivision; the initial date of recording of the Declaration; and the reception number or book and page for the main document that constitutes the Declaration. If the Association's address, designated agent or management company changes, the Association shall make updated information available with ninety (90) days after the change.

B. Within ninety (90) days after the end of each fiscal year hereafter, the Association shall make the following information available to Owners upon reasonable notice:

- (1). The date on which its fiscal year commences;
- (2). Its operating budget for the current fiscal year;
- (3). A list, by unit type, of the Association's current assessments, including both regular and special assessments;
- (4). Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (5). the results of its most recent available financial audit or review;
- (6). A list of all Association insurance policies, including but not limited to property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed;
- (7). All the Association's Bylaws, articles and Rules and Regulations;
- (8). The Minutes of the Board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (9). The Association's responsible governance policies adopted under CRS § 38-33.3-209.5.

It is the intent of this subsection to allow the Association the widest possible latitude in methods and means. Of disclosure, while requiring that the information be readily available at no cost to Owners at their convenience. Disclosure shall be accomplished by one of the following means: posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

C. Except as otherwise provide herein, all financial and other records shall be made reasonably available for examination and copying by any Owner and such Owner's authorized agents.

- (1). Notwithstanding paragraph C of this subsection, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as an Owner

without prior written consent of the Board.

(2). Without limiting the generality of paragraph C of this subsection, without the prior written consent of the Board, a membership list or any part thereof may not be:

- a. Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association:
- b. Used for any commercial purpose: or
- c. Sold to or purchased by any person.

(3). The Association may charge a fee for copies provided to an Owner or Owner's representative which may be collected in advance but which shall not exceed the Association's cost per page, for copies of the Association records.

(4). As used in this section, "reasonably available" means during normal business hours, upon notice of five (5) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request, to the extent that:

- a. The request is made in good faith and for a proper purpose:
- b. The request describes with reasonable particularity the records sought and the purpose of the request: and
- c. The records are relevant to the purpose of the request.

(5). This section shall not be construed to invalidate any other provision of the Declaration, Bylaws, the corporate law under which the Association is organized, or other documents that more broadly define records of the Association that are subject to inspection and copying by Owners, or that grants Owners freer access to such records: except that the privacy protections contained in subparagraph (c) of this section shall supersede any such provision.

**SECTION 5. ASSOCIATION POLICIES.** To promote responsible governance, the Association shall:

- A. Maintain accurate and complete accounting records, and
- B. Adopt policies, procedures, and Rules and Regulations concerning:
  - (1). Collection of unpaid assessments:
  - (2). Handling of conflicts of interest involving Board members;
  - (3). Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
  - (4). Enforcement of Covenants and Rules, including notice and hearing procedures and the schedule of fines;

- (5). Inspection and copying of Association records by Owners;
- (6). Investment of reserve funds; and
- (7). Procedures for the adoption and amendment of policies, procedures, and rules; and (8).  
Procedures for addressing; and
- (8). Procedures for addressing disputes arising between the Association and Owners.

IN WITNESS WHEREOF, the undersigned has hereunto set their hand and seal as of the day and year written above.

DECLARANT

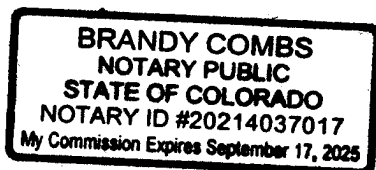
Wylie R. Miller  
WYLIE R. MILLER

Carrie Jane Miller  
CARRIE JANE MILLER

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MESA         )

Subscribed, sworn to, and acknowledged before me by Wylie R. Miller and Carrie J. Miller this 27<sup>th</sup>  
day of May, 2022.

Witness my hand and official seal:



[Signature]  
Notary Public  
My Commission Expires: September 17, 2025

[illegible]

