

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR FLUKEY ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FLUKEY ESTATES is made the 29<sup>th</sup> day of August, 2022, by SCF PARTNERS, LLC, a Colorado limited liability company, Declarant.

**RECITALS**

A. Declarant is the owner of the real property in Mesa County, Colorado, legally described as LOT 1, REA MINOR SUBDIVISION, also known by street and number 681 28 Road, Grand Junction, Colorado 81506 (the Property).

B. Declarant desires to subdivide the Property into a total of nine lots and various tracts and common elements, to be platted as FLUKEY ESTATES. Declarant desires to impose a general plan for the improvement, development and maintenance of the Property, and to adopt and establish covenants, conditions, servitudes, and restrictions upon the Property for the purpose of enhancing, maintaining and protecting the value and desirability of the Property.

C. Declarant deems it desirable to establish Common Elements for the use of the Owners of Lots within the Property, and to establish a Colorado nonprofit corporation, FLUKEY ESTATES Homeowners Association Inc, to which such Common Elements shall be conveyed, and which shall manage the affairs of the subdivision.

THEREFORE, Declarant covenants, agrees and declares that the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the following limitations, restrictions, easements, covenants, conditions, reservations, liens and charges described in this Declaration, all of which are declared and agreed to be in furtherance of a general plan for the improvement and development of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Property or any part of it and the successors in interest of such parties, and are imposed upon the Property and every part of it as equitable servitudes that may be enforced by Declarant, its successors and assigns, each Owner, his or her successors and assigns, or by the Association, its successors and assigns.

**ARTICLE 1  
DEFINITIONS**

Section 1.01. “Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.02. “Assessment” shall mean and refer to any assessment levied against one or more Owner(s) or Lot(s) as permitted by this Declaration or applicable law, including without limitation any of the following:

- (a) “Regular Assessment” shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot,

including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.

- (b) “Special Assessment” shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his or her Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his or her Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness or willful misconduct of any Owner or his or her employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a Special Assessment.
- (c) “Capital Assessment” shall mean and refer to a charge against any Lot representing a portion of the Association’s cost for the purchase, installation, construction, or expected or unexpected repair or replacement, of any capital improvement (including the necessary fixtures and personal property related to it) that is a Common Expense of the Association, plus reserves for repair or replacement of existing capital items, and acquisition, construction and installation of new capital improvements.

Section 1.03. “Association” shall mean and refer to FLUKEY ESTATES Homeowners Association Inc, a nonprofit corporation incorporated under Colorado law.

Section 1.04. “Board” or “Board of Directors” shall mean the Board of Directors of the Association.

Section 1.05. “Bylaws” shall mean the Bylaws of the Association as they may be amended from time to time.

Section 1.06. “City” means and refers to the City of Grand Junction, Colorado.

Section 1.07. “Common Elements” shall mean any and all real property (specifically including but not limited to all Tracts shown on the Plat), improvements, equipment and fixtures owned, leased or controlled by the Association for the common use and enjoyment of the Members.

Section 1.08. “Common Expenses” shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.09. “Conveyance” shall mean and refer to transfer of a fee simple title by deed, installment land purchase contract, or otherwise of any part of the Property.

Section 1.10. “County” means and refers to Mesa County, Colorado.

Section 1.11. “Declarant” shall mean and refer to SCF Partners, LLC, and ARI LLC, a Colorado limited liability company, and its successors and assigns.

Section 1.12. “Lot” shall mean and refer to each numbered lot of the Property described on the Plat as recorded and amended. Boundaries of a Lot shall be as shown on the Plat.

Section 1.13. “Member” shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.14. “Owner” shall mean and refer to any person or entity holding a fee simple ownership interest in any Lot, including contract purchasers and lessees with enforceable options to purchase, but excluding mortgagees (unless and until a mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.15. “Plat” means the plat of the Property by the name FLUKEY ESTATES, and any replat or other plat thereof (in whole or in part), recorded with the County Clerk and Recorder, as it may be supplemented and amended from time to time.

Section 1.16. “Property” shall mean and refer to that certain real property in the County described in Recital paragraph A and the improvements on it, as further shown and described on the Plat, plus the Common Elements, all of which is subject to this Declaration or any amendment to this Declaration.

Section 1.17. “Residence” shall mean the single-family dwelling improvements located on a Lot.

## **ARTICLE 2**

### **THE ASSOCIATION**

Section 2.01. **Membership.** Every Owner of one or more Lots on the Property shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article 2. No person or entity other than an Owner of one or more Lots may be a Member. By accepting a deed to a Lot or other conveyance the acceptance of which would render the holder an Owner, membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by Conveyance of a Lot without additional action or documentation. No Owner shall be entitled to sever his or her ownership interest in a Lot from membership in the Association, provided, that this shall not be construed as precluding an Owner from creating or severing a co-tenancy, joint tenancy, or any other form of co-ownership with any other person or persons.

Section 2.02. **Allocation of Votes.** Each Lot shall be allocated one vote in the Association. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of such Owners. There is agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If the Owners of the Lot are unable to agree, their vote will not be counted.

Section 2.03. **Directors and Officers of the Association.** The affairs of the Association shall be managed by a Board of Directors consisting of not more than three (3) directors, as more fully provided in the Bylaws. The Officers of the Association are specified in the Bylaws. Notwithstanding anything in this Declaration or the Bylaws that could be construed to the contrary, so long as Declarant or any affiliate of Declarant owns any Lot in the Subdivision, Declarant shall have the authority to appoint the Board. The power of the Declarant to “appoint,” as provided in this Section 2.03, shall include without limitation the power to: initially constitute the membership of the Board, appoint member(s) to the Board upon the occurrence of any vacancy, and for whatever reason to remove any member of the Board, with or without cause, at any time, and to appoint a successor; and each such appointment may be made for such term(s) of office, subject to the power of removal stated in this Section 2.03, as may be set from time to time in the

discretion of the Declarant. Declarant may voluntarily surrender the right to appoint and remove members of the Board at any time; but in that event Declarant may require that specified actions of the Board be approved by Declarant before they become effective.

**Section 2.04. Duties and Obligations.** The Association shall perform all duties and obligations specified in this Declaration, the Articles of Incorporation, and the Bylaws, including but not limited to maintenance and upkeep of the Common Elements so that they remain clean, functional for their primary purpose as described in this Declaration, and in good repair at all times.

**Section 2.05. Authority.** The Association shall have all rights, powers and authority specified or permitted by this Declaration, the Articles of Incorporation, the Bylaws, and applicable law, to the extent permitted by law. The Association shall have the authority to adopt such rules and regulations as it deems necessary or convenient for the governance of the Property.

**Section 2.06. Annual Budget.** The Board of Directors shall cause an operating budget for the Association to be prepared no less frequently than annually, a copy of which shall be provided to the Owners before the annual meeting of the Owners. Unless at the meeting Owners representing a majority of the voting rights reject the budget, the budget is ratified, whether or not a quorum is present; except that if the increase in assessments is 10% or less over the previous year, the budget will be deemed ratified unless at the meeting Owners representing at least 75% of the voting rights reject the budget. If the proposed budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

**Section 2.07. Insurance.** The Association shall obtain property insurance insuring against damage to the Common Elements for broad form covered causes of loss in an amount 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. The Association shall also obtain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, in an amount deemed sufficient in the judgment of the Board of Directors, insuring the Board, the Association, any management agent, and their respective employees, agents and all persons acting as agents. The Association, as attorney-in-fact, shall have authority to deal with insured items in the event casualty to them is an insured loss to the Association under its master insurance policy.

**Section 2.08. Suspension of Rights.** The Board of Directors may suspend a Member's voting rights and/or any benefits of membership in the Association for any period during which any Assessment against such Member's Lot remains unpaid and delinquent, except access across Tract A to the member(s) lot shall not be suspended, and/or while a Member is in violation of this Declaration or any rules or regulations adopted by the Association.

### **ARTICLE 3**

#### **PROPERTY RIGHTS IN THE LOTS AND COMMON ELEMENTS; MAINTENANCE**

**Section 3.01. Members' Easements of Enjoyment.** Every Member shall have a non-exclusive right and easement in and to the Common Elements, including but not limited to an easement for ingress and egress over and through the Common Elements. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Elements;

- (b) The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Elements or any part of it for the purpose of improving the Common Elements, provided any such encumbrance shall be expressly subordinate to the rights of the Members;
- (c) The right of the Association to suspend a Member's voting rights, use of Common Elements, and/or any benefits of membership in the Association for any period during which any Assessment against such Member's Lot(s) remains unpaid and delinquent, except access across Tract A to the member(s) lot shall not be suspended, and/or while a Member is in violation of this Declaration or any rules or regulations adopted by the Association; provided that any suspension of such voting rights, Common Element use, or benefits of membership in the Association, except for failure to pay Assessments, shall be made only by the Board or a duly appointed committee of the Board after notice and hearing given at a special meeting of the Board held in accordance with the Bylaws;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; no such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members representing at least sixty-seven percent (67%) of the voting rights of the Members has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than fifty (50) days in advance;
- (e) The right of Declarant or its designees to enter upon the Common Elements for purposes of construction and development of the Subdivision and for purposes of making repairs and remedying construction defects, provided such entry shall not unreasonably interfere with the use and enjoyment of any Lot upon which a Residence has been constructed, unless authorized by the Owner; and
- (f) The right of the Association to close or limit the use of the Common Elements while maintaining, improving, repairing, or making replacements in, on, or to the Common Elements.

Section 3.02. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Common Elements to his or her family members, licensees and invitees, or tenants or contract purchasers who are in possession of such Member's Lot.

Section 3.03. Waiver of Use. No Member may exempt himself or herself from personal liability for Assessments duly levied by the Association, or release the Lot(s) owned by such Member from the liens and charges created by this Declaration, by waiver of the use and enjoyment of the Common Elements or the facilities on it, or by abandonment of his or her Lot.

Section 3.04. General Restrictions.

- (a) All Owners of Lot(s), by their acceptance of their respective deeds or other instruments causing them to become Owners, covenant and agree that the Common Elements shall remain undivided, and no Owner shall bring any action for partition

(which right is expressly waived), it being agreed that this restriction is necessary to preserve the rights of Owners with respect to the operation and management of the Property.

- (b) No Owner shall engage in any activity that will temporarily or permanently deny free access to any part of the Common Elements to all Members, nor shall any Owner place any structure or fence (except those installed by Declarant) upon the Common Elements.

Section 3.05. Maintenance of Common Elements. Declarant and its successors and assigns shall install all Common Elements, after which the Association shall maintain all Common Elements, specifically including but not limited to:

- (a) Tract A, used for parking, ingress and egress, and utilities; stormwater, which includes a detention pond, and such other amenities as the Association may install, from time to time, for the use and enjoyment of the Owners, which do not interfere with the primary use of the Tract for stormwater detention;

Section 3.06. Maximum Number of Lots. Declarant reserves the right to create a maximum of nine (9) single family lots in two or more filings. Declarant's reserved development rights shall be exercised within twenty (20) years of the date of the recording of this Declaration.

Section 3.07. Easements for Lot Owners. An easement in favor of each Lot Owner is hereby created over the abutting Lots for the purpose of maintaining stairways, stairwells, walls and wall-mounted utility, irrigation or other reasonably necessary equipment. No Lot Owner shall unreasonably interfere with the easement rights created hereby.

#### **ARTICLE 4** **COVENANT FOR ASSESSMENTS**

Section 4.01. Creation of the Lien and Personal Obligation of Assessments.

- (a) Each Owner of a Lot by acceptance of a deed or other conveyance for that Lot, whether or not it shall be so expressed in that instrument, is deemed to covenant and agree to pay to the Association: (i) all Assessments and charges levied against that Lot; and (ii) all fees, charges, late charges, attorney fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or by any applicable law. The Association shall have the right to impose reasonable charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, or the rules and regulations of the Association.
- (b) Any charge set forth in this Section 4.01, from the time such charge becomes due, shall be a charge on and covenant running with the land, and shall be a continuing lien on the Lot against which each such item is assessed. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment

obligations. A valid acceleration of installment Assessment obligations may be made by the Board at any time any Assessment or Assessment installment is at least thirty (30) days overdue. Each such charge, together with interest, costs, and reasonable attorney fees, shall also be the joint and several personal obligation of each person and entity who was the Owner of the Lot at the time when the item became due, provided, that this personal obligation shall not pass to an Owner's successors-in-interest unless expressly assumed by them.

- (c) The Association's lien on a Lot for Assessments shall be superior to any homestead exemption now or later provided by the laws of the State of Colorado or any exemption now or later provided by the laws of the United States. The acceptance of a deed or other conveyance to a Lot shall constitute a waiver of the homestead and any other such exemption as against such Assessment lien.

Section 4.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: Common Expenses; to promote the health, safety or welfare of the residents of the Property; for the benefit of the Common Elements; or for any other purpose of the Association, as those purposes (as amended from time to time) are specified in this Declaration, the Bylaws, or the Articles of Incorporation; or as otherwise permitted by applicable law.

Section 4.03. Initial Administrative Contribution. The Board shall have the authority to charge each Owner that purchases a Lot (whether from Declarant or any subsequent Owner) a one-time, non-refundable payment to the Association in an amount determined by the Board that shall be used by the Association to cover administrative costs related to the change in ownership and other Common Expenses. This payment shall be collected and transferred to the Association at the time of closing of each sale of a Lot, and shall not relieve an Owner from making regular payments of Assessments when due.

Section 4.04. Date of Commencement of Assessments; Due Dates. The Board shall fix the amount of the annual Regular Assessment in the budget to be prepared in accordance with Section 2.06. The due date(s) shall be established by the Board of Directors. Special Assessments and Capital Assessments may be made by the Board at any time, except as limited by this Declaration.

Section 4.05. Expense Allocation. Except as otherwise stated in this Article 4, or as otherwise provided by applicable law, each Lot shall be allocated a percentage of the Common Expenses of the Association which shall be determined in accordance with the ratio in which the numerator is 1 and the denominator is the total number of Lots in the Subdivision.

Section 4.06. Owner's Negligence. In the event that the need for maintenance, repair, replacement, reconstruction or reconfiguration of any Common Element, or any other Common Expense, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any family or household member, guest or invitee of such Owner, such expense and all related fees, costs and expenses of or to the Association shall be the personal obligation of such Owner and may be made part of any Assessment against such Owner and that Owner's Lot(s).

## **ARTICLE 5**

### **NONPAYMENT OF ASSESSMENTS**

Section 5.01. Delinquency. Any Assessment provided in this Declaration that is not paid when due is delinquent. If any such Assessment is not paid within thirty (30) days after the due date without additional notice or demand, the Assessment shall bear interest from the due date at a rate not to exceed the

maximum rate of interest permitted by law, as determined by the Board. The Association may, at its option, exercise any right or remedy available to the Association under applicable law, including without limitation bringing an action at law against the Owner(s) personally obligated to pay the same or foreclosing the lien provided in Section 4.01 against the Lot(s) for which the Assessment has not been paid; and in any case there shall be added to the amount of such Assessment interest and all costs that may be incurred by the Association in its collection of the Assessment, including reasonable attorney fees. Each Owner vests in the Association or its assigns the right and power to bring all actions or proceedings at law or in equity or to institute judicial foreclosure proceedings against such Owner or other Owners for the collection of such delinquent Assessments.

Section 5.02. Nature of Obligation and Lien. The obligation for payments of Assessments 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) or demand, and without setoff or deduction. The Board may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner, and the description of the Lot. Such a notice shall be signed by one member of the Board and may be recorded in the real property records of the County. The recording of this Declaration constitutes record notice and perfection of the lien. No further recording of any claim of lien or assessment is required. 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 fees, shall also be the personal obligation of each person who was the Owner of such Lot at the time when the Assessment became due.

Section 5.03. Foreclosure Sale. Any foreclosure sale related to an Assessment lien shall be conducted in accordance with those provisions of the laws and rules of the courts of the State of Colorado applicable to the foreclosure of mortgages, or in any other manner then permitted or provided by applicable law.

Section 5.04. Cumulative Remedies. The Assessment lien and the rights of foreclosure and sale under it shall be in addition to, and not in substitution of, all other rights and remedies that the Association and its assigns may have under this Declaration and then applicable law, including without limitation a suit to recover a money judgment for unpaid Assessments, as provided above, all of which rights and remedies shall be cumulative.

## **ARTICLE 6**

### **CONSTRUCTION AND DESIGN GUIDELINES**

Section 6.01. Lot Use and Residences. No building shall be erected, or otherwise altered, placed or permitted to remain on any Lot other than one detached, single-family Residence and one attached garage with at least one, but no more than two, automobile bay(s). Except as provided in the preceding sentence, the erection of more than one Residence per Lot is prohibited. Shops, outbuildings, accessory dwellings, pergolas and gazebos are prohibited.

Section 6.02. Building Location. The Board must approve the location of any building upon a Lot before any excavation may begin. No building shall be located on any Lot nearer to the front lot line, rear lot line, or interior lot line than permitted by applicable codes, ordinances or governmental conditions of approval for the Subdivision.



Section 6.03. New Construction and Temporary Structures. All construction within the Subdivision shall be new construction. No trailer, tent, shack, barn, outbuilding, or temporary structure shall be used as a Residence on any Lot.

Section 6.04. Prefabricated Structures. All Residences constructed on the Property shall be of high quality design, construction, workmanship, and materials; in particular, no structure may be of a type known as, "modular," "manufactured," or "mobile home," regardless of its quality. This Section 6.04 shall not apply to the temporary sales and construction office used by Declarant during the development, construction and sale of Lots in the Subdivision.

Section 6.05. Dwelling Size and Height. Unless otherwise approved by the Board, no Residence shall be permitted on any Lot if the heated floor area of the Residence, exclusive of garages, basements, and open porches, is fewer than 1,000 or more than 2,000 square feet by outside measurement. No Residence shall be more than forty (40) feet in height above its foundation.

Section 6.06. Building Plans, Materials and Colors. All plans, specifications, color selections, and samples of exterior siding and/or masonry materials, along with roof material samples, for any Residence, addition or improvement must be submitted to the Board for review and approval.

Section 6.07. Irrigation Systems. All irrigation systems installed are maintained by the hoa.

Section 6.08. Utilities and Easements. Underground electrical, natural gas, and water shall be available to all Lots. No structure shall be erected on any utility easement. Neither Declarant nor the utility company or any entity using these easements shall be held liable for any damage done by any of them or their assigns, agents or employees to shrubbery, trees, flowers or improvements of an Owner located on any land subject to an easement. No overhead utility services shall be allowed to service any Lot.

Section 6.09. Satellite Dishes and Antennas. No satellite dish, antenna, or similar device for television, radio, or other electronic transmission or reception, shall be erected, installed or permitted to remain on any Lot, except that satellite dishes and television and radio antennas not in excess of twenty-four (24) inches in diameter or height (as the case may be) may be attached to a Residence or erected on a Lot, but shall not be installed or erected in or on any common element or attached to any improvement within a common element.

Section 6.10. Foundations. Engineered foundations for Residences are not required. Prior to construction of each Residence, however, the Owner of the subject Lot should review the Geotechnical and Geologic Hazards Investigation Report, a copy of which may be obtained from Declarant or the Association.

Section 6.11. No Re-subdivision of Lots. The re-subdivision of any Lot within the Subdivision is prohibited, except by Declarant.

## **ARTICLE 7** **USE RESTRICTIONS**

Section 7.01. Vehicle Parking, Storage and Repair.

- (a) Any unlicensed automobile, or any trailer, boat, snowmobile, recreational vehicle, or other motorized vehicle other than passenger vehicles licensed for use on Colorado roadways (collectively, "vehicles" in this Section 7.01), may only be

parked in the driveway on a Lot temporarily while loading or unloading. No vehicle other than passenger vehicles licensed for use on Colorado roadways shall be parked or stored in one place on a driveway more than seventy-two (72) hours. No vehicle, including passenger vehicles licensed for use on Colorado roadways, may be parked anywhere on a Lot except for the driveway or garage on the Lot. At no time shall an inoperable vehicle, or a registered vehicle for which the registration has expired, be parked anywhere on a Lot except in the garage.

- (b) Only passenger vehicles may be parked on Tract A, and in designated parking spaces only, and only for a period not exceeding forty-eight (48) hours. Tract A is intended to provide parking for Owners' guests and not permanent parking or storage for Owners or tenants. Temporary loading and unloading activities are permitted outside the designated parking spaces in Tract A.
- (c) Parking of recreational vehicles is prohibited within the Subdivision.

Section 7.02. Restrictions on Storage Areas. Equipment, garbage cans, and storage areas shall be adequately screened by plantings or improvements approved by the Board to conceal the same from view from neighboring Lots and streets. Garbage cans must be returned from the curb to a garage or storage area meeting the requirements of this Section 7.02 within twenty-four (24) hours after trash pickup.

Section 7.03. Signs and Flags. No sign, graphic, or advertising device of any kind shall be displayed on any Lot except: (a) one sign advertising the property for sale or rent; (b) signs used by the building contractor or lender for advertising during construction; (c) the American flag, displayed in accordance with 4 U.S.C. §§ 4 to 10 and rules and regulations adopted by the Association and not contrary to law; (d) a service flag, subject to rules and regulations adopted by the Association and not contrary to law; and (e) political signs in support of candidates or ballot issues limited to the period thirty (30) days immediately preceding the election date and seven (7) days after the election date on which the candidates or issues will be voted upon. Any permitted sign may be no more than five (5) square feet (or smaller if required by applicable law). Signs used by Declarant are not subject to the restrictions in this Section 7.03 or any other restrictions.

Section 7.04. Fences. All fences shall be erected by Declarant and maintained by the Association as a Common Element. No fence may be installed or altered by an Owner without the approval of the Board in accordance with Article 8.

Section 7.05. Restrictions Relating to Drainage. Nothing shall be done or permitted on any Lot that would block, divert, change, or channelize the natural flow of drainage water across any Lot from adjacent Lots, as established by the original grading plan approved by the applicable local government, without specific approval from the Board.

Section 7.06. Animals. No more than two (2) animals are allowed on any Lot. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by those pets. No animal may be kept on a Lot that is a nuisance to other Owners or that runs at large or endangers residents in the Subdivision. All animals shall be maintained on the Owner's property or on a leash. At the request of any Owner, the Board of Directors shall determine whether a particular animal shall be considered a nuisance, or whether the number of any such animals on any Lot is a nuisance. Habitually barking and/or vicious dogs are prohibited at the reasonable discretion of the Board. The breeding, boarding and/or sales of animals are prohibited in the Subdivision. The restrictions in this Section 7.06 are in addition to, and not in lieu of, the City's applicable animal control regulations.

Section 7.07. Residential Use. No Lot may be used for commercial purposes, except for home occupations conducted in accordance with City ordinances and which do not entail the employment of third persons on the premises or the visitation of customers to the premises. This does not include the delivery of goods or services to customers upon a Lot, nor to the leasing of any Lot as described in Section 7.08. Any other commercial use shall be considered a nuisance within the meaning of Section 7.09. Declarant shall not be subject to the provisions of this Section 7.07.

Section 7.08. Leases. Any Owner shall have the right to lease his or her Lot for residential use by a tenant provided that: (a) all leases are in writing; (b) the lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration and any rules and regulations of the Association (specifically including watering requirements); and (c) the lease and/or rental arrangement comply with all rules and regulations of the City. The foregoing shall be deemed to be implied terms of each such lease, whether or not actually contained in or attached to the lease. The term "lease" in this Section 7.08 shall include any agreement for the leasing or rental of a Lot or any portion of a Lot. Short-term rentals are allowed; for purposes of this Section 7.08 short-term rental means any rental of a Lot or portion thereof for fewer than 30 consecutive days to any given renter, and any listings through companies such as VRBO, Airbnb, HomeAway, and similar organizations. All short-term rentals must be approved by the board.

Section 7.09. Nuisance and Hazardous Activities. No obnoxious or offensive activity shall be conducted on any Lot, nor shall any activity be permitted that becomes an annoyance or nuisance within the Subdivision. No light shall be permitted from any Lot that is unreasonably bright or causes unreasonable glare when viewed from the street or an adjacent Lot or property. No open burning shall be conducted on any Lot or common area within the subdivision. No sound shall be emitted from any Lot that is unreasonably loud or annoying and no odor shall be permitted from any Lot that is noxious or unreasonably offensive to others, as determined by the Board in its reasonable discretion. No activities shall be conducted on the Property or within the improvements constructed on or within the Property that are or might be unreasonably hazardous to any person or property. No firearms, explosives, air rifles, BB guns, bows/arrows, crossbows or similar devices shall be discharged on the Property. In no event shall activities of Declarant that are reasonably necessary for the development and construction of the Property be considered a nuisance or hazard under this Section 7.09.

Section 7.10. Yards. No rubbish, debris or other such accumulations of any kind shall be placed or permitted to accumulate or remain on any Lot. All ornamentation in yards, such as, by way of example but not limitation, figurines, plastic flowers, colored lights, windmills, sculptures, and bird baths or feeders, shall either be screened from public view or approved by the Board. No clotheslines, sheds, dog runs or drying yards are allowed. This Section 7.10 shall not apply to seasonal holiday decorations which are promptly removed after the holiday or to the display of the flag of the United States of America, which is addressed in Section 7.03.

Section 7.11. Landscaping Installation and Maintenance. Declarant shall install all landscaping on all Common Elements, and the Association shall maintain all such landscaping thereafter. The cost for maintaining the landscaping and snow removal shall be determined by the Board of Directors and included in the annual budget prepared by the Board. All common elements shall be cleaned of animal waste for lawn maintenance crews to perform their job on a weekly scheduled date set by the Board of Directors. All pets shall be detained in the owner's residence until lawn crews have finished maintaining the common elements. In the event any Owner fails to maintain his or her fenced common area in accordance with this Declaration or any rules or regulations adopted by the Association, the Association may hire out such maintenance as is necessary to bring such fenced common area into compliance and levy a Special Assessment against the Owner and Lot for those costs, as provided in this Declaration.

**Section 7.12. Lot Maintenance.** Each Lot shall be properly maintained by the Owner of such Lot. In the event any Owner fails to maintain his or her Lot(s) in accordance with this Declaration or any rules or regulations adopted by the Association, the Association may hire out such maintenance as is necessary to bring such Lot(s) into compliance and levy a Special Assessment against the Owner and Lot for those costs, as provided in this Declaration.

**Section 7.13. Residence Maintenance.** The exterior of each Residence shall be repaired and maintained by its Owner, including but not limited to costs for the purchase, installation, construction, maintenance, and expected or unexpected repair or replacement of any exterior component of a Residence such as, by way of example and not limitation, roofs, exterior wall coverings, doors, windows, foundations, patios and other hard surfaces, decks, HVAC equipment, and satellite systems. Prior approval of the Board is required for the following exterior changes: roofing materials (including without limitation a change in shingle colors), a change to exterior paint colors (including without limitation doors and trim), a change in front façade materials, and major driveway repairs or replacement. If an Owner fails to maintain the exterior of his or her Residence in accordance with this Declaration or any rules or regulations adopted by the Association, the Association may, in the Board's discretion without obligation, hire out such maintenance as is necessary to bring such Residence into compliance and levy a Special Assessment against the Owner and Lot of such Residence for those costs. Except as may otherwise be provided in this Declaration or any rules or regulations adopted by the Association, an Owner may make any improvement or alteration to the interior of his or her Residence so long as such improvement complies with any applicable, law, code, rule or regulation.

**Section 7.14. Temporary Sales and Construction Office.** A temporary sales and construction office maintained by Declarant may be located within the Subdivision during the development, construction and/or sale of Lots and the Property on any Lot owned by Declarant, an affiliate of Declarant, or any successor declarant. Temporary parking in front of and adjacent to the office shall be allowed as long as the office is maintained in the Subdivision. Temporary sales signs, flags, etc. may be placed in the Subdivision during the development, construction and sale of Lots as long as the office is maintained in the Subdivision or there are development, construction or sales activities taking place. During the period of development, construction and sales, Declarant may also designate certain Lots and Residences to be used for sales offices, construction offices, and storage yards.

## **ARTICLE 8**

### **ARCHITECTURAL CONTROL**

**Section 8.01. Approval.** No building, driveway, fence, wall, sign or other structure or improvement shall be commenced, erected or maintained upon the Property (including the Common Elements), nor shall any exterior change or alteration (including without limitation painting, grading, irrigation systems, fences) be made until plans and specifications showing the nature, kind, shape, height, materials, location, drainage and other similar information have been submitted to and approved in writing by the Board of Directors as being in harmony with external design and location in relation to surrounding structures, topography and other matters specified in this Article 8, except that Declarant and its affiliates and successors shall not be required to obtain Board approval so long as they comply with the construction and design guidelines in Article 6.

**Section 8.02. Procedures.** The Board shall approve or deny (by majority vote) all requests for architectural control approval within thirty (30) days after the complete submission of copies of all plans, specifications and other materials that the Board may require in conjunction with the application. If the

Board fails to approve or deny an application in writing within thirty (30) days after completion of submission of a plan to it, the application will be deemed to have been approved if it otherwise complies with the construction and design guidelines in Article 6. The Board shall exercise its reasonable judgment to the end that all construction, improvements, landscaping, and alterations to structures, other improvements and property, within the Property, conform to and harmonize with the existing surroundings, Residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the Board may require that the applicant(s) pay the Board a reasonable processing fee for the review and approval process. Such amounts, if any, may be levied as part of the Regular Assessment against the Lot for which the request for Board approval was made and, as such, shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection thereof, as more fully provided elsewhere in this Declaration. Notwithstanding the foregoing, only the Association shall have the right to materially alter or modify the fencing, landscaping or grading installed by Declarant on any Common Elements, provided that the foregoing prohibition shall not prevent the repair and maintenance of the same.

Section 8.03. Records. The Board shall maintain written or electronic records of all applications submitted to it and all actions taken by it, and such records shall be available to Members for inspection at reasonable hours of the business day. This Section 8.03 shall not apply to Declarant or its affiliates.

Section 8.04. Variance. Upon a unanimous vote, the Board may grant reasonable variances or adjustments from any condition or restriction imposed by Article 6 in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of the conditions and restrictions in Article 6. Variances or adjustments shall be granted only if they will not be materially detrimental or injurious to other Lots or the Property or the general intent and purpose of this Declaration. The grant or denial of a variance request shall not affect in any way any of the terms or provisions of this Declaration covered by the variance and shall not serve as a basis for subsequent variances with respect to any other request. The grant of any variance shall not affect in any way the Association's or Owner's obligation to comply with applicable City codes and other governmental laws or regulations.

Section 8.05. Approval or Consent not a Waiver. The approval or consent of the Board 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 Board as to any other application submitted for approval or consent under this Article 8.

Section 8.06. Time of Construction. Approved projects must be completed within eighteen (18) months after issuance of a building permit or within six (6) months after approval by the Board if no building permit is required. If such work is not completed within the prescribed time, the Board may, by written notice, rescind its approval and re-submission will be required. The Board may grant an extension for good cause. This Section 8.06 shall not apply to Declarant or its affiliates.

Section 8.07. No Liability. Declarant, the Association, and the Board and its members shall not be liable in damages to anyone submitting plans or specifications for approval under this Declaration arising out of or in connection with any action, failure to act, approval, disapproval, or failure to approve or disapprove any matter within its jurisdiction under this Declaration. Any Owner submitting or causing to be submitted any plans or specifications agrees and covenants on behalf of such Owner and such Owner's heirs, successors, legal representatives and assigns that they will not bring any such action or suit at law or in equity against the Declarant, the Association, or the Board, or any of the members of those entities.

Section 8.08. Rules and Regulations. The Board may, from time to time in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of Article 7.

Section 8.09. Delegation of Authority. The Board may, from time to time, by majority vote, delegate some or all of the rights or responsibilities under this Article 8 to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the Board in all matters delegated.

Section 8.10. Review Fee and Address. Any plans and specifications shall be submitted in writing together with a reasonable processing fee determined by the Board. The address of the Board shall be the principal place of business of the Association or such other place as the Board may designate. The address shall be the place for the submittal of any plans or specifications and the place where the current rules and regulations, if any, of the Board shall be kept.

Section 8.11. Inspection. During initial construction, remodeling, repair or other work on a Lot or to a Residence requiring Board approval, any member or agent of the Board may from time to time at any reasonable hour or hours and upon reasonable prior notice enter and inspect any Residence or Lot to determine whether the Residence or any improvement on the Lot complies with the provisions of this Declaration.

Section 8.12. General Provisions. Except for duly licensed architects or other qualified persons delegated authority under Section 8.09, the members of the Board shall not be entitled to any compensation for services performed under this Article 8.

## **ARTICLE 9** **DISPUTE RESOLUTION**

Section 9.01. General. Except for collection and lien foreclosure actions against Owners, specifically including but not limited to actions under Article 5, all actions, disputes or claims between any Owner, the Board, the Association, Declarant, and their respective agents, contractors, successors and assigns, whether in contract, tort or otherwise, shall be resolved by the procedures set forth in this Article 9, or as set forth in any applicable limited warranty or any applicable agreement between Declarant and any Owner or his or her heirs, successors or assigns.

Section 9.02. Initial Notification; Negotiation. For each claim governed by this Article 9 (a "Claim" in this Article 9), the claimant ("Claimant" in this Article 9) shall give notice to the other party or parties against whom the claim is asserted ("Respondent" in this Article 9), setting forth: (a) the nature of the Claim; (b) the basis or reason for the Claim; (c) any other material information regarding the Claim; (d) the specific relief and/or proposed remedy sought; and (e) the intent to invoke this Article 9 (the "Notice of Claim" in this Article 9). Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the Notice of Claim, pending mediation pursuant to Section 9.03.

Section 9.03. Mediation. If the Claim is not resolved through negotiation under Section 9.02, it shall be mediated before a mediator jointly selected by the parties. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute formally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The mediation shall occur within thirty (30) days following delivery of the Notice of Claim (the "Mediation Period" in this Article 9). Mediation shall be a condition precedent to the filing of a lawsuit. In the event Claimant does not appear for mediation, Claimant shall be deemed to have irrevocably waived the Claim, and Respondent shall be released from any and all liability to Claimant on account of such Claim. If mediation is successful, the resolution shall be documented in writing and signed by the parties. Thereafter, if either party violates the resolution, the other party may apply immediately to a court in the

County for relief. The mediation, unless otherwise agreed, shall terminate if the entire dispute is not resolved before the expiration of the Mediation Period. In the event that mediation is unsuccessful, then Claimant may bring an action in a court of proper jurisdiction in the County within sixty (60) days following the expiration of the Mediation Period. If no action is filed within the specified time, Claimant irrevocably waives the Claim and any and all right to proceed to litigation regarding the Claim. If the matter is settled through the mediator, Claimant and Respondent shall share equally in the mediation costs and pay their own attorney fees, if any. If the matter is not settled by mediation and proceeds to litigation, the losing party in the litigation shall pay the prevailing party's portion of the mediation costs and its attorney fees, if any.

**Section 9.04. Standards of Construction.** If any Claim regarding defects in construction is made, the Claim shall be specified with particularity. Each location of any claimed defect must be identified and all evidence supporting each Claim, along with all repair methodologies and costs of repair, must be provided by Claimant in advance of mediation under Section 9.03. In any proceeding, it shall be rebuttably presumed that any construction done by a builder or Declarant was not defective, that the builder or Declarant adequately performed its obligations under its contract, and that the builder or Declarant was not negligent if the builder or Declarant's performance was, at the time of construction, substantially in accordance with: (a) the standards of trade in the County; (b) any applicable building code in the City or County; or (c) any applicable national association of home builders residential construction guidelines. In any such proceedings, evidence of any scientific, engineering, or technical advancements or other knowledge or techniques, or any design theory or philosophy, or any construction or testing knowledge or techniques, where such advancements were discovered subsequent to the time of construction, shall not be admissible for any purpose. If any Claim relates, in any way, to any work completed by any of Declarant's or a builder's subcontractors or any materials and/or equipment provided by any suppliers, Declarant or the builder, as applicable, in its sole discretion, may join such subcontractors and/or suppliers to any proceeding with Claimant. The sole manner which may be used to establish breach of any obligations under this Declaration, any obligations which may exist by law or reason of any statute, any applicable industry standards, and/or Claimant's damages, including but not limited to appropriate repair costs, shall be through the testimony of a homebuilder with experience in the County. The court shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

**Section 9.05. Limitation of Remedies.** Every party subject to this Declaration disclaims and waives any claims for the following remedies and damages for any matters related to any Claim, whether a Claim is made on the basis of contract, tort or any other theory or basis at law or in equity: (a) punitive or exemplary damages; (b) claims for emotional distress or pain and suffering, and (c) claims for incidental and/or consequential damages (except as otherwise provided in this Declaration). Claimant further agrees that, subject to the other limitations in this Declaration, Respondent's total liability to Claimant shall be limited to, and in no event exceed, the amount of any insurance proceeds actually available with respect to any and all Claims, whether in contract, tort or otherwise.

**Section 9.06. Attorney Fees and Jury Waiver.** In the event of any dispute, the substantially prevailing party shall be awarded its reasonable costs and attorney fees, including post-judgment collection costs, in addition to actual damages. All parties subject to this Declaration waive the right to a jury in any action or proceeding concerning their Lot, Common Elements, the Property, the Subdivision, and/or any other Claims arising under or related to this Declaration, to the maximum extent permitted by law.

## **ARTICLE 10**

### **GENERAL PROVISIONS**

**Section 10.01. Easements.** Easements for the installation and maintenance of utilities and irrigation, detention and other water facilities are hereby reserved as shown on the Plat. Within these

easements no improvement, structure, planting or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of such utilities or facilities, or which may change the direction of flow of drainage channels in the easements. Declarant and the Association shall have the right (but assume no obligation) to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 10.02. Rights of Declarant Incident to Construction. An easement is retained by and granted to Declarant and its successors and assigns for access, ingress and egress over, in, upon, under and across any easements shown on the Plat, including but not limited to the right to store materials on such areas and to make such other use of such areas as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property, including without limitation construction of improvements indicated on the Plat; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner or his or her family members, guests or invitees, to or of that Owner's Lot. Declarant, for itself and its affiliates, successors and assigns, retains a right to store construction materials on any Lot owned by Declarant or its affiliates and to make such other use of it as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations under this Declaration, and the sale of the Lots.

Section 10.03. Term. The provisions of this Declaration shall each constitute covenants running with the land applicable to all of the Property and Lots, binding Declarant and Lot Owners and all persons and entities claiming by, through or under them for a period of twenty (20) years from the date of recording of this Declaration in the real property records of the County, which term shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended or terminated as provided in Section 10.04.

Section 10.04. Amendment and Termination.

- (a) Subject to Declarant's rights in paragraph 10.04(b), all or any portion of this Declaration may be supplemented, changed or canceled in whole or in part at any time by the vote or agreement of Members representing at least sixty-seven percent (67%) of the voting rights of the Members. Such agreement may be in any number of counterparts. Such amendment shall be effective when duly recorded in the real property records of the County.
- (b) So long as Declarant or any affiliate of Declarant owns any Lot in the Subdivision, Declarant shall have the right and power to adopt and record amendments to this Declaration, the Articles of Incorporation, the Bylaws, and the Plat. This power and right are superior to the Members' right to amend in paragraph 10.04(a). In the event of any conflict between the Members' rights in paragraph 10.04(a) and Declarant's rights in this paragraph 10.04(b), Declarant's rights shall control.

Section 10.05. Colorado Common Interest Ownership Act. To the maximum extent permitted by law, the Property shall be specifically exempt from all terms, conditions and provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, as provided in C.R.S. § 38-33.3-116(2).

Section 10.06. Compliance with Law. All Owners shall comply with all federal, state and local laws, codes, rules and regulations applicable to their use, improvement and occupancy of their Lots and the Property, including, by way of example and not limitation, building codes and all other laws designed to



protect public health or welfare and the environment. Any violation of any such law, code, rule or regulation shall be a breach of this Declaration.

Section 10.07. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 10.08. Notice. Any notice or demand required or permitted by this Declaration shall be in writing and shall be (a) hand-delivered or sent by United States first class mail, postage prepaid, to the address of the Owner of the Lot(s) to receive notice at the address provided by the Owner for that purpose to the secretary of the Association or (b) emailed to an email address provided by the Owner for that purpose to the secretary of the Association. If the Owner fails to provide a contact address to the secretary, notice shall be sent to the address of the Owner specified in the deed recorded in the real property records of the County by which that Owner took title, and to the street address of that Lot, if any.

Section 10.09. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration shall in no way affect or limit any other provisions, which shall remain in full force and effect. To the extent feasible, any non-complying provision and the remainder of this Declaration shall be reformed to comply with applicable law and to preserve the intent of this Declaration, including the invalidated provision.

Section 10.10. Waiver. The failure of the Association or any Owner to enforce any right under this Declaration upon any occasion shall not be deemed a waiver of such right on any subsequent occasion(s). The waiver, either express or implied, by the Association or any Owner of any of the rights, terms or conditions in this Declaration shall not be deemed as or constitute a waiver of any other rights, terms or conditions in this Declaration. Any waiver, in order to be valid and effective, must be in writing.

Section 10.11. Titles and Headings; Construction. The article and section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa; and the masculine gender shall include the feminine and neuter genders, and vice versa.

Section 10.12. Binding Effect. The provisions of this Declaration shall be binding upon and for the benefit of each Owner and each of their heirs, personal representatives, successors in interest, and assigns.

Section 10.13. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose.

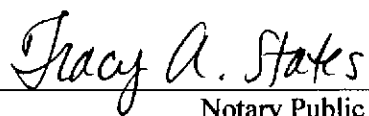
Section 10.14. Applicability of Governmental Regulations. The covenants, conditions and restrictions contained in this Declaration are separate and distinct from any zoning, building or other law, ordinance, rule or regulation of the City or of any governmental authority having jurisdiction over the Property that now or in the future may contain different requirements from or in addition to those contained in this Declaration or that may prohibit uses permitted in it or permit uses prohibited in it.

SCF PARTNERS, LLC

  
Eric Flukey, Member

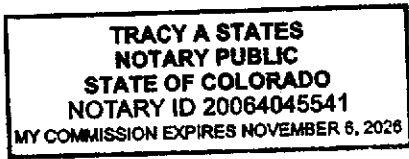
STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF MESA         )

Subscribed and sworn to before me the 7<sup>th</sup> day of August, 2022, by Eric Flukey as Member of SCF PARTNERS, LLC.

  
\_\_\_\_\_  
Notary Public

STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF MESA         )

and official seal.



My commission expires: 11/06/2026