

**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

**CERTIFICATE OF FIRST AMENDMENT OF THE  
AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS**

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## CERTIFICATE OF FIRST AMENDMENT OF THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

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THIS FIRST AMENDMENT OF THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ELK STREAM RANCH ("First Amendment"), as amended from time to time, ("Amended Declaration") is made this \_\_\_ day of \_\_\_\_\_, 2016, by the Elk Stream Ranch Property Owners Association, Inc., a Colorado non-profit corporation.

### RECITALS

WHEREAS, the Board and Members desire to amend the Amended Declaration to provide that the General Assessment Period shall be co-terminus with the Association's fiscal year and to change references in Article 6 from "calendar year" to "fiscal year; and

NOW THEREFORE, the Board of Directors of the Elk Stream Ranch Property Owners Association, Inc. ("Board"), deems it necessary and desirable to adopt this First Amendment of the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Elk Stream Ranch ("First Amendment"), and subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this First Amendment.

I. Article 6 is deleted in its entirety and replaced with the following Article 6:

### ARTICLE 6 ASSESSMENTS, COMMON EXPENSES, RESERVE FUNDS, BUDGETS, FINANCIAL STATEMENTS, AND AUDITS [C.R.S. §38-33.3-315; POLICY #5-2010; POLICY #8-2010]

#### 6.01 Covenant to Pay Assessments.

(a) *Covenant to Pay.* Each Owner by acceptance of a deed to a Parcel, covenants and agrees to pay when due all General Assessments, Special Assessments, Default Assessments or other charges that the Association is required or permitted to levy or impose on such Owner or such Owner's Parcel pursuant to the Declaration or any Governing Document. Such Assessments, together with interest, costs and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Parcel against which each such Assessment is made.

(b) *No Waiver.* No Owner shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Parcel against which such Assessments or other charges are made.

(c) *Personal Liability.* Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Parcel during the period of such Owner's ownership of the Parcel. If there is more than one Owner of a Parcel, each Owner shall be jointly and severally liable with the other Owners of the Parcel for all Assessments and other charges levied on the Parcel or any Owner of the Parcel. Each such Assessment, together with interest, costs and reasonable attorney's fee, shall also be the personal obligation of the Owner of such Parcel at the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to a successor in title unless expressly assumed by them.

(d) *Costs of Collection.* Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other amount, including all fees and disbursements to attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

**6.02 Allocated Interest Share of Common Expenses.**

(a) *Board Determination of Common Expenses.* Except as otherwise set forth in the Declaration, the Association's Common Expenses shall be determined by the Board.

(b) *Allocated Interest Share of Common Expenses.* The share of Common Expenses allocated to a Parcel shall be an amount equal to the Parcel's Allocated Interest multiplied by the total amount of Common Expenses as determined by the Board to relate to the General Common Elements. Unless otherwise specifically provided herein, Assessments shall be fixed at a uniform rate for all Owners. Each Parcel in the Elk Stream Ranch shall be assessed at one-thirty-fifth (1/35) or 2.85714% of all General Assessments approved by the Board.

(c) *Interest on Late Payments.* Any past-due Common Expense Assessment or installment thereof shall bear interest at the rate established by the Association, not exceeding twenty-one percent (21%) per year.

(d) *Limitation.* Any Common Expense associated with the maintenance, repair, or replacement benefitting fewer than all of the Parcels or related to any Limited Common Elements shall be assessed against the Parcels benefitted as a Special Assessment.

(e) *Insurance and Utilities.* As may be applicable, the costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.

(f) *Misconduct of Owner.* If any Common Expense is caused by the misconduct of any Parcel Owner, the Association may assess that expense exclusively against such Owner's Parcel as a Special or Default Assessment.

(g) *Ownership Transfers.* Each Parcel Owner is liable for Assessments made against such Owner's Parcel during the period of ownership of such Parcel.

(h) *Escrow with Mortgagees.* The Association may enter into an escrow agreement with the holder of a Parcel Owner's Mortgage so that Assessments may be combined with the Parcel Owner's Mortgage payments and paid at the same time and in the same manner, except that any such escrow agreement shall comply with any applicable rules of the Federal Housing Administration, Department of Housing and Urban Development, Veterans' Administration, or other government agency.

**6.03 Assessment Period, Notice, and Due Date.** The General Assessment period shall commence on the first day of each fiscal year of the Association and terminate on the last day of the fiscal year. Special Assessments shall be due as determined by the Board. The due dates for General Assessments and Special Assessments shall be established by the Board. Each payment of a General Assessment or Special Assessment shall become delinquent if not paid within thirty (30) days after the due date thereof.

**6.04 General Assessments.** General Assessments shall be made no less frequently than annually and shall be based on a budget for the Common Expenses that is adopted no less frequently than annually by the Association.

(a) *Levy of Assessment.* After the establishment of the Association's annual budget, the Association shall levy a General Assessment for Common Expenses on each Parcel. The amount of the General Assessment levied against a Parcel shall be equal to the amount set forth in the annual budget as the amount of Common Expenses to be raised by General Assessments, multiplied by the Parcel's Allocated Interest.

(b) *Payment Annually.* The Owners shall pay the General Assessments levied against their respective Parcels annually as determined by the Board or in accordance with the Bylaws or Governing Documents.

(c) *Amendment of Budget.* If the Owners ratify an amendment to the General Assessment portion of the Association's annual budget, the amount of the General Assessment levied against each Parcel shall be adjusted accordingly.

(d) *Default Budget.* If the Owners fail to ratify the Association's annual budget at the Association's annual meeting, the Owners shall pay the General Assessment to the Association at the rate payable during the prior fiscal year until such time as the Owners ratify a new annual budget for the then current fiscal year. Once the Owners ratify a new annual budget, the Association shall levy against each Parcel the General Assessment for the then current fiscal year.

(e) *No Waiver.* The failure of the Association to levy a General Assessment for any fiscal year shall not be deemed a waiver, modification or release of an Owners liability for the share of the Common Expenses allocated to such Owner's Parcel for that fiscal year.

**6.05 Special Assessments.**

(a) *Special Assessment for Budget Shortage.* In the event that the Board shall determine that the General Assessment for a given fiscal year is or will become inadequate to meet the Common Expense liability of the Association for any reason including, but not limited to, costs of maintenance and unexpected repairs upon the Common Elements, the Board shall determine the approximate amount necessary to defray such expenses and shall give notice to the Owners of a Special Meeting to address the matter, describing the need for and the anticipated amount of the Special

Assessment. A Special Assessment regarding a budget shortage shall require a budget amendment made in accordance with the Association Bylaws.

(b) *Special Assessment for Fewer than All Parcels.* A Special Assessment may be levied where any Common Expense is attributable to the operation, maintenance, repair, replacement, alteration or improvement of fewer than all Parcels or to any Limited Common Elements. Normal maintenance, repair and snow removal of the Association roads cannot be a Special Assessment against fewer than all Parcels, however, damage to Association roads caused by a Parcel Owner or its Guests could be a valid basis for a Special Assessment against any Owner. The Association may levy a Special Assessment for such Common Expenses against the Parcels to be improved, repaired or altered, or to which that Limited Common Element is assigned, in a manner as the Association reasonably deems appropriate. Special Assessments attributable to fewer than all Parcels shall not require a budget amendment, but shall require the unanimous approval of the Board.

(c) *Payment as Required by Association.* Each Special Assessment levied against all Parcels regarding a budget shortage shall be shown on an annual budget or an amendment to an annual budget, adopted in accordance with the Bylaws of the Association, and shall be paid as and when required by the Association.

**6.06 Default Assessments.**

(a) *Default Assessment.* Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by the negligence or misconduct of an Owner or an Owner's Guest, or a violation of any covenant or condition of a Governing Document by an Owner or an Owner's Guest, the Association may levy an Assessment for such Common Expense against such Owner's Parcel. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon an Owner for the Owner's violation of any covenant or condition of any Association Document shall be a Default Assessment.

(b) *No Amendment to Budget.* Default Assessments need not be approved by the Members, or shown on an annual budget or on an amendment to an annual budget.

(c) *Notice and Opportunity to be Heard.* With respect to any Default Assessment, or portion thereof that is not a late charge, the Owner of the Parcel against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard, which may be in conjunction with a hearing regarding a covenant violation. Owners of Parcels against which Default Assessments have been levied following an opportunity to be heard shall pay such Default Assessments as and when required by the Board. [POLICY #5-2010]

**6.07 Assignment of Assessments.** The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

**6.08 Surplus Assessment Funds.** Any surplus funds of the Association remaining after payment of or provision for Common Expenses shall be paid to the Parcel Owners in proportion to their Common Expense liabilities, or credited to the Owners to reduce their future Common Expense Assessments or reserve fund accounts, as may be approved by the Members at a regular meeting or a special meeting of the Members called for that purpose. [C.R.S. §38-33.3-314]

**6.09 Reserve Funds.** The Association shall have the right to maintain a reserve fund, or multiple reserve fund accounts, for future or anticipated Common Expenses. The reserve fund(s) may be funded through the annual budget process and the amount of funds placed in reserve in any fiscal year shall be determined based on the most recent reserve fund assessment or plan of the Association. Any amount of any Assessment paid by the Owner of any Parcel that is attributed to any reserve fund account shall be considered to be a paid Assessment, and amounts contributed by Owners to reserve fund accounts shall not be returned to the Owner of any Parcel upon the sale of a Parcel. [C.R.S. §38-33.3-209.5; POLICY #9-2010]

**6.10 Budgets, Financial Statements, and Audits.** Budgets, financial statements, and audits shall be administered in accordance with the Bylaws and the Act. [C.R.S. §38-33.3-207; C.R.S. §38-33.3-303; C.R.S. §38-33.3-314; C.R.S. §38-33.3-315]

**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 First Amendment of the Amended and Restated Declaration of Covenants, Conditions, and Restrictions were duly adopted at a meeting of the Owners held on the 13<sup>th</sup> day of August, 2016, at which a quorum was present, called for the purpose of amending the Association's Declaration, by the affirmative vote of Parcel Owners of Parcels to which sixty-seven percent (67%) of the votes in the Association are allocated, the results of which are on file in the Association records, as a complete replacement for

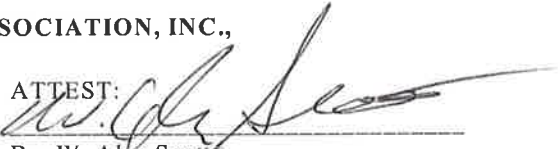
Article 6 of the Association's previous Declaration, and that the above and foregoing First Amendment of the Amended and Restated Declaration now constitutes Article 6 of the Declaration of the Association.

**DECLARANT:**

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



By: Stephen P. Villano  
Its: President and member of the Board of Directors

ATTEST:  


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



By: Thomas Olson  
Secretary and member of the Board of Directors