

ELK STREAM RANCH

A Colorado Common Interest Community
Located in T36N R13W, T35N R13W, T36N R12W and T35N R12W, N.M.P.M
Montezuma County and La Plata County, Colorado

**AMENDED AND RESTATED BYLAWS OF THE
ELK STREAM RANCH PROPERTY OWNERS ASSOCIATION, INC.,
A COLORADO NONPROFIT CORPORATION**
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RECITALS

WHEREAS, the Elk Stream Ranch Property Owners Association, Inc., a Colorado non-profit corporation (“Association”), was established on July 14, 1995, for the purpose of managing the affairs of the Elk Stream Ranch common interest community, and such non-profit corporation is maintained in good standing at the office of the Secretary of State of Colorado; and

WHEREAS, current information regarding the principal office of the Association and its registered agent is maintained with the office of the Secretary of State of Colorado; and

WHEREAS, the Bylaws provide for their amendment, and certain elements of the Bylaws, as amended, need to be changed to conform to applicable law and the Amended and Restated Declaration of the Association; and

NOW THEREFORE, the Board of Directors of the Elk Stream Ranch Property Owners Association, Inc. (“Board”), deems it necessary and desirable to adopt these Amended and Restated Bylaws for the Elk Stream Ranch (“Amended Bylaws”), and to manage the Association as set forth in these Amended Bylaws.

ARTICLE 1: PURPOSES, DEFINITIONS, APPLICABILITY OF BYLAWS

1.01 Purpose of Association.

- (a) *Purposes.* The Association is a nonprofit corporation formed to effectively and efficiently regulate, operate and manage the Elk Stream Ranch Property Owners Association in accordance with:
- (i) the purposes identified in the Amended and Restated Articles of Incorporation of the Association;
 - (ii) the provisions of the Colorado Common Interest Ownership Act, §§38-33.3-101 et seq., C.R.S., as amended (the “Act”);
 - (iii) the applicable sections of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., as amended;
 - (iv) the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Elk Stream Ranch Property Owners Association, as amended (the “Declaration”);
 - (v) the provisions of the Governing Documents of the Association;
 - (vi) the provisions of these Bylaws; and
 - (vii) other applicable law.

1.02 Applicability. The provisions of these Bylaws are applicable to the Property, the Association and the Owners of Parcels regarding the operation and management of the Association.

1.03 Definitions. Unless separately defined in these Bylaws, or unless the context otherwise requires, the capitalized names, words and phrases used in these Bylaws shall have the meanings set forth in the Act or Declaration.

1.04 Conflicts. In the case of a conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of a conflict between the Declaration and these Bylaws, the Declaration shall control, except to the extent the Declaration is inconsistent with the Act.

1.05 Association Managed by Board of Directors. The affairs of the Association shall be managed and administered by the Board of Directors ("Board") in accordance with these Bylaws, the Declaration and the Act.

1.06 Scope of Powers of the Association. The Association may act in any manner defined in and consistent with C.R.S. §38-33.3-302 or other applicable provisions of the Act.

ARTICLE 2: MEMBERS OF ASSOCIATION

2.01 Membership. As included in the Declaration, there shall be one Membership appurtenant to each Parcel in the Elk Stream Ranch. The Membership appurtenant to a Parcel shall be held by the Owners of that Parcel and may not be separated from the Parcel to which it is appurtenant. Each Owner by virtue of being such an Owner and for so long as it is an Owner, shall be deemed a Member of the Association. The terms "Member" and "Owner" are synonymous.

(a) *Liability of Members.* No Owner shall be personally liable for any of the debts, liabilities or obligations of the Association except as provided in the Governing Documents and the Act.

2.02 Meetings of the Members.

(a) *Annual Meetings.* Annual meetings of the Members shall be held during the first two weeks of August on a date set by the Board, or at such other reasonable place or time, not more than 30 days before or after such date, as may be designated by the Board. Annual meetings shall be for the purpose of electing the Board, consideration of the annual budget for the Association, and of transacting any other business that may properly come before the Members at such meeting.

(b) *Special Meeting of Members.* A special meeting of the Members may be called at any reasonable time and place by the president of the Board, by a majority of the Board, or by Members having not less than twenty percent (20%) of the Membership of the Association.

(c) *Place and Time.* Annual and special meetings of the Members shall be held at the locations and times designated by the Board in the notice of such meetings.

(d) *Notice.* Notice of any regular or special meeting of the Members shall be given by the Board by e-mail if the Owner has filed an e-mail authorization form with the Association, or by depositing the same in the United States mail, first class postage prepaid, to any Owner not filing an e-mail authorization form with the Association. Notice shall be mailed not less than ten (10) days nor more than fifty (50) days prior to the date fixed for the regular or special meeting of the Members. The Association shall provide notice of all regular and special meetings of Owners by e-mail to all Owners who so request and who furnish the Association with their e-mail addresses. The notice shall state the time and place of the meeting and the items on the agenda, specifically including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board.

(i) *Website Posting.* Notices of all regular and special meetings of the Members shall be posted on the Association's website at the same time that they are otherwise sent to the Members.

(ii) *Mailing.* If notice of a regular or special meeting of the Members is mailed, the Secretary or other designated officer of the Association shall cause notice to be sent prepaid by United States mail to the mailing address of each Owner or to any other mailing address designated in writing by the Parcel Owner on file with the Association, or to the address maintained by the County Assessor for the Parcel Owner.

(iii) *Posting.* The notice of any meeting of the Members shall be physically posted in a conspicuous place on the Common Elements, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices that may be given by the Association.

(iv) *Notice Regarding Multiple Ownership.* Where a Parcel is owned by more than one person, notice to any Owner of such Parcel shall be deemed notice to all Owners of such Parcel. Each Owner

shall be responsible for providing the Association with such Owner's mailing address, facsimile telephone number (if any) and e-mail address (if any), and shall be responsible for keeping such address, facsimile telephone number (if any) and e-mail address (if any) current in the event of any change. If an Owner has not provided the information required by this paragraph, any notice from the Association may be sent to the address for the Owner contained in the records of the Assessor for Montezuma County or La Plata County, Colorado, and such notice shall be deemed received by such Owner upon mailing, whether or not ever received by such Owner.

(v) *Waiver of Notice.* Any Owner may waive notice of a meeting in writing before or at any annual or special meeting of the Members, and any Owner that attends an annual or special meeting of the Members, in person or by proxy, shall be deemed to have waived the requirement of notice and/or defective notice unless such Owner objects to the meeting on the basis of improper or insufficient notice at the beginning of the meeting.

(e) *Agenda of Annual Meeting of Members.* At each annual meeting of the Members, the Board shall present a written report of the Association's financial status. The Members shall consider the budget for the upcoming year as adopted by the Board, elect Directors, and conduct any other business that may come before the Members at such meeting.

(f) *Quorum.* The presence at any annual or special meeting of the Members, in person or by proxy of Members entitled to vote, of at least twenty percent (20%) of the Membership of the Association shall constitute a quorum for conducting the normal business of the Members. If at any meeting of the Association a quorum is not present, a majority of the members present and entitled to vote, either in person or by proxy, may adjourn the meeting to a time not less than twenty-four (24) hours nor more than fifteen (15) days from the time for which the original meeting was called. Notice of the date, time and location of the continuation of the adjourned meeting shall be posted on the website.

(g) *Conduct of Meetings.* The President of the Association (or the Vice President in his/her absence) shall act as chairman of all meetings of the Members, and the Secretary of the Association (or an Assistant Secretary thereof in his/her absence) shall act as secretary of all such meetings.

(h) *Meetings Open to Members.* All regular and special meetings of the Association are open to every Owner, or to any person designated by an Owner in writing as the Owner's representative. Any such designation does not constitute a proxy, which is a separate delegation of the Owner's rights.

2.03 Voting.

(a) *Number of Votes.* The Association shall have a single class of voting membership, with each Parcel having a single Membership which shall be entitled to one vote. Any Owner who is delinquent in the payment of any annual or special Assessment shall not be entitled to vote upon any matter put to a vote at any annual or special meeting of the Members.

(b) *Voting for Multiple Ownership of a Parcel.* Each Membership shall be entitled to one vote, regardless of the number of Owners of the Parcel to which the Membership is appurtenant. Fractional voting shall not be allowed. The vote appurtenant to any Parcel may be cast only in accordance with the agreement of a majority in interest of the Parcel Owners. If the Owners of a Parcel cannot agree among themselves as to how to cast their votes on a particular matter, they shall lose their right to vote on such matter, and no vote shall be cast or counted in any balloting on such matter. If any Owner casts a vote representing a Membership appurtenant to a particular Parcel, it will thereafter be presumed by the Association for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Membership, unless objection thereto is made by an Owner of that Parcel to the person presiding over the meeting at the time the vote is cast. If more than the number of allocated votes are cast for any particular Membership, none of such votes shall be counted, and all of such votes shall be deemed null and void.

(c) *Board Member Election.* In any election of the members of the Board, every Member entitled to vote at such an election shall have one vote for each Parcel owned. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected. Cumulative voting shall not be allowed. Votes for contested positions on the Board shall be taken by secret ballot.

(d) *Secret Ballot.* At the discretion of the Board, in voting for contested positions on the Board, or upon the request of twenty percent of the Parcel Owners who are present at the meeting or represented by proxy, if a quorum has been achieved, a vote on any matter affecting the Elk Stream Ranch on which all Parcel Owners are entitled to vote shall be by secret ballot. Secret ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Parcel Owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates. The results of a vote taken by secret ballot shall be reported without reference to the names, addresses, or other identifying information of Members participating in such vote.

(e) *Proxies.* Votes allocated to a Parcel may be cast pursuant to a proxy duly executed by a Parcel Owner and timely delivered to the Association. A proxy shall not be valid if obtained through fraud or misrepresentation.

(i) *Valid Proxy.* A valid proxy shall not be effective for longer than eleven (11) months from the date of its execution unless otherwise provided in said proxy and approved by the Board, provided, however, that in no case shall any proxy be valid for more than two (2) years from the date of its execution. All proxies shall, whether or not stated in the proxy document: (1) be revocable by the grantor upon actual notice to the Association; (2) automatically cease to be valid upon the conveyance of the Parcel owned by the Owner executing or authorizing the execution of such proxy; and (3) be invalid during any period in which the voting rights of the Member executing or authorizing the execution of such proxy is suspended. A proxy is void if it is not dated or purports to be revocable without notice.

(ii) *Multiple Ownership.* If a Parcel is owned by more than one person, each Owner of the Parcel has the right to vote or register protest to the casting of votes by the other Owners of the Parcel through a duly executed proxy, provided that only one vote is cast for any Parcel.

(iii) *Revocation.* A Parcel Owner may not revoke a proxy except by actual notice of revocation to the Association prior to a meeting or to the person presiding over a meeting of the Association. The revoking Owner is responsible for verifying that the Association has timely received any valid revocation submitted to the Association.

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

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

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

(f) *Majority Vote.* Unless a different percentage is required by the Act, the Declaration or these Bylaws, the vote of a majority of the Owners present in person or by proxy at any annual or special meeting of the Members at which a quorum is present, or at the continuation of any adjourned meeting where a quorum is present, shall be sufficient to approve any matter and/or decide any item of business conducted at such meeting.

(g) *Action without Meeting.* Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a resolution setting forth the action so taken is signed by all of the Members entitled to vote. A unanimous consent resolution under this section may be executed in counterparts, and any signature supplied by facsimile copy shall in all respects be considered an original signature unless and until replaced with an original signature.

ARTICLE 3: BOARD OF DIRECTORS

3.01 Board of Directors and Officers.

(a) *Management of the Association.* The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws, as they may be amended from time to time. Except as otherwise provided in the Act or Governing Documents, the Board may act in all instances on behalf of the Association. Each Board member shall exercise ordinary and reasonable care in carrying out his/her duties as Directors, and shall owe the duty of undivided loyalty and honesty to Association and its Members. Each Board member shall avoid actions of self-interest, self-dealing, or conflicting interests.

(b) *Qualifications of Directors.* The Directors of the Association shall be individuals that are Owners of a Parcel in Elk Stream Ranch. If a Parcel is owned by an entity, an individual who has an ownership interest in the entity shall be qualified to be a Director.

(c) *Access to Information and Association Records.* All members of the Board shall have available to them, at any reasonable time, all information related to the responsibilities and operation of the Association obtained by any other member of the Board. This information shall include, but is not necessarily limited to, reports of detailed monthly expenditures, contracts to which the Association is a party, and copies of communications, reports, and opinions to and from any member of the Board or any managing agent, attorney, or accountant employed or engaged by the Board to whom the Board delegates responsibilities.

(d) *Amendment.* Amendment of the provisions of this Section 3.01 shall require the approval of fifty-one percent (51%) of the Members of the Association at a regular meeting or a special meeting of the Members called for that purpose.

3.02 Powers and Limitations. The affairs of the Association shall be managed and administered by the Board, and all of the powers and duties of the Association, except as specifically reserved to the Members, shall be exercised by and through such Board, including without limitation all those powers and duties provided for in the Act and the Governing Documents, as amended from time to time.

(a) *Limitation on Powers of the Board.* Except as provided in the Declaration, the Articles and the Bylaws, the Board may act on behalf of the Association in all instances, provided that the Board may not act on behalf of the Association to:

- (i) elect Directors; or
- (ii) amend the Declaration; or
- (iii) terminate the Association, the Declaration or the Elk Stream Ranch common interest community; or
- (iv) determine the qualifications, powers and duties, or terms of office, of Directors; or
- (v) amend the Association's Design Standards and Review Procedures, Article 2: Design and Construction Standards, which shall only be amended in accordance with Section 7.04 of the Design Standards and Review Procedures and the Associations Policy #1-2010 - Adoption and Amendment of Policies, which shall further require the approval of fifty-one percent (51%) of the Members of the Association at a regular meeting or a special meeting of the Members called for that purpose.

(b) *Delegation of Powers.* The Board may, by contract, delegate the routine operation and management of the Association affairs to a Managing Agent or such other employees or independent contractors as they deem necessary to prescribe their duties, to be selected by the Board and who shall be responsible to the Board. The Board shall act in good faith with regard to all such contractual or employment arrangements.

(i) *Subject to the Act.* Any managing agent, employee, independent contractor, or other person acting on behalf of the Association shall be subject to the Act to the same extent as the Association itself would be.

(c) *Requirements Regarding Delegation of Financial Matters.* If the Association delegates powers of the Board or officers relating to collection, deposit, transfer, or disbursement of Association funds to other persons or to a managing agent, the Association shall require the following:

(i) that the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars or such higher amount as the Board may require;

(ii) that the other persons or managing agent maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other persons or managing agent, and maintain all reserve accounts of each association so managed separate from operational accounts of the Association; and

(iii) that an annual accounting for Association funds and a financial statement be prepared and presented to the Association by the other person, managing agent, a public accountant, or a certified public accountant.

(d) *Standards With Regard to the Investment of Reserve Funds.* The actions of the officers and members of the Board shall be subject to the standards set forth in C.R.S. §7-128-401, as such standards apply to the Association, and the Association's policies regarding reserve funds.

(e) *Financial Incentives.* No remuneration shall be accepted by any management agent, employee, contractor, any member of the Board or any officer from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise. Anything of value received by any such person shall be turned over to the Association.

(f) *Decisions Regarding Improvements.* Decisions concerning the approval or denial of a Parcel Owner's application to make any Improvements on a Parcel shall be made in accordance with standards and procedures set forth in the Governing Documents or in duly adopted Rules and Regulations, and shall not be made arbitrarily or capriciously.

(g) *Construction Defect Actions.* In the event the Board institutes an action asserting construction defects regarding five or more Parcels, the Board shall comply with the provisions of C.R.S. §38-33.3-303.5.

(h) *Conflicts of Interest.* The Board and any committee thereof shall comply with the Association's Conflict of Interest Policy.

(i) *Personal Liability.* No member of the Board, or any committee of the Board, or any officer of the Association shall be liable for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, or any other representative or employee of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her, acted in good faith and without wanton or willful acts or omissions.

(j) *Amendment.* Amendment of the provisions of this Section 3.02 shall require the approval of fifty-one percent (51%) of the Members of the Association at a regular meeting or a special meeting of the members called for that purpose.

3.03 Number and Term.

(a) *Number.* The Board of Directors shall consist of not less than three (3) Owners, who shall be elected at the annual meeting of the Members, and each of which shall serve for a term of three years. The terms shall be staggered on a three-year system so that an approximately equal number of the Director terms expire each year. All Board members shall be Members of the Association; provided, however, no Parcel shall be represented by more than one Member on the Board at any time. The number of Directors may be increased or decreased at the discretion of the Board. No reduction of the number of Directors shall have the effect of removing any Director prior to the expiration of such Director's elected term of office.

(b) *Vacancies.* Vacancies in the Board may be filled by a majority vote of the remaining Directors, even if less than a quorum but more than one, and each Director so appointed shall hold office until his successor is elected at the next annual meeting of the Members or at the next special meeting of the Members called for such purpose. At any regular or special meeting of the Members, the Owners may elect Directors to fill any vacancy not otherwise filled by the Board. In the event the entire Board resigns, or there is only one remaining Director, or the Directors are otherwise disqualified or cease to be Directors, a special meeting of the Members shall be called to elect a new Board. A Board vacancy shall be deemed to exist:

(i) upon the death, resignation or removal of any Director, or

(ii) in the event the Association increases the number of Directors without electing a Director to fulfill such increase; or

- (iii) in the event the Director is absent from three consecutive meetings of the Board; or
- (iv) in the event the Director is delinquent in the payment of any assessment; or
- (v) in the event the Director ceases to be an Owner.

(c) *Removal of Directors.* At any annual or special meeting of the Members at which a quorum is present, any Director may be removed with or without cause by a vote of sixty-seven percent (67%) or more of the Members. Any Director whose removal is to be considered at a meeting of the Owners shall be given an opportunity to be heard at the meeting.

(d) *Amendment.* Amendment of the provisions of this Section 3.03 shall require the approval of fifty-one percent (51%) of the Members of the Association at a regular meeting or a special meeting of the members called for that purpose.

3.04 Compensation of Directors. The compensation, if any, for all officers and employees of the Association shall be fixed by the Board. No compensation shall be paid to Directors for their services as Directors and no remuneration of any kind shall be paid to a Director for services performed by him for the Association in any other capacity unless a resolution authorizing such remuneration has been unanimously adopted by the Board, excluding the interested Director. Nothing in this paragraph shall be construed as preventing the Association from adopting a resolution reimbursing a Director for such Director's reasonable expenses incurred or expended performing such Director's duties pursuant to the Governing Documents.

3.05 Board Rules. The Board may adopt such Rules and Regulations as it deems proper to enable it to properly perform its duties hereunder. A copy of such Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be Rules and Regulations of the Association. All such Rules and Regulations shall be posted on the Association's website: <http://elkstreamranch.org/>. Upon such posting, said Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of the Governing Documents.

3.06 Committees. The Board may create one or more committees of the Board and appoint one or more Directors to serve on them. Any person appointed to a committee shall be a Member of the Association in good standing.

3.07 Meetings of Directors.

(a) *Place and Time.* The Board shall hold meetings as required to conduct the business of the Association, no less than on a quarterly basis. Annual and special meetings of the Board shall be held at the locations and times designated by the President in the notice of such meetings.

(b) *Quarterly Meeting Agendas.* Any meeting and agenda item listed in this section may be changed or delayed at the discretion of the Board. The agendas for quarterly meetings shall address at a minimum the following matters, unless otherwise determined by the Board:

(i) *Annual/Summer Meeting (~ August).* The annual meeting of the Board shall be held immediately after the annual meeting of the Members or as soon thereafter as is reasonably practical. Annual meetings of the Board shall be for the purpose of electing officers, ratification of the annual budget, and conducting any business that may come before such Board at such meeting. At the meeting, the Board shall set the preliminary Board meeting dates for quarterly meetings for the upcoming year.

(ii) *Fall Meeting (~ November).* At the fall meeting of the Board, the Board shall review the contracts, insurance policies, and governing documents of the Association; finalize winter road maintenance contracts and other arrangements; finalize Regular and any Special Assessments; review and discuss any suggestions or comments made by the Members at the annual Member meeting; send the adopted and ratified budget and notice of the annual assessment to the Owners; and take any other actions that the Board deems needed.

(iii) *Winter Meeting (~ February).* At the winter meeting of the Board, the Board shall review the financial information for the Association for the prior year, and prepare and send the annual disclosure information to the Members.

(iv) *Spring Meeting (~ May)*. At the spring meeting of the Board, the Board shall prepare and adopt the Board's budget for the upcoming year, determine the date of the annual meeting of Members, prepare and send out the annual Member meeting notice and documentation, and review and act upon the DRC's annual review report. At the spring Board meeting, the Board may consider and plan for a summer community picnic for the Members, that may be held in conjunction with the annual Member meeting or at any other time.

(c) *Regular Meetings*. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. The Board shall hold at least one regular meeting prior to the annual meeting of the Members for the purposes of adopting the Board's annual budget and carrying out its responsibilities regarding the annual budget and annual meeting of the Members.

(d) *Special Meetings*. Special meetings of the Board shall be held at any time upon notice from the President or upon the request of any two Directors. Special meetings shall include any meeting called on an emergency basis. The notice of a special meeting of the Board, depending on the nature of the business to be conducted, may be given to the Board members in any reasonable manner. Any notice of a special meeting shall specify the nature of the business to be undertaken at such meeting.

3.08 Notice of Meetings. Written notice of the annual, quarterly and regular meetings of the Board, stating the place, date and time of such meeting, shall be provided to each Director not more than fifty (50) days before such meeting and not less than ten (10) days before such meeting, unless waived by each Director. All notices of Board meetings shall be posted on the Association's website at the same time such notice is provided to the Board members. Agendas for all Board meetings shall be posted on the Association's website at the same time such information is provided to the Board members.

(a) *Receipt of Notice*. Any notice sent to a Board Member regarding annual, quarterly and regular meetings of the Board shall be deemed received by a Director:

(i) upon personal delivery to such Director,

(ii) upon deposit in regular U.S. mail or courier service, addressed to such Director at such Director's address on file with the Association, whether or not ever received by such Director,

(iii) upon receipt by the Association of a machine-generated acknowledgment of successful transmission by facsimile copy to such Director's facsimile telephone number on file with the Association, if any, whether or not ever received by such Director; or

(iv) upon transmission by e-mail to such Director's e-mail address on file with the Association, provided that such form of e-mail communication has been approved in writing by such Director, whether or not ever received by such Director.

(b) *Information for Notices*. Each Director shall be responsible for providing the Association with such Director's mailing address, facsimile telephone number (if any) and e-mail address (if any), and shall be responsible for keeping such address, facsimile telephone number (if any) and e-mail address (if any) current in the event of any change. If a Director has not provided the information required by this paragraph, any notice may be sent to the address for the Director contained in the records of the Assessor for Montezuma County or La Plata County, Colorado, and such notice may be deemed received by such Director upon mailing, whether or not ever received by such Director.

(c) *Waiver of Notice*. Any Director may waive notice in writing before or at any annual, quarterly, regular or special meeting of the Board, and any Director who acknowledges the meeting in any way or attends any meeting of the Board shall be deemed to have waived the requirement of notice and/or defective notice.

3.09 Conduct of Meetings.

(a) *Meetings Open to Members*. All regular and special meetings of the Association's Board, or any committee thereof, shall be open to attendance by all Members of the Association or to any person designated by an Owner in writing as the Owners representative.

(b) *Agendas*. Agendas for meetings of the Board shall be made reasonably available in advance of the meeting for examination by all Members of the Association or their representatives.

(c) *Quorum*. A majority of the Directors shall constitute a quorum for the transaction of business at all meetings of the Board. If at any meeting of the Board a quorum is not present, any Director present at such

meeting may adjourn the meeting to a time not less than twenty-four (24) hours nor more than fifteen (15) days from the time for which the original meeting was called. At the continuation of such adjourned meeting the presence of at least two (2) Directors shall constitute a quorum. Notice of the date, time and location of the continuation of the adjourned meeting shall be provided to those Directors not present at the meeting in any reasonable manner.

(d) *Attendance by Telephone.* Any Director may attend any regular or special meeting of the Board by speaker telephone or telephone conference call. The Director desiring to attend any meeting by telephone shall be responsible to ensure that the facilities for two-way communication between all Board members in attendance are available and scheduled, and shall be responsible for the cost, if any, of providing such facilities to enable such Director to so attend the meeting.

(e) *Member Participation.* At an appropriate time determined by the Board, but before the Board votes on an issue under discussion, Owners or their designated representatives shall be permitted to speak regarding that issue. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue.

(f) *Majority Vote.* Unless a different percentage is required by the Act, the Declaration or these Bylaws, the vote of a majority of the Directors present at any annual, regular or special meeting of the Board at which a quorum is present, or at the continuation of any adjourned meeting where a quorum is present, shall be sufficient to approve any matter and/or decide any item of business conducted at such meeting.

3.10 Executive Sessions.

(a) *Executive Sessions Allowed.* The members of the Board or any committee thereof may hold an executive or closed door session and may restrict attendance to Board members and such other persons requested by the Board during a regular or specially announced meeting or a part thereof. The matters to be discussed at such an executive session are limited to:

(i) matters pertaining to employees of the Association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Association; or

(ii) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client; or

(iii) investigative proceedings concerning possible or actual criminal misconduct; or

(iv) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; or

(v) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; or

(vi) review of or discussion relating to any written or oral communication from legal counsel.

(b) *Conduct of Executive Sessions.*

(i) *Attorney-Client Privilege.* Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information as it deems appropriate about such matter in an open meeting.

(ii) *Announcement.* Prior to the time the members of the Board or any committee thereof convene in executive session, the chairman shall announce the general matter of discussion.

(iii) *Limitations.* No Rule or Regulation of the Board or any committee thereof shall be adopted during an executive session. A Rule or Regulation may be validly adopted only during a regular or special meeting or after the body goes back into regular session following an executive session.

(iv) *Minutes.* The minutes of all meetings at which an executive session was held shall indicate that an executive session was held and the general subject matter of the executive session.

3.11 Action without Meeting. Any action required by law to be taken at a meeting of the Board, or any action which may be taken at a meeting of the Board, may be taken without a meeting if a resolution setting forth the action so taken is signed by all of the Directors. A unanimous consent resolution under this section may be executed in counterparts, and any signature supplied by facsimile copy, or a scanned signature in an electronic computer file shall in all respects be considered an original signature unless and until replaced with an original signature.

3.12 Directors not Responsible for Loss. No Director or officer shall be responsible to any Owner or Owner's Guest for loss of, damage to or theft of any article, vehicle, or other thing of value at or in the Elk Stream Ranch resulting from the act of any third person, or for any loss of rental income or other pecuniary loss of any Owner or Owner's Guest resulting from the act of any third person or from the management, maintenance, repair or replacement of the Common Elements.

3.13 Limitation of Liability. The Association, its Board, its officers and any other person acting for the Association or at the request of the Association, or as a volunteer of the Association (other than a Management Contractor or other contractor who is under contract to the Association whose duties are determined according to such contract) shall not be liable to any Owner or Owner's Guest for any act, failure to act, error or omission unless such act, failure to act, error or omission was caused by the wanton and willful acts or omissions of such entity or person.

3.14 Indemnification of Board and Others. The Association shall indemnify and hold harmless each current and past member of the Board, each current and past officer of the Association and any other person acting or who acted for the Association or at the request of the Association, or as a volunteer of the Association (other than a Management Contractor or other contractor who is under contract to the Association) of and from all claims and liabilities of any kind or sort resulting from or arising out of their work for the Association, including without limitation the amount of any judgment rendered against such person or persons and the costs and reasonable attorneys' fees incurred or expended by such person or persons in responding or defending against any such claim or liability; provided, however, that the Association shall not be responsible for the indemnity contained in this paragraph in any such case where such person or persons is/are finally adjudged to be guilty of wanton and willful acts or omissions. Committee members shall be afforded the same level of indemnification as any Director of the Association.

3.15 Fidelity Bonds. The Board may require that some or all officers and employees of the Association handling or having any responsibility for any funds received or collected by the Association furnish adequate fidelity bonds. The premiums on said bonds shall be paid by the Association as a Common Expense.

ARTICLE 4: OFFICERS

4.01 Designation and Qualification. The officers of the Association shall be a President, a Secretary and a Treasurer, and such other officers as are authorized and appointed by the Board. When the duties do not conflict, any two (2) offices, except those of President and Secretary, may be held by the same person. The officers of the Association shall be individuals that are Owners and elected as Directors. If a Parcel is owned by an entity, an individual who has an ownership interest in the entity shall be qualified to be an officer.

4.02 Appointment and Tenure. The officers of the Association shall be elected annually by the Board at the annual Board meeting, and any new offices may be created and appointed at any meeting of the Board. Each officer shall hold office until his or her successor has been elected or appointed by the Board.

4.03 Removal and Resignation. Any officer appointed or elected by the Board shall serve at the pleasure of the Board, and may be removed by a majority vote of the Board whenever in their judgment the best interests of the Association would be served. Any officer may resign at any time by giving written notice to the Board.

The acceptance of a resignation shall not be necessary to make it effective. Any resignation shall not take place until a successor officer is appointed by the Board, which shall act promptly to appoint such a successor.

4.04 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board.

4.05 President. The President shall be the executive officer of the Association and, subject to the control of the Board, shall administer all of the business and affairs of the Association. The President shall preside at all meetings of the Association and of the Board. The President may sign on behalf of the Board and the Association, together with the Secretary (or any other officer of the Association duly authorized by the Board) any deeds, mortgages, bonds, contracts, agreements, drafts, checks or other instruments that the Board have authorized to be executed, except in such case where such execution is expressly delegated to someone else by the Board, the Governing Documents or the Act.

The President shall be an ex-officio member of all standing committees, and may act in the stead of any absent committee member or may act in a voting capacity in the event of a tie vote.

The President shall have all the general powers and shall perform all of the duties usually vested in the office of the president of a nonprofit corporation in Colorado, including without limitation the powers and duties prescribed by the Act, the Board and the Governing Documents.

(a) *Certification Authority.* The President has the specific authority to sign a certification, on behalf of the Association, any document relating to or resulting from the Association's business that certifies that the business was duly conducted, subject to the attestation of the Secretary of the Association and the appropriate filing of information in the records of the Association to support the President's certification. The President has the specific authority to prepare, certify, and record amendments to the Declaration on behalf of the Association, subject to the Secretary's attestation to the President's certification.

4.06 Secretary. The Secretary shall keep the minutes of all meetings of the Association and the Board in one or more books provided for that purpose. The Secretary shall provide for all notices required or permitted by the Act or the Governing Documents in accordance with the provisions of these Bylaws. The Secretary shall be the custodian of the Association's records and of the seal of the Association, and shall attest to and affix the image of the seal to documents requiring such seal. The Secretary shall keep a record of the mailing address, telephone number, facsimile telephone number (if any) and e-mail address (if any) of each Owner and of the Board and officers of the Association. The Secretary shall perform all duties incident to the office of Secretary and such other duties as may be required by the Board, the President, the Act or the Governing Documents.

(a) *Attestation.* The Secretary shall attest to any certification of documents signed by the President.

4.07 Treasurer. If required, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board shall determine is appropriate. The cost of such bond shall be a Common Expense of the Owners. The Treasurer shall have charge and custody of, and be responsible for, all funds, securities and/or proceeds collected, owned and/or received by the Association. The Treasurer shall receive and give receipts for money due and payable to the Association from any source whatever, and shall deposit all such money in the name of the Association in such banks, trust companies or other depositories as directed by the Board. The Treasurer shall keep and maintain the assessment rolls and the accounts of the Owners, shall keep and maintain the books of the Association in accordance with generally accepted accounting principles and shall perform all other duties incident to the office of Treasurer, and such other duties as may be assigned by the Board, the President, the Act or the Governing Documents.

4.08 Special Appointments. The Board may appoint such other officers as the affairs of the Association may call for, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

ARTICLE 5: DUTIES AND OBLIGATIONS OF BOARD OF DIRECTORS

5.01 Specific Duties. In addition to and as further clarification of other duties and obligations of the Board defined in the Governing Documents and the Act, the duties and obligations listed in this section shall be observed by the Association.

5.02 Prohibitions Contrary to Public Policy. Prohibitions contrary to public policy, including patriotic and political expression, emergency vehicles and fire prevention shall be managed in accordance with the provisions of C.R.S. §38-33.3-106.6 and other applicable provisions of the Act.

5.03 Supplemental General Principles of Law. The Association shall act in accordance with principles of law and equity, including, but not limited to, the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement to the provisions of the Act, except to the extent inconsistent with the Act.

5.04 Obligation of Good Faith. The Association shall act in good faith in the performance or enforcement of every contract or duty governed by the Act. Any claim that a contract or contract clause is or may be unconscionable shall be addressed in accordance with C.R.S. §38-33.3-112 and other applicable provisions of the Act.

5.05 Responsible Governance Policies. The Association shall adopt and act in accordance with responsible governance policies as defined by C.R.S. §38-33.3-209.5 and C.R.S. §38-33.3-124 and other applicable provisions of the Act.

5.06 Association Policies. The Association may adopt additional policies of whatever nature it deems necessary.

5.07 Annual Disclosures.

(a) *Annual Disclosures Required.* Within ninety days after the end of each fiscal year, the Association shall make the following information available to Owners upon reasonable notice, in accordance with the provisions of C.R.S. §38-33.3-209.4 and other applicable provisions of the Act.

- (i) *Fiscal Year.* The date on which its fiscal year commences;
- (ii) *Budget.* Its operating budget for the current fiscal year;
- (iii) *Assessments.* A list, by unit type, of the Association's current assessments, including both regular and special assessments;
- (iv) *Financial Statements.* Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (v) *Audit.* The results of its most recent available financial audit or review, if any;
- (vi) *Insurance Policies.* 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;
- (vii) *Governing Documents.* All of the Association's Governing Documents;
- (viii) *Meeting Minutes.* The minutes of the Board and Member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (ix) *Policies.* The Association's responsible governance policies adopted under C.R.S. §38-33.3-209.5, and any other policies adopted by the Association.

(b) *Allowed Methods.* The annual disclosure requirement shall be accomplished by at least one of the following means:

- (i) *Website Posting.* Posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail;
- (ii) *Association Office.* The maintenance of a literature table or binder at the association's principal place of business; or
- (iii) *Delivery.* Mail or personal delivery.
- (c) *Cost.* The cost of such distribution shall be accounted for as a Common Expense.

5.08 Changes in Management or Location. In the event that the Association changes its address, designated agent, or managing company, the Association shall make updated information available to the Members within ninety (90) days after the change.

5.09 Inspection of Books and Records.

- (a) *Rules.* The Board shall establish reasonable Rules and Regulations with respect to:
 - (i) notice to be given to the custodians of the records by the persons desiring to make the inspection;
 - (ii) hours and days of the week of such inspection; and
 - (iii) payment of the cost of reproducing copies of documents.
- (b) *Owner's Right of Inspection.* The Membership register, books of account and minutes of the Board and committees of the Board shall be made available for inspection and copying by an Owner or by his duly appointed representatives, at any reasonable time and for a purpose reasonably related to his interest as an Owner at the office of the Association or at such other place within the Property as the Board of such Association shall prescribe.
- (c) *Director's Right of Inspection.* Every current member of the Association Board of Directors shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the rights to make extracts and copies of documents.
- (d) *Mortgagees.* Upon request, the Association shall allow Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

5.10 Board and Owner Education. The Board shall provide education for Board members and Owners in accordance with the provisions of C.R.S. §38-33.3-209.6 and C.R.S. §38-33.3-209.7.

- (a) *Board Education.* The Board may authorize, and account for as a common expense, reimbursement of Board members for their actual and necessary expenses incurred in attending educational meetings and seminars regarding responsible governance of the Association. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of the Act.
- (b) *Owner Education.* The Board shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Board under Colorado law. The criteria for compliance with this section shall be determined by the Board.

5.11 Annual Budget. The Board shall adopt a budget annually, prior to the annual meeting of the Members.

- (a) *Elements.* The budget shall set forth:
 - (i) the Board's estimates of Common Expenses for the next calendar year;
 - (ii) the amount of funds for such Common Expenses that the Board proposes to raise through Regular Assessments; and
 - (iii) the amount of funds for such Common Expenses that the Board proposes to raise through Special Assessments or other means such as loans or expenditure of reserve funds.

(b) *Notification.* Within ninety (90) days after adopting the annual budget, the Board shall mail a summary of the annual budget to the Owners and set a date for a meeting of the Owners, which may be the date of the annual meeting, to consider ratification of the annual budget. The date of such meeting shall be within a reasonable time after mailing or other delivery of the summary of the annual budget to the Owners.

(c) *Ratification.* At the meeting scheduled to consider the annual budget, unless sixty-seven percent (67%) of the Members of the Association, whether or not a quorum is present, rejects the Board's adopted annual budget, the adopted budget shall be deemed ratified. If the Board's adopted annual budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent annual budget adopted by the Board.

(d) *Amendment of Budget.* If the Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners, the Board may adopt an amendment to the annual budget. Following such action, the Board shall mail or deliver a summary of the budget amendment to all Owners and set a date for a special meeting of the Owners to consider ratification of the budget amendment. The date of such meeting shall be within a reasonable time after mailing or other delivery of the summary of the amended budget to the Owners. Unless at that meeting sixty -seven percent (67%) of the Members of the Association, whether or not a quorum is present, rejects the budget amendment, the amendment shall be deemed ratified.

5.12 Financial Statements.

(a) *Financial Statements.* Financial Statements for the Association shall be regularly prepared and copies shall be distributed to each Owner of the Association as follows:

(i) *Budget.* The ratified operating budget for each fiscal year shall be distributed not less than sixty (60) days before the beginning of each fiscal year.

(ii) *Balance Sheet.* Within ninety (90) days after the close of each fiscal year, the Association, or its agent shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for its fiscal year. Copies of said documents shall be distributed to each Owner within ninety (90) days after the end of each fiscal year as a part of the Association's annual disclosures.

5.13 Audit. The Association shall be subject to the provisions of C.R.S. §38-33.3-303 and other applicable provisions of the Act regarding audits and audit procedures.

(a) *When Required.* At the discretion of the Board or upon request by one-third (1/3) of the votes of the Association, the books and records of the Association shall be subject to an audit, using generally accepted auditing standards, or a review using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

(b) *Copies.* Copies of an audit or review shall be posted on the Association's website or otherwise made available upon request to any Parcel Owner beginning no later than thirty days after its completion.

5.14 Conflicts of Interest of Board Members. Conflicts of interest of Board members shall be addressed according to the Act and to the Board Member Conflict of Interest Policy.

5.15 Insurance. The Board shall obtain and maintain insurance policies in compliance with the provisions of C.R.S. §38-33.3-313 and other applicable provisions of the Act.

5.16 Assessments for Common Expenses. Assessments for common expenses shall be based on a budget adopted no less frequently than annually by the Association. All Assessments shall be administered in

accordance with the provisions of C.R.S. §38-33.3-315 and other applicable provisions of the Act and Declaration.

5.17 Statutory Liens Against Parcels. The Association has a statutory lien for Assessments levied against the Parcels in accordance with the provisions of C.R.S. §38-33.3-316 and other applicable provisions of the Act, and the Association shall administer liens in a manner consistent with the Act.

5.18 Statement of Status of Assessment Payments. Upon payment of a reasonable fee as determined by the Board, which fee shall be waived for First Mortgagees, and upon the written request of any Owner, prospective Owner, prospective Mortgagee, title insurance company or representative of an Owner, Mortgagee or title insurance company, delivered to the Association by certified mail, postage prepaid, return receipt requested, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to any Parcel, which statement shall be delivered to the inquiring party in accordance with the provisions of the Declaration.

5.19 Enforcement. Actions of the Association with regard to violations and reimbursement for collection costs shall be made in accordance with the provisions of C.R.S. §38-33.3-123 and other applicable provisions of the Act and Declaration.

5.20 Association Records. The Association shall keep financial and other records in accordance with the provisions of C.R.S. §38-33.3-317.

ARTICLE 6: DESIGN REVIEW COMMITTEE

6.01 Improvements to Parcels. As provided in the Declaration, all construction of Improvements and any alteration to the exterior appearance of any Improvement on a Parcel shall require written approval of the Design Review Committee in accordance with adopted DRC Design Standards and Review Procedures, or the approval of the Board in the absence of the action of the DRC. The review of proposed Improvements is limited to a determination as to whether the proposed Improvement is in compliance with the Governing Documents.

(a) *Duties.* With regard to the construction of Improvements, the DRC shall:

- (i) review all proposals for Improvements within Elk Stream Ranch;
- (ii) issue written statements for approved proposals; and
- (iii) monitor and inspect the construction of any approved Improvements to the extent necessary to determine compliance with the Association's Governing Documents.

6.02 Design Review Committee.

(a) *Design Review Committee ("DRC").* The DRC is established as a standing committee of the Board and its members are appointed by the Board. The DRC shall consist of three (3) members who shall be voting Members of the Association in good standing. Each DRC member shall hold office until such time as he/she has resigned or has been removed or his/her successor has been appointed.

(b) *Authority.* Based on the adopted design standards, the DRC shall have the authority to determine the proper use, appearance, design, alteration, and aesthetic quality of the exterior appearance of any existing or proposed Improvement on a Parcel, subject to the Owners right to appeal the decision to the Board.

(c) *DRC Decisions.* Decisions concerning the approval or denial of a Parcel Owner's proposal for Improvements on a Parcel shall be made in accordance with standards and procedures set forth in duly adopted Rules and Regulations or Governing Documents of the Association, and shall not be made arbitrarily or capriciously. The Board shall approve all operational rules and design standards of the DRC prior to implementation by the DRC. Any decision or action of the DRC may be appealed to the Board.

(d) *DRC Review Procedures and Review Fees.* Subject to Board approval, the DRC shall issue Design Standards and Review Procedures setting forth:

(i) the procedures for the submission and review of plans for Improvements to Parcels;

- (ii) the fee schedule applicable to the review of various types of Improvements; and
- (iii) design standards that supplement Article 9 of the Declaration.
- (e) *Design and Construction Standards.* The provisions of the Association's Design Standards and Review Procedures, Article 2: Design and Construction Standards, shall only be amended in accordance with Section 7.04 of the Design Standards and Review Procedures and the Associations Policy #1-2010 - Adoption and Amendment of Policies, which shall further require the approval of fifty-one percent (51%) of the Members of the Association at a regular meeting or a special meeting of the members called for that purpose.
- (f) *Governing Documents.* The DRC Design Standards and Review Procedures shall be Governing Documents of the Association upon approval by the Board or Members as may be required. The DRC's Design Standards and Review Procedures may be amended from time to time by the action of the Board upon recommendation of the DRC or as such a matter may otherwise come before the Board except as to Article 2: Design and Construction Standards, in accordance with the provisions of the Governing Documents. Upon the Board's approval of the DRC's Design Standards and Review Procedures, the DRC shall have the independent authority to review and approve the construction on any Parcel of homes, Improvements, and any alterations to Improvements to Parcels.

6.03 Review Fees, Compensation and Reimbursement.

- (a) *Review Fees.* The DRC, as part of its rules, may establish reasonable processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid to the Association at the time the request for approval is submitted. The review fee schedule shall be set or reviewed annually, approved by the Board, and disclosed annually by the Association to the Members.
- (b) *Compensation of DRC Members.* Out-of pocket expenses as approved by the Board may be added to the applicable review fees for any application, and the DRC member submitting dated receipts to the Board for valid out-of-pocket expenses shall be reimbursed upon the Association's assessment and collection of such expenses from the Owner/Applicant.

6.04 Meetings

- (a) *Meetings of the DRC.* The DRC shall meet from time to time as needed to perform its duties.
- (b) *Quorum.* A meeting of two (2) members of the DRC shall constitute a quorum for purposes of carrying on any DRC business. In the event of a temporary absence, conflict of interest, or other inability of any DRC member to act on behalf of the DRC, any Board member may act in place of an absent DRC member without any formal action of the Board.
- (c) *Delegation of Authority.* From time to time with respect to a specific project, the DRC may, by unanimous resolution made in writing, designate one of its members to take certain actions on behalf of the DRC or perform any duties for and on its behalf, except the granting of variances of the DRC Design Standards and Review Procedures. All review procedures except for any final action made by the DRC in response to an application for an Improvement may be made administratively by the DRC.
- (d) *Meetings Open to Members.* All regular and special meetings of the DRC shall be open to attendance by all Members of the Association or to any person designated by an Owner in writing as the Owners representative.
- (e) *Agendas.* Agendas for meetings of the DRC shall be made reasonably available in advance of the meeting for examination by all Members of the Association or their representatives.
- (f) *Attendance by Telephone.* Any DRC member may attend any meeting of the DRC by speaker telephone or telephone conference call. The DRC member desiring to attend any meeting by telephone shall be responsible to ensure that the facilities for two-way communication between all DRC members in attendance are available and scheduled, and shall be responsible for the cost, if any, of providing such facilities to enable such Director to so attend the meeting.
- (g) *Executive Sessions Allowed.* The members of the DRC may hold an executive or closed door session and may restrict attendance to DRC members and such other persons requested by the DRC in accordance with the provisions of Section 3.10 of these Bylaws.

(h) *Action Without Meeting.* Any action by the DRC may be taken without a meeting if a resolution setting forth the action so taken is signed by all of the DRC members. A unanimous consent resolution under this section may be executed in counterparts, and any signature supplied by facsimile copy, or a scanned signature in an electronic computer file shall in all respects be considered an original signature unless and until replaced with an original signature.

6.05 Review of Proposals for Improvements. The DRC shall consider and act upon, within a reasonable time, any and all proposals or plans and specifications for Improvements submitted for its approval pursuant to the terms of the Governing Documents and the DRC rules. The purpose of the DRC review is to ensure compliance of the proposed Improvement with the Governing Documents. The DRC shall perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the DRC. If the DRC does not take steps to review a submitted application within a reasonable time, the Owner/Applicant may appeal the matter to the Board.

(a) *Proposals.* Any Owner desiring DRC approval of any Improvement or other change in the existing state of any Parcel shall make application in writing to the DRC in accordance with the DRC Design Standards and Review Procedures.

(b) *VariANCES.* The DRC may authorize variances from compliance with any of the DRC Design Standards and Review Procedures in accordance with the provisions of the DRC Design Standards and Review Procedures, provided that no variance shall be granted in a manner that would render the proposed Improvement inconsistent with the Act or the reasonable application of the Governing Documents. Any denial of a variance application by the DRC may be appealed to the Board.

(c) *No Waiver of Future Approvals.* The DRC's approval of any proposal or variance shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals or variances, plans and specifications, drawings, or matter whatever subsequently submitted for approval or consent by any Owner.

6.06 Annual Inspection of Elk Stream Ranch.

(a) *Annual Inspection.* In furtherance of the provisions of C.R.S. §38-33.3-123, the Design Review Committee will conduct an annual inspection of the entire Elk Stream Ranch to assess the compliance of the external appearance of Improvements with the Governing Documents. The annual inspection will be conducted prior to the first day of May of each year. The DRC will submit the results of the annual inspection in the form of a written report to the Board, prior to the spring Board meeting, or the Board's first meeting after May 1. The written report shall be disclosed to the Members annually as a part of the Association's annual disclosures.

(b) *Report.* The written report shall identify instances where the external appearance of Improvements on any Parcel are in significant disrepair or otherwise not in compliance with the Governing Documents, and shall make recommendations for corrective actions to the Board.

(c) *Board Action.* The Board will determine which recommendations to take action on and send notice to the Owner to remedy the violation in compliance with the enforcement provisions of the Governing Documents, and take other actions as the Board deems appropriate.

6.07 Liability.

(a) *DRC Actions.* Neither the Board, the DRC, the Association or any of its respective officers, Directors, employees or agents shall be responsible or liable for:

(i) any defects, errors or omissions in any plans, specifications or proposals submitted for Improvements to Parcels, as revised or approved by the DRC or Association; or

(ii) any defects, errors or omissions in construction pursuant to such plans and specifications or approval of any proposal for Improvements to Parcels; or

(iii) any mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans or specifications or approval of any proposal for Improvements to Parcels; or

(iv) any act, omission, decision or determination that is not related to the implementation of the Governing Documents of the Association; or
(v) the failure to enforce any covenants and restrictions contained in the Declaration or Governing Documents.

(b) *Disclaimer.* The DRC does not consider and assumes no responsibility for the following regarding any Improvement reviewed or approved by the DRC:

(i) the structural capacity, functional integrity, or operation of any Improvement; or
(ii) compliance with any applicable building codes or governmental regulations; or
(iii) whether or not the location of the proposed Improvement on the building site is free from possible man-made or natural hazards occurring either on or off the Property. Such hazards shall include but are not limited to flooding and avalanche.

(c) *DRC Approval.* A consent or approval issued by the DRC or Board means only that the DRC or Board believes that the construction, alteration, installation or other work for which the consent or approval was requested complies with the Governing Documents. No consent, approval or permit issued by the DRC or Board shall relieve Owners or other Persons of their obligations to comply with laws, rules, regulations, ordinances and other requirements of governmental or quasi-governmental authorities. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby:

(i) complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority; or
(ii) is free from defects, errors or omissions; or
(iii) lies within the boundaries of the Parcel.

(d) *Liability.* Neither the Board, DRC, or any member thereof shall be liable to the Association, or to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the Board's or DRC's duties hereunder, unless due to the willful misconduct or bad faith of such member.

ARTICLE 7: RULES AND REGULATIONS

7.01 Establishment of Rules and Regulations. The Board may adopt Rules and Regulations from time to time in accordance with the Governing Documents, which shall be binding upon all Owners and Owners' Guests. Any Rules and Regulations adopted by the Board shall be uniform and nondiscriminatory as to the Owners, shall not become effective or enforceable until posted on the Association's website. Upon such posting, said Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of the Governing Documents.

7.02 Fines. The Board may adopt a system of fines for infractions of the Rules and Regulations and for violations of the other obligations and duties of Owners contained in the Governing Documents, or may institute legal proceedings against any Owner to enforce compliance with such Rules and Regulations or other obligations and duties of Owners contained in the Governing Documents. Any system of fines shall be published to the Owners along with the Rules and Regulations, and shall provide an offending Owner the opportunity for a hearing before the imposition of any fine. Any fines imposed upon an Owner, and any judgments obtained against an Owner by the Association, shall be charged to such Owner as a Special Assessment against such Owner and such Owners Parcel, and until paid shall constitute a lien on such Owners Parcel as provided in the Declaration for unpaid Assessments.

ARTICLE 8: AMENDMENT OF BYLAWS

8.01 Amendment of the Bylaws. These Bylaws may be amended, modified, supplemented, revised or revoked, in whole or any part, and any provision of these Bylaws may be amended, modified, supplemented, revised or revoked, or new provisions added, by the affirmative vote of a majority of the Owners who are present in person or by proxy and entitled to vote at any annual or special meeting of the Association at which a quorum is present. The provisions of Sections 3.01, 3.02, and 3.03 shall require the approval of fifty-one

percent (51%) of the Members of the Association at a regular meeting or a special meeting of the Members called for that purpose.

However, notwithstanding the foregoing, any provision of these Bylaws that requires a higher percentage of Owners to take action on any matter shall require the same percentage to amend such provision. Amendments may be proposed by the Board or by petition signed by at least twenty-five percent (25%) of the Members of the Association. A statement of any proposed amendment shall accompany the notice of any annual or special meeting at which such proposed amendment will be considered by the Members.

8.02 Scope of Amendments. These Bylaws may not be amended in any manner that would render these Bylaws inconsistent with the Act, the Declaration or the Articles of Incorporation of the Association.

ARTICLE 9: GENERAL PROVISIONS

9.01 Non-Profit Association. The Association is not organized for profit. No Owner, Member of the Board, officer or person for whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from its operation. In no event shall any part of the funds or assets of the Association be paid as salary or compensation to be distributed to, or inure to the benefit of, any Member of the Board, officer or Owner; provided, however:

(a) that reasonable compensation may be paid to any Owner, Director or officer while acting as an agent or employee of the Association for services actually rendered in effecting one or more of the purposes of the Association; and

(b) that any Owner, Director or officer may, from time to time, be reimbursed for such person's actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

9.02 Fiscal Policy. In the absence of a resolution of the Board providing otherwise, the fiscal policies in this section shall be observed by the Association.

(a) *Fiscal Year.* The fiscal year of the Association for tax reporting purposes shall be from January 1 through December 31 of each year.

(b) *Accrual Accounting.* Accrual accounting, as defined by generally accepted accounting principles, shall be employed.

(c) *Accounting and Controls.* Accounting and controls shall conform to generally accepted accounting principles.

(d) *Cash Accounts.* Cash accounts of the Association shall not be commingled with any other accounts.

(e) *Reserve Accounts.* Reserve accounts of the Association shall not be commingled with any other accounts.

9.03 Corporate Seal. The Board shall provide for a suitable corporate seal containing the name of the Association, which seal shall be in the custody and control of the Secretary. The corporate seal shall be circular and shall have inscribed thereon the name of the Association and the word "Colorado" in the circle and the word "Seal," in the middle. If and when so directed by the Board, a duplicate seal may be kept and used by such officer or other person as the Board may determine.

9.04 Captions. The captions and headings in these Bylaws are for convenience only and shall not be considered in construing any provision of these Bylaws.

9.05 Numbers and Genders. Whenever used in these Bylaws, unless the context requires otherwise, the singular number shall include the plural and the plural shall include the singular, and the use of any gender shall include all genders.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned Board of Directors of the Elk Stream Ranch Property Owners Association do hereby certify that the above and foregoing Amended and Restated Bylaws were duly adopted at a meeting of the Owners held on the _____ day of _____, 2010, at which a quorum was present, called for the purpose of amending the Association's Bylaws, by the affirmative vote of the Owners representing, in accordance with the current Bylaws, no less than seventy-five percent (75%) of the Members of the Association, the results of which are on file in the Association records, as a complete replacement for the Association's previous Bylaws, and that the above and foregoing Amended and Restated Bylaws now constitute the Bylaws of the Association.

ELK STREAM RANCH PROPERTY OWNERS ASSOCIATION, INC.,
a Colorado nonprofit Corporation

ATTEST:

By: Stephen M. Boone
Its: President and member of the Board of Directors

By: W. Alan Scott
Secretary/Treasurer and member of the Board of
Directors

By: Barry N. Stone
Vice President and member of the Board of Directors