

## DECLARATION OF PROTECTIVE COVENANTS KISMET MINOR SUBDIVISION

This Declaration of Protective Covenants of Kismet Minor Subdivision ("**Declaration**") is made and executed as of the date last written by Karen Leonhart ("**Declarant**").

### RECITALS

- A. Declarant is the owner of that certain real property known as the Kismet Minor Subdivision (the "**Property**"), as the same is laid out and described on the Plat thereof recorded as Reception No. \_\_\_\_\_ in the records of Mesa County, Colorado (the "**Plat**").
- B. The Property consists of Lots 1, 2, and 3 (collectively the "**Lots**");
- C. Declarant is also the owner of all water and water rights, ditches and ditch rights, easements and rights-of-way appurtenant to or used upon or in connection with the Property and all other common facilities and appurtenances related thereto, all of which shall be deemed to be included in the definition of "Property" as set forth and used herein
- D. Declarant has created a nonprofit association known as the Kismet Minor Subdivision Homeowners Association, Inc., a Colorado nonprofit corporation ("**Association**"), formed for the purpose of being and constituting the entity for the furtherance of the interest of the Owners of Lots in the Development, providing for the delivery of Association Water and maintenance of irrigation facilities, and enforcing the covenants, conditions and restrictions set forth in this Declaration, including the levy and collection of assessments.

### DECLARATION

NOW THEREFORE, Declarant hereby declares that the Property, and all Lots comprising the same, shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions and restrictions which are established for the purpose of protecting the value and desirability of the Property and which shall run with title to the Lots and be binding on all owners or other parties having any right, title or interest in the Property. Declarant expressly does not submit the Property to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as amended from time to time, except for §38-33.3-105 through 107 thereof only to the extent required thereby.

ARTICLE I  
Definitions

Section 1.1. Definitions. The following words, when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

A. "**Association**" shall have the meaning given above in Recital D.

B. "**Association Water**" shall mean and refer to the allocation of water to the Property by the Grand Valley Irrigation Company for the purpose of providing irrigation water to the Lots of the Owners.

C. "**Board**" shall mean and refer to the Board of Directors of the Association.

D. "**Development**" shall mean the Kismet Minor Subdivision.

E. "**Irrigation Facilities**" shall mean and refer to all equipment and facilities owned, operated and maintained by the Association for the purpose of delivering Association Water to the Lots and shall include, but not be limited to, all pumps, pipes, pipelines, risers, connectors and related parts and materials located in, under or upon irrigation easements within the Development, or elsewhere outside of the Development for the purpose of serving the Development.

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

G. "**Property**" shall mean and refer to that certain real property described above in Recital A.

H. "**Common Area**" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. At the time of the recording of this instrument, there is no common area to be owned by the Association. All provisions hereof concerning Common Area are inserted to control and regulate such common area in the event Common Area is conveyed to the Association.

I. "**Lot**" shall mean and refer to any plot of land shown upon any plat, including all or a portion of the Property, with the exception of Common Area.

J. "**Declarant**" shall mean and refer to the undersigned, and any successor or assigns as may hereafter be designated by Declarant by a written instrument duly recorded in the office of the Clerk and Recorder of Mesa County, Colorado.

K. "**Member**" shall mean and refer to every person or entity who holds membership in the Association.

## ARTICLE II Use Regulations

Section 2.1. Land Uses. Each Lot shall be used only for residential purposes.

Section 2.2. Drainage and Grading. All plans and specifications for the construction of improvements on a Lot, and the actual construction of such improvements, shall maintain drainage easements and rights-of-way within the Property clear and unobstructed. Further, all grading on a Lot shall be done with a minimum of disruption to the Lot and shall not drain surface water to adjoining Lots unless along a natural drainage path, nor shall grading cause soil erosion.

## ARTICLE III Restrictions

Section 3.1. General Plan. It is the intention of Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Property which shall be binding on and inure to the benefit of the Owners of the Property, all in order to enhance the value, desirability and attractiveness of the Property and to subserve and promote the sale thereof.

Section 3.2. Restrictions Imposed. Declarant hereby declares that all of the Property shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated upon and subject to the following provisions, conditions, limitations, restrictions, agreements and covenants.

### Section 3.3. Use of Common Area.

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

3.3.2. The use of 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.

3.3.3. No use shall ever be made of Common Area which will deny ingress and egress to those Owners having access to Lots only over Common Area and the right of ingress and egress to said Lots by vehicle and otherwise is hereby expressly granted.

Section 3.4. Land Use and Building Type. No Lot shall be used except for residential purposes. Only single-family dwelling, private garages and other outbuildings directly incidental to residential use shall be constructed, altered, placed or permitted to remain on any site.

Section 3.5. Dwelling and Site. The main structure, exclusive of open porches and garages, shall not be less than 1,600 square feet on one level and not less than 1,200 square feet per level on multi-level houses, outside measurements. All building exteriors shall be of neutral or natural colors and of quality workmanship and materials. Outbuildings shall conform to exterior design of the residence. All structures shall be constructed of either brick, stone, lumber, stucco, logs, or a combination thereof. The use of cinderblock shall not be allowed.

Section 3.6. Construction of Homes; No Manufactured Homes. The work of construction, altering or remodeling any building on any part of said Lot shall be pursued diligently from the commencement until the completion thereof with a maximum time limit of one (1) year. No manufactured, mobile, modular, factory-built, or similar homes shall be allowed.

Section 3.7. Easements. Easements for installation and maintenance of utilities, drainage facilities and irrigation waste are reserved as shown. Within those easements, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or with the final irrigation plan, or which may change the direction of flow, obstruct or retard the flow of water in and through drainage channels in easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or one or more utility companies is responsible.

Section 3.8. 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 3.9. No Hazardous Activities. No activities shall be conducted on the Property or on improvements constructed on the Property which are or might be unsafe or hazardous to any person or property.

Section 3.10. No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot or dwelling unit which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot or in any dwelling unit which is unreasonably loud or annoying, and no odor shall be emitted on any Lot or dwelling unit which is unreasonably noxious or offensive to its neighbors.

Section 3.11. Livestock. No livestock, including but not limited to horses, cattle and sheep, may be kept on the Property.

Section 3.12. Property Maintenance. Lots must be maintained in a good, clean, and safe condition, whether or not occupied by the Owner.

Section 3.13. Garbage and Refuse Disposal. No Lot shall be used as a dumping ground for rubbish. All garbage, rubbish and trash shall be placed and kept in covered containers and shall not be allowed to accumulate on any Lot. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and shall be kept inside a building or screened from public view.

Section 3.14. Vehicles. No Lot roadway or easement shall be used as a parking, storage or accommodation for any type of junk vehicles or vehicles under repair. Only those cars and trucks incidental to residential family use will be permitted within the development.

Section 3.15. No Weeds or Tall Grass. Each Owner must maintain his Lot reasonably free of weeds and tall grass; otherwise, the Association will have the right to maintain the Lot and bill the Owner.

#### ARTICLE IV Easements and Reservations by Declarant

Section 4.1. Recorded Easements. The property shall be subject to all easements as shown affecting the Property that are depicted on the Plat and to any other easements or rights-of-ways of record or of use as of the date of recordation of this Declaration.

#### ARTICLE V Irrigation Facilities

Section 5.1. Irrigation Water and Facilities. Declarant is the owner of 2 shares of capital stock of the Grand Valley Irrigation Company and is a member of the Peach Street Ditch Company. Declarant has conveyed

or will convey all such stock to the Association for the use of Owners to water and irrigate Lots.

Section 5.2. Irrigation Facilities. Each Owner shall be solely responsible for installing, maintaining, repairing, and replacing, their own individual irrigation and/or pumping systems upon their Lot and connecting the same to the source of water in order to supply each Lot with adequate irrigation water. All of the irrigation delivery system shall lie within the Irrigation Easement as depicted on the Plat.

Section 5.3. Owners' Easements of Enjoyment Concerning Irrigation Facilities. Every Owner shall have a nonexclusive easement of enjoyment in and to the irrigation delivery system existing as an "easement" across other portions of the Property, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 5.4. Extent of Owner Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

5.4.1. The right of the Association to promulgate and publish rules and regulations concerning the Irrigation Facilities and Association Water which each Member shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges and assessments for the use of the Irrigation Facilities;

5.4.2. The rights of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a member for any period during which any assessment against his Lot remains unpaid, and for any infraction of its published rules and regulations, and

5.4.3. The right of the Association to close or limit the use of the Irrigation Facilities while maintaining, repairing and making replacements to the Irrigation Facilities.

## ARTICLE VI Association Membership and Voting Rights

Section 6.1. Purpose and Powers. The Association shall be a corporation organized pursuant to the Colorado Nonprofit Corporation Act, to be and constitute an entity for the exercise of the powers for the purposes set forth in the Declaration, including the management and delivery of Association Water, the repair and maintenance of Irrigation Facilities, the levy and collection of assessments, the enforcement of the covenants, conditions and restrictions set forth in this Declaration, and to otherwise exercise such other powers as are set forth in this Declaration, or reasonably necessary to fulfill its objectives and purposes.

Section 6.2. Membership. Every Owner of a Lot within the Property shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 6.3. Voting Rights. The Association shall have one class of voting membership, being all Owners of Lots within the Property who shall be entitled to one vote for each Lot owned.

Section 6.4. Liability of Officers and Directors. To the fullest extent provided by law, the officers and directors of the Association shall not have personal liability to the Association, the Association members, or any third party, including liability for tort or breach of fiduciary duty, when acting in their official capacity as an officer or director on behalf of the Association.

## ARTICLE VII Covenant for Maintenance Assessments

Section 7.1. Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot within the Property, hereby covenants, and each Owner of any such Lot 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 the Association: (a) annual assessments or charges, and (b) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest thereon, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. To evidence such lien the Board of Directors of the Association shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner and a description of the Lot. Such a notice shall be signed by the President of the Association or one of the Directors and shall be recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado. Such lien may be enforced by foreclosure of the defaulting Owner's property by the Association in like manner as a mortgage on real property, upon the recording of a notice or claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing and notice or claim of lien and all reasonable attorney's fees. Each such assessment, together with interest thereon, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment was due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 7.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and for the improvements, repair and maintenance of the Irrigation Facilities and Common Area (if any). The Association will pay the yearly fee for irrigation water as well as the payment of any premiums for

insurance which the Association deems necessary for its operation and protection and a payment to an accountant, if needed, to document yearly activity and file non-profit documents. The Association shall maintain an adequate reserve fund out of the annual assessment for the maintenance, repair and replacement of those element of the Irrigation Facilities and Common Area that must be replaced on a periodic basis.

Section 7.3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction , reconstruction, repair or replacement of a capital improvement upon the Irrigation Facilities (or Common Area, if any), including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7.4. Notice and Quorum for Any Special Assessment. Written notice of any meeting called for the purpose of taking any action to levy any special assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the required quorum is not present, another meting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots which are subject to assessment, based upon the amount of acreage of each Lot, and sufficient to meet the expected needs of the Association.

Section 7.6. Date of Commencement of Annual Assessments. The initial and all subsequent annual assessments shall commence on the first day of January, beginning in 1997, and shall be due and payable sixty (60) days thereafter. Any Owner purchasing a Lot between commencement dates shall pay a pro rate share of the last installment due.

Section 7.7. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the



assessment as above provided and a reasonable attorney's fees 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 non-use of the Irrigation Facilities or Irrigation Water or Common Area or the abandonment of his Lot. The Association may refuse to deliver Association Water to any Owner's Lot whose assessment is delinquent.

Section 7.8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage. The lien of the assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado. Transfer of actual or constructive possession of any Lot shall not affect the assessment liens. However, the transfer of title of actual or constructive possession of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such transfer of title of actual or construction possession. No transfer of title of actual or constructive possession shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VIII Duration of Covenants and Amendment

Section 8.1. Term. The covenants and restrictions of this Declaration shall run with the land and bind until December 31, 2033, after which time they shall be automatically extended for successive periods of time of ten (10) years each, subject to the following provisions.

Section 8.2. 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-six and two-thirds percent (66.67%) of the votes possible to be cast under this Declaration. Any amendment must be recorded and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association.

Section 8.3. Revocation. This Declaration shall not be revoked without the consent of one hundred percent (100%) of the Owners evidenced by a written instrument duly recorded.

Section 8.4. When Modifications Permitted. Notwithstanding any other provision of this Declaration to the contrary, no termination, extension, modification or amendment of this Declaration made prior to December 31, 2033, shall be effective unless the prior written approval of Declarant is first obtained.

#### ARTICLE IX General Provisions

Section 9.1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or 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 9.2. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 9.3. Conflict of Provisions. In the case of conflict between this Declaration and the Articles of Incorporation of Bylaws of the Association, this Declaration shall control.

Section 9.4. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to the Secretary of the Association.

Section 9.5. Leases. Any lease agreements between an Owner and a lessee for a Lot shall provide that the terms of such lease shall be subject in all respects to provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, 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 9.6 Indemnification. The Association shall indemnify Declarant and any persons acting in the capacity of Association Manager against any and all expenses, including attorneys' fees and costs reasonably incurred by or imposed upon said Declarant in connection with any action, suit or other proceeding (including settlement of any suit or proceeding) to which the Declarant may be a party by reason of any actions, contracts, agreements or other activity undertaken by the Declarant before or after the making of this Declaration, other than those acts or omissions of Declarant taken or done in violation of the provisions hereof. The Declarant shall not be liable for any mistake of judgment, negligent or otherwise, except for willful misfeasance, malfeasance, misconduct or bad faith. The Declarant shall have no personal liability with respect to any contract or other commitment made by them with third parties, in good faith, with respect to the Subdivision or Common Facilities or otherwise, on behalf of the Association, and the Association shall indemnify, save and forever hold such Declarant free and harmless against any and all liability to any third party on

account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which Declarant may be entitled in this regard. Nothing herein shall be construed as relieving Declarant of their respective obligations and duties to the Lot Owners enjoined upon each under the provisions hereof.

Section 9.7 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9.8 Non-Waiver. The failure of Declarant, the Association, the Association Manager or a Lot Owner to object to any breach of or failure to comply with the provisions of this Declaration or any Rules and Regulations by a person subject thereto shall in no event be deemed a waiver of any right to object to the same and to seek compliance therewith at any time.

Section 9.9 Captions. Article and section captions, headings or titles inserted throughout this Declaration are intended solely as a means of convenience and reference and in no way shall such captions, headings or titles define, limit or in any way affect any of the substantive terms and provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration on the date first written above.

By \_\_\_\_\_  
Karen Leonhart

State of Colorado        )  
                                  ) ss.  
County of Mesa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Karen Leonhart.

My Commission Expires: \_\_\_\_\_

Witness my hand and official seal. \_\_\_\_\_

\_\_\_\_\_

Notary Public