

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
DESIGN REVIEW PROCEDURES
for the
ELK STREAM RANCH PROPERTY OWNERS ASSOCIATION, INC.**
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THESE AMENDED AND RESTATED DESIGN STANDARDS AND REVIEW PROCEDURES (“Standards and Procedures”) for the Elk Stream Ranch are effective this ___ day of ____, 2023, and promulgated in accordance with the Governing Documents of the Association.

ARTICLE 1 OBJECTIVES AND AUTHORITY

1.01 Objectives and Policy Statement. These Design Review Procedures are designed to create a fair, effective and efficient framework for proposed Improvements in Elk Stream Ranch. The Declaration establishes covenants and restrictions that maintain the aesthetic nature and promote the economic value of the Elk Stream Ranch by imposing reasonable controls on Improvements and alterations. These Design Review Procedures assist the Design Review Committee (“DRC”) and the Owners during the design review and inspection processes for Improvements as required by the Governing Documents. These Design Review Procedures shall apply to the construction of Improvements on all Parcels within Elk Stream Ranch, as such Improvements are subject to the restrictions contained in the Governing Documents. The Covenants and these Design Review Procedures are established for the purpose of defining certain aesthetic guidelines, construction standards, placement of buildings, landscaping, color schemes, exterior finishes and materials, and similar features, and are designed to maintain harmony with surrounding structures and prevent the construction of Improvements which may be detrimental to the Elk Stream Ranch and the surrounding area.

1.02 Authority. The Declaration and Bylaws of the Association provide that all construction of Improvements and any material 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 Review Procedures, or the Board in the absence of the action of the DRC, for the purposes of ensuring compliance with the Declaration and Governing Documents.

1.03 Definitions. All terms used in the Design Review Procedures shall have the same meaning as set forth in the Declaration or the Act.

1.04 Power and Duties. The DRC shall have the powers and the duties granted to it by the Board to review all proposals for the construction or alteration of Improvements on any Parcel in accordance with the Governing Documents.

1.05 Appeals. Any action of the DRC may be appealed to the Board. Any such appeal shall be addressed by the Board in accordance with the Governing Documents.

ARTICLE 2 DESIGN AND CONSTRUCTION STANDARDS

2.01 Additional Laws and Regulations. The DRC Standards and Procedures are applicable IN ADDITION TO other provisions of the Governing Documents AND all applicable land use restrictions,

zoning ordinances, laws, rules, and decisions of other governmental and judicial authorities including La Plata County and Montezuma County. All applicable laws and regulations outside of the Governing Documents must be independently satisfied by the Owner proposing Improvements to any Parcel.

(a) *Owner/Applicant Responsibilities.* The Owner/Applicant shall be responsible for consulting all third party professionals as may be necessary or prudent to involve in the development of a proposal for Improvements submitted to the DRC. ALL safety, structural, performance, natural hazard, etc., issues should be evaluated and designed by qualified professionals and such matters are the sole responsibility of the Owner/Applicant.

2.02 Declaration Article 9 Covenants, Conditions, and Restrictions. All proposals for Improvements within the Elk Stream Ranch shall be in compliance with the provisions of Article 9 of the Declaration which includes the Covenants, Conditions and Restrictions applicable to Improvements on Parcels.

ARTICLE 3 VARIANCES

3.01 Variances. Upon the request of the Owner, the DRC may authorize variances from strict compliance with any of the conditions, covenants, and restrictions of the Governing Documents regarding the construction of Improvements on a Parcel, as long as such variances are in reasonable compliance with the Governing Documents and the Act.

(a) *Owner Request.* Owners may request variances to alter the review procedures based on timing considerations, or alter certain design standards, including restrictions upon height, size, floor area, set backs or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require.

(b) *Review.* Such requests for variances may be processed within the context of any Improvement proposal made by an Owner.

(c) *Effect of Approval.* If any requested variance is granted, with or without conditions, the approval will not result in a violation of the Declaration or Governing Documents. The granting of any such variance shall not operate to waive any of the terms and provisions of the Declaration for any purpose except as to the particular Parcel and particular provisions covered by the approved variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the proposed use of the Parcel including, but not limited to, the Act, zoning ordinances, the Parcel set-back lines, or requirements imposed by any governmental or municipal authority.

(d) *Significant Modifications.* The DRC may deny any request for a variance or require the approval of the Board prior to further consideration of a proposal for Improvements submitted by the Owner/Applicant.

3.02 Criteria. In reviewing a request for a variance, the DRC shall consider the following:

- (a) whether special conditions exist;
- (b) whether strict enforcement would result in a hardship to the Owner;
- (c) whether the variance would not be contrary or detrimental to the Association and the spirit and intent of the Governing Documents are respected;
- (d) whether adverse impacts would result to other Owners, Parcels, or the Association; and
- (e) whether the request was made to procure a special privilege, profit or convenience solely benefitting the Owner.

3.03 Variance Requests. Variance requests may be made within the context and review of a proposal for Improvements in accordance with these Design Review Procedures, or made as an independent request and submittal to the DRC. Variance requests shall include the following information:

- (a) a completed DRC application form;
- (b) a description and citation of the specific provisions for which a variance is being requested;
- (c) the nature and scope of the variance requested;
- (d) the relevant facts that the Owner/Applicant believes would justify a waiver or variance, including conditions of hardship;

- (e) the identification of any adverse impacts that might result from the approval of the variance;
- and
- (f) any other relevant information for consideration of the DRC.

3.04 Review Procedure. Unless declined or referred to the Board, requests for variances shall be reviewed by the DRC according to the procedures of Article 4 and/or Article 5 herein as may be appropriate to the nature of the request.

ARTICLE 4 INFORMAL REVIEW OF PROPOSED IMPROVEMENTS

4.01 Informal Introductory Meetings. Prior to the submittal to the DRC of an application for a proposed Improvement, an Owner/Applicant may schedule an introductory meeting with Owner and/or the Owner's representative and the DRC to informally discuss the proposal. This is a free service offered by the Association to assist Owners/Applicants in preparing to make Improvements on their Parcel within the Elk Stream Ranch and to understand the applicable standards and requirements. Owner/Applicants are strongly encouraged to take advantage of this opportunity.

(a) *Class A applications.* Class A applications consist of the proposed construction of a residence or guesthouse, and shall be reviewed informally by the DRC board.

(b) *Class B Applications.* Class B applications consist of the proposed construction of other buildings, structures or major Improvements, and may be reviewed informally by the chair of the DRC or by the DRC board, at the discretion of the chair of the DRC.

(c) *Class C Applications.* Class C applications consist of minor Improvements and may be reviewed informally by the chair of the DRC or at any scheduled meeting of the DRC board.

4.02 Informal Meeting Submittals.

(a) *Purposes.* The purposes of informal meetings and submittals is to allow the DRC an opportunity to review proposed Improvements at an early stage regarding elements such as the concept, compatibility and layout of the proposal, and to make sure that the Owner is aware of the applicable Covenants, Conditions and Restrictions in Article 9 of the Declaration, these Design Review Procedures and other applicable provisions of the Governing Documents.

(b) *Submittal Information.* There are no requirements for specific information to be submitted to the DRC for informal review meetings, however, the Owner is encouraged to provide any information that may assist the DRC in understanding the nature and scope of the proposal either prior to or at the informal meeting.

4.03 DRC Action. Any statements made by the DRC or its chair at an informal meeting shall be advisory only, and shall not represent in any way either the chair's or the DRC's future actions on any Owner's formally submitted proposal for an Improvement on a Parcel.

ARTICLE 5 APPLICATION AND REVIEW PROCEDURE FOR PROPOSED IMPROVEMENTS.

5.01 Application and Submittal. Following the informal meeting with the DRC or the DRC chair, if held, an Owner may submit a completed application form, applicable fees, and four (4) sets of documents including the following information:

(a) *Location Map.* At a scale of not less than 1" = 400' showing the location of the proposed Improvement and the impact of the proposed Improvement on the principal view corridors of all neighboring dwellings or unimproved building envelopes located on any Parcels adjacent to the exterior boundaries of the Parcel for which approval is sought.

(b) *Site Plan.* At a scale of not less than 1" = 100', including the following information as may be applicable to the proposed Improvement:

- (i) property lines and dimensions;

- (ii) location of any existing Improvements;
 - (iii) site impact area and location;
 - (iv) setbacks;
 - (v) building envelope (as shown on the Map);
 - (vi) proposed location of the proposed Improvement and its relationship to the site impact area boundary and building envelope and property lines;
 - (vii) grading or drainage plan at a scale not less than 1" = 100' for the Parcels at a contour interval of not greater than forty feet (40'), and 1" = 50' for the Building Envelope at a contour interval of not greater than two feet (2'). The site plan shall show all existing and proposed watercourses, drainage channels and patterns, swales, culverts, catch basins, and subsurface drainage systems. The site plan shall clearly indicate any drainage or watercourses that may be altered or modified by the proposed project and how such watercourse or drainage will be managed;
 - (viii) location of elevation benchmark used to set all finish elevations, if applicable. This benchmark shall be tied to the topography plan;
 - (ix) prominent site features within the building envelope or site impact area such as rock outcroppings and existing vegetation;
 - (x) driveway location, width, grades and proposed surface material, proposed turnarounds and parking areas, and all areas intended for removal or storage of snow; and
 - (xi) all existing maintenance, utility, and snow storage easements on or adjacent to the subject property including septic and drain fields and wells.
- (c) *Construction Drawings*. Construction Drawings shall include:
- (i) *Floor Plans*. Floor plans at a scale of not less than 1/8" = 1' and showing all floors, basements, lofts, and spaces intended to be used or occupied. Square footage of each floor shall be indicated.
 - (ii) *Exterior Materials*. Exterior materials shall be called out on the plans specifying color, type of materials and finish or siding, trim, doors, windows, roof, exposed foundation, skylights, decking, handrails, and all attached or recessed lighting. Color chips may be required.
 - (iii) *Exterior Elevations*. At a scale of not less than 1/8" = 1' showing elevations of the proposed Improvement with texture and direction of surface materials clearly delineated. All proposed finish grades relative to each elevation as indicated on the grading plan shall be shown.
 - (iv) *Exterior Lighting*. Exterior lighting will be clearly delineated on the plans indicating location, type, height, and type of light source.
- (d) *Landscape Drawings*. The landscape drawings at a scale of 1" = 100' shall include, but not be limited to, the following:
- (i) *Landscape Plan*. The landscape plan shall show for the 50-foot area surrounding the house the arrangement of principal trees, shrubs, lawn areas, natural areas, and areas to be revegetated after final grading and construction clean-up.
 - (ii) *Landscape Features*. Landscape features such as decks, patios, retaining walls, privacy screens, awnings, canopies, gazebos, benches, steps, etc. shall be clearly delineated on the plans in sufficient detail to adequately demonstrate finished appearance.
- (e) *Other Submittals*. The Owner shall also submit any other information reasonably requested by the DRC or reasonably necessary for the DRC to review the proposed Improvement.

5.02 Application and Review Procedure Fees. The DRC application form and applicable review fees shall be submitted with the application submittal materials. The Owner/Applicant shall submit four (4) copies of all submitted materials. The review fees shall be according to the following review fee schedule:

- (a) *Class A Applications*. A fee of \$500.00 will be charged for a DRC plan review for a house and/or guesthouse.
- (b) *Class B Applications*. A fee of \$120.00 will be charged for the review of other buildings, structures or major Improvements.
- (c) *Class C Applications*. A fee of \$60.00 will be charged for the review of all other improvements requiring DRC approval.

5.03 Review Procedure.

(a) *Forward to Board.* Upon receipt of an application, the DRC shall forward one (1) set of all submitted materials and the review fees to the Board.

(b) *Posting on Website.* Upon receipt of an application, the DRC shall post on the Association's website a notice consisting of the general nature of the submitted proposal and the identification of the Parcel and Owner/Applicant, and a notice regarding how to obtain additional information or arrange for a review of the submitted materials.

(c) *Determination of Complete Application.* The DRC chair shall review the submitted materials for completeness and inform the Owner/Applicant of any deficiencies and any additional materials necessary for the DRC review. Until receipt by the DRC of all plans and specifications required by the DRC rules, the DRC may postpone review of any plan submitted for approval.

(d) *Items Requiring Variances.* At any time during the DRC review procedure that an item or element of a proposal for an Improvement is identified as being outside of the scope of the Covenants, Conditions and Restrictions contained in Article 9 of the Declaration, the Owner/Applicant may amend the application or continue to seek approval of the element as a variance, in accordance with the provisions of Article 3, herein.

(e) *Hearing.* When the DRC chair determines that the application is complete, a meeting of the DRC will be scheduled at a time convenient to the DRC and the Owner/Applicant for a hearing regarding the proposed Improvements. The hearing will be conducted in accordance with the Association's Policy #4. A notice of the hearing will be posted on the website.

(e) *Administrative Functions.* Prior to taking any final action on an application for an Improvement, the DRC may address review functions administratively in accordance with the provisions of Section 6.04 of the Bylaws of the Association.

(f) *DRC Action.* The DRC may act on the proposal at the scheduled hearing, or, if necessary, continue the hearing to another date for further consideration and review.

(g) *Site Meeting.* The DRC may require a site meeting at which the DRC and the Owner/Applicant can review, on site, the general parameters of the proposed development. In advance of the meeting the Owner/Applicant may be asked to stake or mark corners, Building Envelopes, and the location of major features to facilitate the visualization of the proposed Improvement on the Parcel. A site meeting shall be deemed to be a worksession of the DRC but any interested Owner may attend upon request made to the DRC.

(h) *Decisions of the DRC.* All approvals, disapprovals or other final actions of the DRC shall be in writing to the Owner and the Board. Any decision or action of the Design Review Committee may be appealed by the Owner to the Board, and upon such appeal the Board shall control and resolve the disputed matter. The Owner of the Parcel may not initiate any legal action against the Association regarding the disputed matter unless it has appealed the matter to the Board.

(i) *Posting on Website.* A summary description of all final actions of the DRC shall be posted on the Association's website, and any interested party may inspect and copy any document associated with such final action in accordance with the Association rules and policies regarding inspection of documents.

5.04 Conditions of Approval. The DRC may place conditions on the approval of any proposal for an Improvement, which may include any of the following:

(a) *Conditions.* Conditions regarding specific aspects of the application.

(b) *Completion and Payment Surety Bond.* The DRC may, as a condition to any consent or approval, require an Owner to enter into a written agreement with the Association containing such covenants, conditions and restrictions as the DRC deems necessary or appropriate, which may include a requirement for a completion and payment surety bond for the benefit of the Association for failure to comply with the conditions of approval or with the Governing Documents.

(c) *Duration of Approval.* An approval issued by the DRC shall be valid for a period relevant to the nature of the Improvement and the timing of the commencement of construction. Generally, DRC approvals for major construction projects will be for a period of eighteen (18) months. An Owner/Applicant may request a design approval in advance of and separate from a construction approval. If the approved Improvements are not initiated or completed within the allowed period of time, upon the request of the Parcel

Owner the DRC may determine whether to extend the approval or require a new review of the proposed Improvement. If the Owner does not request an extension the approval shall lapse and any portion of the Improvements constructed that are not complete shall be deemed to be a violation of the Governing Documents.

ARTICLE 6 CONSTRUCTION INSPECTIONS

6.01 Inspection of Approved Improvements and Noncompliance.

(a) *Monitoring of Construction.* The DRC or its designated representative may monitor any approved project to the extent required to ensure that the construction or work on such project complies with the Declaration and Governing Documents. The DRC or its designated representatives may enter any Parcel at any reasonable time or times to inspect the progress, work status or completion of any approved project. In addition to available remedies regarding violations, the DRC may withdraw approval of any project and require all activity at such project to be stopped, if deviations from the approved plan are not corrected or reconciled within twenty-four (24) hours after written notification to the Owner specifying such deviations, or other reasonable time as may be included in the notice.

(b) *Completion of Work.* The Owner shall give written notice of completion of construction to the DRC upon the completion of the approved proposal.

(i) *DRC Inspection.* Within thirty (30) days after the DRC receives notice of the completion of the work from the Owner, the DRC or its duly authorized representative may inspect such Improvement. If the DRC finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within thirty (30) days of the date of the DRC inspection, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(ii) *Noncompliance.* If upon the expiration of thirty (30) days from the date of a notification of noncompliance, and if the Owner shall have failed to remedy such noncompliance, the DRC shall notify the Board in writing of such failure. Upon such notice to the Board, the Board shall schedule a hearing in accordance with the Governing Documents, at which the Board shall determine whether there is a noncompliance. If at the hearing a noncompliance is found to exist, the Owner shall remedy the noncompliance as directed by the Board.

(iii) *Approval by Default.* If the DRC fails to notify the Owner of any noncompliance within sixty (60) days after the receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with approved plans.

6.02 Inspections for Class A and Class B Improvements. The DRC shall conduct on-site inspections during the course of construction of a Class A or Class B Improvement according to the following schedule and requirements:

(a) *Submittals.* Prior to the commencement of any construction the Owner shall submit to the DRC:

- (i) a copy of the county building permit; and
- (ii) the estimated start date of the construction.

(b) *Construction Submittals.* The Owner shall be responsible for submitting to the Design Review Committee the following:

(i) *Foundation and Grade Survey.* Within three (3) weeks after the foundations are completed an as-built survey of the foundation prepared by a licensed surveyor to determine whether the foundation is in the correct place as approved on the plans. An elevation benchmark, or the Base Elevation where applicable, that has been established and installed by a licensed surveyor, shall be set for use in determining that approved heights have been adhered to.

(i) *Rough Opening and Roof Height Certification.* Within one (1) week after the roof structure is in place and all openings have been framed, a statement signed by a registered architect that the exterior of the structure is in compliance with the approved plans and that the roof system does not exceed the height shown on the approved plans.

(c) *NOTE: ANY CHANGE OR DEVIATION IN CONSTRUCTION OF ANY IMPROVEMENT, OR ANY PORTION THEREOF, OR DEVIATION FROM ANY APPROVED PLAN WITHOUT PRIOR WRITTEN APPROVAL OF THE COMMITTEE WILL RESULT IN THE OWNER BEARING THE COST OF CORRECTIONS REQUIRED TO BRING THE WORK INTO COMPLIANCE WITH THE APPROVED PLANS.*

(d) *Landscape Inspection.* Performed to determine a reasonable start date for implementation of the landscape program, including but not limited to the driveways, paving and/or other hard-surfaced areas. This inspection is generally performed once the Improvement is substantially complete.

(e) *Final Inspection.* Performed after final installation of all items on the approved architectural, site, and landscape plans to determine whether such work is in compliance with the approved plans. As set forth in the Construction Agreement, it is the sole responsibility of the Owner to notify the Committee in writing, at least five (5) days ahead of the required inspection, when the Parcel or Improvement is ready to be inspected.

(f) *Release of Surety Bond.* If the Improvement was completed in compliance with the DRC approval, the DRC shall, within thirty (30) days after the final inspection, request the Association to refund the deposit to the Owner. If, based on the final inspection, the Improvement was not completed in compliance with the DRC approval, the DRC shall notify the Board of the deficiencies which shall be addressed by the Board as a violation of the Governing Documents, and the surety bond shall remain in place until such a time as the matter of compliance is resolved.

6.03 Final Disposition. A summary of the final disposition of any proposed Improvement review procedure addressed by the DRC shall be posted on the Association's website.

ARTICLE 7 GENERAL PROVISIONS

7.01 Severability. If any section, subsection, paragraph, sentence, clause, or phrase of these Design Review Procedures is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of these Design Review Procedures.

7.02 Non-Waiver. Consent by the DRC to any matter proposed to it or within its jurisdiction, or failure by the DRC or the Association to enforce any violation of these Design Review Procedures, shall not be deemed to constitute a precedent or waiver impairing the DRC's right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent or to enforce any subsequent or similar violation of these Design Review Procedures.

7.03 Non-Conforming Uses. If any Owner shall have any Improvement located on a Parcel which is not in compliance with these Design Review Procedures as adopted or hereafter amended, except when said Improvement existed prior to the adoption of these Design Review Procedures, the Owner shall have six (6) months from the date of notification by the DRC to comply with these Design Review Procedures, provided, however, that each Owner shall not be required to expend more than two (2) times the then prevailing annual dues of the Elk Stream Ranch Property Owners Association, Inc., per violation if said non-complying Improvement existed prior to the adoption of these Rules or prior to the adoption of any applicable amendment to these Design Review Procedures.

7.04 Amendment. These Design Review Procedures may be amended in accordance with the Associations Policy #1-2010 - Adoption and Amendment of Policies.

[Remainder of page intentionally left blank]

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 Design Review Procedures were duly adopted at a meeting of the Owners held on the _____ day of _____, 2023, at which a quorum was present, called for the purpose of amending the Association’s Design Review Procedures, by the affirmative vote of the Owners representing no less than fifty percent (50%) 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 Design Standards and Review Procedures, and that the above and foregoing Amended and Restated Design Review Procedures now constitutes the Design Review Procedures of the Association.

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

ATTEST:

By: _____
Its: President and member of the Board of Directors

By: _____
Secretary/Treasurer and member of the Board of Directors

By: _____
Its: Vice President and member of the Board of Directors