

ELK STREAM RANCH SUBDIVISION
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 DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

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NOTE: This document is based on Colorado Revised Statutes (“C.R.S.”) and on the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq*, and other applicable statutes. The statutes should be reviewed for additional information and interpretation through recent case law. Colorado statutes can be accessed online: http://www.state.co.us/gov_dir/leg_dir/OLLS/colorado_revised_statutes.htm

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ELK STREAM RANCH SUBDIVISION, as amended from time to time, (“Amended Declaration”) is made this 5th day of August, 2023, by the Elk Stream Ranch Property Owners Association, Inc., a Colorado non-profit corporation.

RECITALS

WHEREAS, the original Declaration for the Elk Stream Ranch Subdivision common interest community was made on February 6, 1996, by Tru-Worth, Ltd., a Colorado Limited Partnership, Ron Trujillo, Inc, a Colorado corporation, General Partner, Ron Trujillo, President, as recorded in the office of the Clerk and Recorder of Montezuma County at Rec. #453559, on February 7, 1996 and recorded in the office of the Clerk and Recorder of La Plata County at Rec. #808440, on June 29, 2001; and

WHEREAS, the Declaration was duly amended at an annual Member meeting held on August 11, 2001, as recorded in the office of the Clerk and Recorder of Montezuma County at Rec. #499031, on October 11, 2001 and recorded in the office of the Clerk and Recorder of La Plata County at Rec. #826018, on March 20, 2002; and

WHEREAS, the Declaration was duly amended at an annual Member meeting held on August 10, 2002, as recorded in the office of the Clerk and Recorder of Montezuma County at Rec. #507933, on October 24, 2002 and recorded in the office of the Clerk and Recorder of La Plata County at Rec. #842992, on November 15, 2002; and

WHEREAS, the Declaration was duly amended at an annual Member meeting held on August 14, 2004, as recorded in the office of the Clerk and Recorder of Montezuma County at Rec. #529631, Rec. #529632, Rec. #529633, and Rec. #529634 on September 8, 2004; and

WHEREAS, the Declaration as originally recorded applied to certain real property, which shall be amended in accordance with this Amended and Restated Declaration to apply to the real property described in Exhibit A (“Property”) to this document; and

WHEREAS, the Property subject to this Amended and Restated Declaration is a Planned Community as defined in C.R.S §38-33.3-103(22), and is subject to the Colorado Common Interest Community Ownership Act (“CCIOA”), C.R.S. §38-33.3-101 *et seq*, as it may be amended from time to time; and

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 common interest community, and such non-profit corporation is maintained in good standing with the office of the Secretary of State of Colorado; and

WHEREAS, the Declaration needs to be comprehensively amended and updated to comply with the provisions of CCIOA and other applicable law, and the 2016 Declaration amendment to change the fiscal year 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 this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Elk Stream Ranch Subdivision (“Amended Declaration”), and subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Amended Declaration.

**ARTICLE 1
DECLARATION**

1.01 Declaration. The Property is subjected to these protective covenants, conditions, and restrictions for the benefit of the Property and present and future Owners thereof. The Declaration is intended to preserve the natural beauty of the Property and its setting, to preserve, protect and enhance the values and amenities value, desirability and attractiveness of the Property, to maintain the Property as a pleasant and desirable community, and additionally to create and protect the highest quality development of the Property, to insure proper maintenance thereof, and to maintain the Association’s management of the Property in compliance with all applicable laws. [C.R.S. §38-33.3-205]

1.02 Covenants Running with the Land. All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of the Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by the Declaration bind and inure to the benefit of the Owners, the Association, all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives. The Property and each Parcel within the Elk Stream Ranch Subdivision shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the covenants, conditions, restrictions, easements, and equitable servitude as contained in the Declaration.

1.03 Upkeep of the Common Interest Community. Except to the extent of any valid original Declarant reserved rights, or insurance matters under C.R.S. §38-33.3-313(9), the Association is responsible for maintenance, repair, and replacement of the Common Elements, and each Parcel Owner is responsible for maintenance, repair, and replacement of the Improvements located on such Owner’s Parcel. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner’s Parcel reasonably necessary for those purposes. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements or any Parcel through which access is taken, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. [C.R.S. §38-33.3-307]

1.04 Tort and Contract Liability. Any action alleging an act or omission by the Association other than the original Declarant responsibilities must be brought against the Association and not against any Parcel Owner. A Parcel Owner is not precluded from maintaining an action against the Association or Declarant by virtue of being a Parcel Owner or a Member or an officer of the Association. [C.R.S. §38-33.3-311]

1.05 Other Applicable Law. Except as provided in the Act, the covenants, conditions and restrictions contained in the Declaration are in addition to all other applicable laws, land use restrictions, zoning ordinances, rules, and decisions of other governmental and judicial authorities including La Plata County and Montezuma County. The Declaration does not supplant any such laws and land use restrictions, which apply independently and separately from the provisions of the Declaration. [C.R.S. §38-33.3-106; C.R.S. §38-33.3-108; C.R.S. §38-33.3-319; C.R.S. §7-121-101 to C.R.S. §7-137-101 et seq.]

1.06 Supplemental General Principles of Law. The principles of law and equity, including, but not limited to, the law of corporations and 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 the provisions of the Declaration, except to the extent inconsistent with the Act. [C.R.S. §38-33.3-108]

**ARTICLE 2
DEFINITIONS
[C.R.S. §38-33.3-103]**

2.01 Defined Terms. The following terms as used in this Amended Declaration are defined below, and unless specifically provided otherwise or unless the context otherwise requires, the definitions included in C.R.S. §38-33.3-103 shall apply. In the event of a conflict between any term defined below and those in the Act, the Act shall control. [C.R.S. §38-33.3-103]

“Act” means the Colorado Common Interest Ownership Act (“CCIOA”), Colorado Revised Statutes §38-33.3-101 through §38-33.3-319, as the same may be amended from time to time.

“Allocated Interest” means the Common Expense liability and the votes in the Association appurtenant to each Parcel, determined in accordance with the Declaration.

“Amended Declaration” means this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Elk Stream Ranch Subdivision, including by reference all Plats associated with the common interest community, all as may be amended from time to time.

“Articles” means the Articles of Incorporation of the Association, as filed in the office of the Secretary of State of Colorado and as the same may be amended from time to time.

“Assessment” means a General Assessment, a Special Assessment or a Default Assessment levied and assessed against any Parcel pursuant to the Declaration.

“Assessment Lien” means the statutory lien rights of the Association pursuant to C.R.S. §38-33.3-316.

“Association” means the Elk Stream Ranch Property Owners Association, Inc., a Colorado non-profit corporation, or any successor to the Elk Stream Ranch Property Owners Association by whatever name, charged with the duties and obligations set forth in this Declaration, the Articles, the Bylaws and other Governing Documents.

“Association Roads” means the Common Element access roads as shown on the Plats, specifically including the Association Roads which include portions Road 46, 46.1 and G.3, and other common road easements as shown on the Plats.

“Board” means the Board of Directors of the Elk Stream Ranch Property Owners Association, Inc., the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Elk Stream Ranch Subdivision.

“Building” shall mean a detached structure enclosing a minimum of 80 square feet within its walls or supports.

“Building Envelope” means the area as shown on any Plat or site plan within which all Improvements and structures must be located, except as specifically allowed by the Governing Documents, the DRC or the Board.

“Building Footprint” means the vertical extension to the ground of the exterior walls of all enclosed portions or extensions of buildings (including, but not limited to attached garages, enclosed decks, porches, and similar enclosed extensions, attachments and accessory structures) and unenclosed portions or extensions of buildings (including, but not limited to decks, porches, eaves and roof overhangs).

“Building Height” means the vertical distance from the average ground level of the Building Footprint to the highest point of the roof ridge.

“Bylaws” means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including any amendments to those instruments.

“Common Elements” means the General Common Elements and the Limited Common Elements.

“Common Expense Liability” means the liability for common expenses allocated to each unit pursuant to C.R.S. §38-33.3-207.

“Common Expenses” means any and all costs, expenditures made or liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (a) managing, operating, insuring, improving, repairing, replacing and maintaining the Commons Elements; (b) providing facilities, services and other benefits to Owners; (c) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (d) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (e) regulating and managing the Elk Stream Ranch Subdivision; and (f) operating the affairs of the Association; together with all reserve funds for any such costs, expenses and liability.

“Common Interest Community” means, whether or not capitalized, real estate described in the Declaration with respect to which a Person, by virtue of such Person's ownership of a Parcel, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a Declaration.

“Declarant” means Tru-Worth, Ltd., a Colorado limited partnership, its successors or assigns, or any Person, Persons, entity or entities to whom the rights of the Declarant under the Declaration were validly transferred by the Declarant prior to the termination of any such rights. The Declarant for the purposes of this Amended Declaration is the Elk Stream Ranch Property Owners Association, Inc.

“Declaration” means the original Declaration of Covenants, Conditions and Restrictions as created by the Declarant, including by reference all Plats associated with the common interest community, all as may have been amended from time to time, including this Amended Declaration and any future amendments and supplements. There is only one Declaration for the Elk Stream Ranch Subdivision: the terms “Declaration” and “Amended Declaration” are used only for the convenience of identifying various documents as may be needed in certain contexts. The term “Declaration” may refer to either the original Declaration or the Amended Declaration, refers to this Amended and Restated Declaration.

“Director” means a duly elected or appointed member of the Board of Directors, whether or not capitalized.

“Design Review Committee” (“DRC”) shall mean that committee as established by the Board for the purpose of reviewing all proposed Improvements to any Parcel in the Elk Stream Ranch Subdivision in accordance with the Governing Documents, and carrying out other duties as may be assigned to it by the Board.

“Design Review Committee Rules” means any rules adopted by the Association for the purpose of carrying out the duties of the DRC.

“Design Review Committee Design Review Procedures” means any procedures applicable to the construction of any Improvements on any Parcel in Elk Stream Ranch.

“Driveway” means a private access road on a Parcel to serve that Parcel. A Driveway, by agreement of the affected Owners, may be located on and serve more than one Parcel. A Driveway is not a Common Element.

“Elk Stream Ranch” means the common interest community created regarding the Property by the Declaration, consisting of the Parcels and the Common Elements of the Elk Stream Ranch common interest community.

“General Common Elements” means all of the Elk Stream Ranch Subdivision, other than the Parcels and the Limited Common Elements. The General Common Elements include, without limitation, (a) Association Roads within the Property, road and drainage Improvements, gates and access control facilities, utility and other easements as shown on the Plats, walkways, parking areas, and in general all apparatus and installations intended for common use, except for those Improvements that are designated by the Act, by the Declaration or by the Plats as Parcels or Limited Common Elements; and (b) any parcels of real property and improvements and fixtures located thereon, that (i) are owned by a Person other than the Association, but in which the Association has rights of use, management or possession pursuant to the Declaration or a lease, license, easement or other agreement, and (ii) that are used or possessed by the Association for the benefit of all Owners.

“Governing Documents” means the Declaration, the Articles, the Bylaws, the Rules and Regulations, the Design Review Procedures, and Policies of the Association, and the Act, as the same may be amended from time to time.

“Guest” means any family member, employee, agent, independent contractor, licensee, lessee, customer or invitee of an Owner.

“Improvement” means the exterior aspects of any building, structure or other improvement (including, without limitation, all fixtures and improvements contained therein), either new or existing, and all things constructed upon, above, or below the surface of any Parcel, and exterior aspects of any appurtenances thereto of every type and kind. Improvement shall specifically include any alteration, excavation, or fill of any part of the surface of a Parcel for any purpose. Other than as specifically excepted in the Governing Documents, all Improvements on Parcels require advance approval of the DRC to ensure compliance with the Governing Documents.

“Limited Common Elements” means those portions of the Common Elements allocated by the Declaration or as may be established by the Association or by operation of the Act for the exclusive use of one or more Parcels, but fewer than all Parcels.

“Lot” shall refer to any Parcel, Lot or Unit within the Property described in the Plats or the legal description listed on Exhibit “A” hereto attached and incorporated by reference herein.

“Majority” regardless of whether capitalized, means any percentage greater than fifty percent (50%).

“Member” means an Owner of a Parcel entitled to Membership in the Association by virtue of such ownership. The terms “Member” and “Owner” are synonymous.

“Membership” means a Membership in the Association, together with the rights granted to Owners and the responsibilities of the Owners as a Member of the Association, pursuant to the Declaration and the Governing Documents.

“Officer” means, whether or not capitalized, a duly elected or appointed officer of the Association.

“Owner” means the record holder of legal title to the fee simple interest in any Parcel or portion thereof. If there is more than one record holder of legal title to a Parcel, each record holder shall be an Owner. The terms “Member” and “Owner” are synonymous.

“Parcel” shall refer to any Lot, Parcel or Unit within the Property described in the Plats or the legal description listed on Exhibit “A” hereto attached and incorporated by reference herein.

“Person” means, whether or not capitalized, any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

“Plat” means that part of the Declaration that is a land survey plat as set forth in C.R.S. §38-51-106, depicts all or any portion of the Elk Stream Ranch subdivision in two dimensions, is executed by a person that is authorized under CCIOA to execute a declaration relating to the common interest community, and is recorded in the real estate records in every county in which any portion of the common interest community is located.

“Property” means: (a) the real property located in the Montezuma County and La Plata County, Colorado, that consists of the Elk Stream Ranch Subdivision and is more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference; and (b) any real property that is later made subject to the Declaration in accordance with the terms and conditions contained herein.

“Property Management Committee” (“PMC”) shall mean that committee as established by the Board for the purposes of assisting the Board in carrying out certain property management responsibilities.

“Residential Use” means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or service to, the public.

“Rules and Regulations” means any instruments adopted by the Association for the regulation and management of the Elk Stream Ranch Subdivision, as the same may be amended from time to time, including any policies adopted by the Association and those policies required by the Act, regardless of the title of any such instrument.

“Unit” means a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the declaration. For the purposes of this Declaration, “Unit” has the same meaning as “Lot” or “Parcel”.

“Vegetation” means, whether or not capitalized, trees, shrubs and grasses of all types, whether natural or planted, and whether or not maintained by an Owner or the Association.

“Xeriscape” means the combined application of the seven principles of landscape planning and design, soil analysis and improvement, hydro zoning of plants, use of practical turf areas, uses of mulches, irrigation efficiency, and appropriate maintenance under C.R.S. §38-35.7- 107(1)(a)(III)(A).

ARTICLE 3 PARCELS, COMMON ELEMENTS AND ALLOCATED INTERESTS

3.01 Parcels.

(a) *Creation of Parcels.* The Parcels of the Elk Stream Ranch Subdivision were created within the Property by the Plats, the boundaries and identifying numbers of which Parcels are shown on the Plats, as amended and supplemented from time to time.

(b) *Alteration of Boundaries.* No Owner may alter or relocate the boundaries between its Parcel and an adjacent Parcel, except as provided by the Declaration and the Act. No alteration or relocation of Parcel boundaries shall be effected without the necessary amendments to the Declaration and Plats, executed and recorded pursuant to the requirements of C.R.S. §38-33.3-217(3) and (5).

(c) *Appurtenant Interests.* Except as expressly provided to the contrary in the Declaration, the Allocated Interest of each Parcel, the right to use Common Elements and Limited Common Elements and the Membership in the Association appurtenant to the Ownership of a Parcel may not be partitioned or separated from the Parcel or any part thereof.

(d) *Owner Rights Regarding Guests.* Notwithstanding anything to the contrary in the Declaration, an Owner may grant its rights to reasonably use any General Common Element or any Limited Common Element appurtenant to the Owner’s Parcel to the Owner’s Guests in accordance with the Governing Documents.

(e) *Subdivision.* No Parcel in the Elk Stream Ranch may be subdivided into two or more Parcels.
[C.R.S. §38-33.3-213; C.R.S. §38-33.3-217]

3.02 Allocated Interests. Each Parcel within Elk Stream Ranch is allocated one-thirty-fifth (1/35) or 2.85714% of the Allocated Interests as defined herein, to include one-thirty-fifth (1/35) or 2.85714% of the Common Expense liability and one vote in Association matters, and an interest in the Common Expense Liability equal to a percentage of each Parcel as it relates to the total number of Parcels expressed as a fraction or percentage. Except as expressly provided to the contrary elsewhere in the Declaration, an Allocated Interest may not be partitioned from the Parcel to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Allocated Interest made without the Parcel to which the Allocated Interest is appurtenant shall be void.

(a) *Formula.* The formulas used to establish allocations of interests is per Parcel. There are 35 parcels in the Elk Stream Ranch. The acreage of the Parcels may differ slightly for various reasons, which does not alter the one-thirty-fifth (1/35) formula for Common Expense Liability or the voting rights of any Owner in any way.

(b) *Void Conveyances.* Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements not allowed for in C.R.S. §38-33.3-312 that is made without the Parcel to which that interest is allocated is void.
[C.R.S. §38-33.3-207; C.R.S. §38-33.3-312]

3.03 Separate Taxation of Parcels. Pursuant to the Act, each Parcel, together with its interest in the Common Elements, constitutes a separate parcel of real estate and will be separately assessed and taxed by the appropriate governmental entity. The valuation of the Common Elements shall be assessed proportionately to each Parcel in accordance with the Parcel’s allocated Common Expense liability, and the Common Elements shall not be separately taxed or assessed.
[C.R.S. §38-33.3-105]

3.04 Plats. A Plat is a required part of the Declaration and must be clear and legible, and contain a certification made by a registered land surveyor that all information required by the Act is contained in the Plat or Declaration. Each Plat shall

meet the requirements of a land survey plat as set forth in C.R.S. §38-51-106, and each Plat shall include the requirements listed in C.R.S. §38-33.3-209, except to the extent such information is contained in the Declaration. The statutory requirements of any Plat relating to the Elk Stream Ranch Subdivision shall not be deemed to satisfy any local government laws or requirements, the approval of which must be separately obtained. Any Plat that was recorded on or after July 1, 1998, but prior to July 1, 2007, and that satisfies the requirements of C.R.S. §38-33.3-209 in effect on July 1, 2007, is deemed to have satisfied the requirements of C.R.S. §38-33.3-209 at the time it was recorded. [C.R.S. §38-33.3-209; C.R.S. §38-51-106]

3.05 Description of Parcels. Any instrument that conveys, encumbers or otherwise affects legal title to a Parcel must describe the Parcel in accordance with C.R.S. §38-33.3-204. [C.R.S. §38-33.3-204]

3.06 Relocation of Boundaries Between Adjoining Parcels. Subject to other applicable provisions of law and pursuant to the procedures described in C.R.S. §38-33.3-217, the boundaries between adjoining Parcels may be relocated by an amendment to the Declaration upon application to the Association by the Owners of those Parcels and approval by the Board. [C.R.S. §38-33.3-212; C.R.S. §38-33.3-217]

3.07 Limited Common Elements. Except as expressly provided to the contrary in the Declaration, the allocation of any Limited Common Elements may not be altered without the consent of all Owners whose Parcels would be affected by such reallocation, and then only in accordance with the terms and conditions of the Act and the Declaration. Subject to the provisions of the Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to the Owner's Parcel. [C.R.S. §38-33.3-202; C.R.S. §38-33.3-205; C.R.S. §38-33.3-208; C.R.S. §38-33.3-217]

3.08 Conveyance or Encumbrance of Common Elements. Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least sixty-seven percent (67%) of the votes of the Association agree to that action; except that all Owners of Parcels to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Proceeds of the valid sale of any Common Element are an asset of the Association.

(a) *Agreement.* An agreement to convey, or subject to a security interest, Common Elements must be evidenced by the execution of an agreement, in the same manner as a deed, by the Association. The agreement must specify a date after which the agreement will be void unless approved by the requisite percentage of Owners. Any grant, conveyance, or deed executed by the Association must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(b) *Acts of Association.* The Association, on behalf of the Parcel Owners, may contract to convey an interest in the common interest community pursuant to the Act. Any such contract is not enforceable against the Association until approved, executed and ratified pursuant to the Act. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(c) *Owners Rights.* A conveyance or encumbrance of Common Elements pursuant to the Act and the Declaration shall not deprive any Parcel Owner of its rights of ingress and egress of the Parcel.

(d) *Preexisting Encumbrances.* Notwithstanding anything to the contrary, a valid conveyance or encumbrance of Common Elements does not affect the priority or validity of preexisting encumbrances. [C.R.S. §38-33.3-207; C.R.S. §38-33.3-312]

ARTICLE 4 EASEMENTS AND RESERVATIONS

[C.R.S. §38-33.3-205; C.R.S. §38-33.3-216; C.R.S. §38-33.3-312; POLICY #11]

4.01 Recorded Easements and Licenses. The Property shall be subject to all valid easements and licenses granted by Declarant, all easements and licenses as shown on any recorded Plats affecting the Property and any other valid easements or licenses of record as of the date of recordation of the Declaration. In addition, the Property is subject to all easements created or permitted by the Declaration. [C.R.S. §38-33.3-205]

(a) *Limitation on Obstruction on Easements included in the Declaration.* No gates, fences or obstructions or any structure, material, equipment or refuse will be placed on any easement or Common Element within the Elk Stream Ranch Subdivision, including:

- (i) access and utility easements as shown on the Plats (where public utility services may also be present);
- (ii) Subdivision entrance features and signage; and
- (iii) other easements identified on the Plats.

(b) *Limitation on Parking.* Overnight parking is not allowed on any common Association Roads within the Elk Stream Ranch Subdivision, without approval of the Board of Directors.

4.02 Reservation of Right. The Association hereby reserves for itself, its successors and assigns, the right to establish from time-to-time utility and other easements, permits or licenses over, across, through and under the Common Elements; and create other reservations, exceptions and exclusions in the best interests of the Association.

4.03 Utility Easements.

(a) *General Utility Easement.* Subject to the terms and conditions of the Declaration and the Governing Documents, there is a general easement over, across, through and under the Common Elements or any portion of a Parcel designated for such use, for ingress to, egress from, and installation, replacement, repair and maintenance of all utility and service lines and systems that service the Property and the Parcels. The Association may but is not obligated to authorize the release of portions of the general utility easement upon the request of any Owner showing good cause therefor.

(b) *Use by Public Utility Companies.* Pursuant to the general utility easement, a public utility or service company may, with the Association's prior approval, install and maintain facilities and equipment on the Property to provide service to the Parcels or the Common Elements. Any public utility or service company using the general utility easement shall use its best efforts to install, repair, replace and maintain its lines, facilities and systems without disturbing the uses of Owners, the Association, any areas of the Property other than Association Roads, platted easements, and Parcel Driveways, and the facilities of other public utility and service companies. Public utility companies shall restore any disturbed areas to the previous condition.

(c) *Specific Easement for Utility Company.* If any utility or service company furnishing utilities or services to the Property requests a specific easement by separate recordable document, the Association shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property, subject to the additional approval of any Parcel Owner necessitated by any such specific easement and adequate assurances regarding the restoration of any disturbed areas.

(d) *Specific Utility Easements Shown on Plats.* Certain areas of the Property are shown on the Plats as Utility Easements, which may be used in the same manner as the general utility easement

(i) *Owner Responsibility.* The Owners shall contact the various utility companies and at their own expense, arrange for the connection of utilities from the primary distribution lines to their homesite or associated outbuildings. Owners may install utility service lines for service to their Parcel subject to approval by the Association and the requirements of the utility service provider.

(ii) *Underground Utilities Required.* All new utilities within the Association Roads, platted easements, and along Parcel lines as well as across any Parcel shall be underground.

4.04 Home Site Utility Connections. The rights and duties of the Owners of the Parcels within the Property with respect to utilities shall be governed by the following:

(a) *Located on Other Parcels.* Whenever home site utility connections, if any, are installed within the Property, which connections or any portions thereof lie in or upon Parcels owned by Owners other than the Owner of the Parcel served by such connections, Owners shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Parcels or to have their agent enter upon the Parcels within the Property in or upon which the connections or any portion thereof lie, to install, repair, replace, and generally maintain said connections as and when the same may be necessary, subject to the approval of the Association regarding the Improvement and any applicable Rules and Regulations.

(b) *Serving Multiple Parcels.* Whenever home site utility connections, if any, are installed within the Property that serve more than one Parcel, the Owner of each Parcel served by such connections shall be entitled to full use and enjoyment of such portions of the utility connections as necessary to service his Parcel. Any such connection serving more than one Parcel shall be jointly maintained by the utility provider and/or each Parcel Owner using such connection.

4.05 Association's General Easement. The Association shall have a general easement over, across, through and under each Parcel and all Common Elements. The Association shall not enter any Parcel without reasonable prior notice to the Owner thereof, except in cases of emergency. Under the general easement, the Association has the rights to:

(a) exercise any right held by the Association under the Declaration or any Governing Document; and
(b) perform any obligation imposed upon the Association by the Declaration or any Governing Documents, including inspection of Parcels regarding compliance of uses thereon with the Governing Documents, pest and weed control and fire hazard management.

4.06 Easements for Encroachments. To the extent that any Parcel, Improvement, or Common Element encroaches on any other Parcel, Improvement, or Common Element, an easement shall exist for that encroachment, but such easement

shall not relieve an Owner of liability in the case of willful misconduct, or relieve any other person of liability for failure to adhere to the Plats and Governing Documents. [C.R.S. §38-33.3-214]

4.07 Emergency Access Easement. The Association hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar agencies or persons to enter upon the Property in the proper performance of their duties.

4.08 Owner Easements. Every Owner and its Guests shall have a perpetual right and easement of access over, across, and upon the Common Elements for the purpose of entering and exiting such Owner's respective Parcel. The Association shall take no action which unreasonably restricts any Owner or its Guests the right and easement of access over, across and upon the Common Elements, including the Association Roads, to its Parcel. The Owner easement rights shall be appurtenant to and pass with the transfer of title to such Parcel; provided, however, that such right and easement shall be subject to the following:

(a) the covenants, conditions, restrictions, Governing Documents, easements, reservations, rights-of-ways, and other provisions contained in the Declaration and the Plats; and

(b) the right of the Association to adopt from time to time and enforce any and all Rules and Regulations concerning the Elk Stream Ranch Subdivision as the Association may determine are necessary or prudent, subject to the terms of the Declaration and the Act.

[C.R.S. §38-33.3-216; C.R.S. §38-33.3-302; C.R.S. §38-33.3-312]

4.09 Driveway and Road Easements. Whenever a private Driveway is installed within the Property which by necessity in whole or in part lies upon more than one Parcel, or Parcels owned by Owners other than the Owners of the Parcel served, or is installed to serve more than one Parcel, the Owners of the Parcels served or to be served by such Driveways shall agree on the location of the Driveway. Owners coming to such agreement shall be entitled to full use and enjoyment thereof as required to service its Parcel or to repair, replace or maintain the same, and are hereby granted an easement to the full extent necessary therefore, subject to the approval of the Association regarding the Improvement, appropriate sharing of responsibilities of costs and maintenance between the benefitted and affected Owners, and any applicable Rules and Regulations.

4.10 Watercourse Easement. There is reserved for the benefit of the Association an easement for all watercourses, other bodies of water, irrigation ditches, and drainage ways; and any related pipes, pumps, and other equipment, over, across, and under all Parcels and Common Elements to the extent reasonably required to protect the Association's water rights, to prevent erosion and other damage to the Property and Common Elements, and to maintain and service the watercourses, drainage, and irrigation systems as existing or installed or maintained by the Association on the Property or pursuant to plans and specifications approved by the Board or the Design Review Committee.

4.11 No Construction Within Easements. No Improvement shall be made or constructed within any easement without the prior written approval of the Board and Design Review Committee.

4.12 Disputes as to Sharing in Costs. In the event of a dispute between Owners with respect to the construction or repair of common or shared utility connections, private Driveways or drainage or waterway features, or with respect to the sharing of the maintenance costs and expenses thereof, upon the written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute. The Board may make a Special Assessment regarding shared costs if appropriate against any or all of the Owners involved, which Special Assessment shall be collected and enforced in the manner provided by the Declaration.

ARTICLE 5

THE ASSOCIATION

[C.R.S. §38-33.3-301 to C.R.S. §38-33.3-319]

5.01 The Association. 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 Subdivision common interest community, and such non-profit corporation is maintained in good standing at the office of the Secretary of State of Colorado. The Membership of the Association at all times shall consist exclusively of all Parcel Owners. The Association is charged with the duties and vested with the powers prescribed by law and set forth in its Articles, Bylaws, the Declaration, and the Act. [C.R.S. §38-33.3-301]

5.02 Association as Trustee. With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee. [C.R.S. §38-33.3-318]

5.03 Association Governing Documents.

(a) *Governing Documents.* The Declaration and Plats created the Elk Stream Ranch Subdivision common interest community and set forth certain covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens applicable to the Property and Parcels. The Articles filed with the Colorado Secretary of State created the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations and Policies provide for the regulation and management of the Elk Stream Ranch Subdivision common interest community. These documents, together with the Act and other applicable law, constitute the Governing Documents of the Association and the Elk Stream Ranch Subdivision.

(b) *Conflicts.* If there is any conflict or inconsistency between the terms and conditions of the Declaration and the terms and conditions of the Act, the Act shall control. If there is any conflict or inconsistency between the terms and conditions of the Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of the Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

5.04 Bylaws. In addition to complying with applicable sections of the "Colorado Revised Nonprofit Corporation Act," articles 121 to 137 of title 7, C.R.S., the Bylaws of the Association must provide the information required in C.R.S. §38-33.3-306. [C.R.S. §38-33.3-306]

5.05 Powers of the Association. To the extent not inconsistent with the Act, the Association shall have all the powers of a non-profit corporation organized under the general non-profit corporation laws of the State of Colorado to regulate and manage the Elk Stream Ranch Subdivision common interest community, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Act, the Articles, the Bylaws, the Declaration and other applicable law. The Association shall have the powers set forth under the Act in C.R.S. §38-33.3-302, as it may be amended. The Association shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under the Act, the Declaration, the Articles, and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the Association, the common interest community, the Common Elements and the performance of the other responsibilities herein assigned. Except as expressly provided by the Act, provisions of the Act may not be varied by agreement, and rights conferred by the Act may not be waived.

The Association has the following powers:

(a) *Association Rules and Regulations.* The power to adopt, amend and repeal by majority vote of the Board such Rules and Regulations as the Association deems reasonable, including policies required by the Act and otherwise adopted by the Board. The Association Rules and Regulations shall govern the use of Common Elements by Owners and Guests, provided, however, that the Association Rules and Regulations may not discriminate among Owners and shall not be inconsistent with the Act or the Governing Documents. A copy of the Association Governing Documents as they may from time to time be adopted, amended, or repealed, shall be mailed, posted on the Association's website, or otherwise delivered to each Owner. Upon such mailing, posting or other delivery, the Association Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of the Declaration.

(b) *Budgets.* The power to adopt and amend budgets for revenues, expenditures, and reserves of the Association.

(c) *Management.* The power to hire and terminate managing agents and other employees, agents, and independent contractors, and to retain and pay for legal and accounting services for the operation of the Association, enforcement of the Governing Documents, or performance of any other duties or rights of the Association. The authority to delegate its powers and duties to committees, officers, employees, or to any person, firm or corporation to act as manager. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by any third party of any such duty or power so delegated. Any managing agent, employee, independent contractor, or other person acting

on behalf of the Association shall be subject to the Act and Governing Documents to the same extent as the Association itself would be.

(d) *Legal Proceedings.* The power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or Parcel Owners on matters affecting the common interest community.

(i) *Construction Defect Actions.* The Association shall comply with C.R.S. §38-33.3-303.5 regarding construction defect actions.

(e) *Contracts and Liabilities.* The power to make contracts and incur liabilities, and to borrow monies and grant security interests in the Common Elements and in the assets of the Association as collateral therefor.

(f) *Operation and Maintenance of Common Elements.* The power to regulate the use, maintenance, repair, replacement, and modification of Common Elements and cause additional improvements to be made as a part of the Common Elements consistent with the Declaration and the Governing Documents as the Association deems necessary or appropriate. The Association shall also take such actions and arrange for such maintenance as may be necessary or desirable for the upkeep of watercourses, Association Roads, and all other easements. These powers shall include the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired (by easement or otherwise) by the Association. Xeriscape landscaping is encouraged in Common areas that are landscaped. The Board, on behalf of the Association, may contract for the operation, management, and maintenance of Common Elements.

(i) In regulating the Owneres' use of Common Elements, the Association shall comply with C.R.S. §38-33.3-302.5 and Policy #19 - Use of Common Elements, including during the maintenance, repair, replacement, or modification of a Common Element.

(g) *Property.* The power to acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, however, Common Elements may be conveyed or subjected to a security interest only pursuant to C.R.S. §38-33.3-312.

(h) *Easements.* The power to grant easements, leases, licenses, and concessions through or over the Common Elements. The power to grant and convey to any third party such licenses, easements, and rights-of-way in, on or under any non-exclusive Common Elements as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of the health, safety, convenience and welfare of the Owners, for the purposes of constructing, erecting, operating or maintaining underground lines, cables, wires, conduits or other devices for the transmission of utilities; and any similar public or quasi-public improvements or facilities.

(i) *Fees.* The power to impose and receive any payments, fines, fees, or charges for the use, rental, or operation of the Common Elements, subject to the Association's written policy governing the imposition of fines.

(j) *Assessments.* The power to levy, collect and enforce the Assessments, charges and liens imposed, to impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association.

(k) *Preparation and Recordation of Documents.* The power to impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

(l) *Indemnification.* The power to provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance.

(m) *Assignment.* The power to assign its right to future income, including the right to receive Common Expense Assessments.

(n) *Facilities and Services.* The power to provide certain facilities, services and other benefits to the Owners.

(o) *Emergency Powers.* The Association or any person authorized by the Association may enter upon any Parcel in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable and any damage caused thereby shall be repaired by the Association.

(p) *Other Powers.* The power to exercise any other powers conferred by the Declaration or Bylaws, and to exercise all other powers that may be exercised under the Act, the Governing Documents and by Colorado non-profit corporations. The power to exercise any other powers necessary and proper to fulfill the purposes of the Governing Documents and for the governance and operation of the Association to protect the interests and general welfare of the Owners.

[C.R.S. §38-33.3-102; C.R.S. §38-33.3-104; C.R.S. §38-33.3-110; C.R.S. §38-33.3-302; C.R.S. §38-33.3-302.5; C.R.S. §38-33.3-303; C.R.S. §38-33.3-312; Policy #19]

5.06 Duties and Obligations of the Association. In addition to powers delegated to it by the Governing Documents, the Association or its Board shall have the duty of care required of fiduciaries of the Property Owners, duty of undivided

loyalty to the Association and its Owners, and the duty to act within the scope of authority regarding the conduct of all business affairs of the Association. The Association has the obligation to perform each of the following obligations:

(a) *Registration of Association.* The Association shall register annually with the Colorado Division of Real Estate (“DORA”), in the form and manner specified by the DORA.

(ii) *Annual Registration.* Except as otherwise provided in subsection (b) below, Association shall submit its annual registration a fee as set by DORA and the registration shall include the following information, updated within ninety days after any change:

(1) The name of the Association, as shown in the Colorado secretary of state's records;
(2) The name of the Association's management company, managing agent, or designated agent, which may be the Association's registered agent, as shown in the Colorado secretary of state's records, or any other agent that the executive board has designated for purposes of registration under this section;

(3) The physical address of the Association;
(4) A valid address; email address, if any; website, if any; and telephone number for the Association or its management company, managing agent, or designated agent; and

(5) The number of units in the Association.
(ii) *Exemption.* An Association is exempt from the fee, but not the registration requirement, if the Association has annual revenues of five thousand dollars or less or is not authorized to make assessments and does not have revenue.

(iii) *Annual Renewal.* The DORA registration is valid for one year. If the Association that fails to register, or whose annual registration has expired, its rights to impose or enforce a lien for assessments under C.R.S. §38-33.3-316 or to pursue an action or employ an enforcement mechanism otherwise available to it under C.R.S. §38-33.3-123 is suspended until the Association is validly registered pursuant to this section. A lien for assessments previously recorded during a period in which the Association was validly registered or before registration was required pursuant to this section is not extinguished by a lapse in the Association's registration, but a pending enforcement proceeding related to the lien is suspended, and an applicable time limit is tolled, until the Association is validly registered. The Association's registration in compliance with C.R.S. §38-33.3-401 revives a previously suspended right without penalty to the Association.

(iv) *Validity.* The Association's registration is valid upon DORA's acceptance of the information required by C.R.S. §38-33.3-401 and the payment of applicable fees.

(1) The Association's registration number, and an electronic or paper confirmation issued by the division of real estate, are prima facie evidence of valid registration.

(b) *Promote Responsible Governance.* To promote responsible governance the Association shall maintain accurate and complete accounting records, adopt policies, procedures, and Rules and Regulations as required by the Act, provide for Board and Owner education, make timely annual disclosures as required by the Act, conduct a reserve study as appropriate, create and adopt a budget on an annual basis, conduct audits as needed or required, provide for appropriate inspection and copying of Association records, and adopt other Policies as needed to comply with CCIOA and responsibly govern the Association. C.R.S. §38-33.3-209.4, C.R.S. §38-33.3-209.5.

(c) *Enforcement of Governing Documents.* The Association shall perform such other acts, whether or not expressly authorized by the Declaration, as may be reasonably necessary to enforce any of the provisions of the Declaration and the Governing Documents, including the enforcement of the covenants, conditions and restrictions contained therein.

(d) *Design Review.* The Association shall provide design standards adequate to function as a legally supportable basis for making decisions regarding Improvements to Parcels consistent with the Declaration, and shall establish a Design Review Committee to carry out its assigned duties.

(i) *Architectural and Landscaping Changes.* Decisions concerning the approval or denial of a Owner's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the declaration or in duly adopted rules and regulations or bylaws of the Association, and shall not be made arbitrarily or capriciously. [C.R.S. §38-33.3-302(3)(b)].

(e) *Access and Road Maintenance.* The Association shall establish and maintain adequate access to the Elk Stream Ranch Subdivision through other properties and maintain all Association Roads, bridges, and trail systems which are part of the Common Elements. The Association shall keep all such Improvements in good order and repair and in a neat and usable condition; and shall participate in any joint maintenance arrangement necessary to maintain any other access roads to the Property. The Association through its Board may establish a standing Property Management Committee to serve at its pleasure and assist the Board in carrying out these and any other assigned duties.

(f) *Protection of Natural Resources.* The Elk Stream Ranch Subdivision contains many unique natural resources including streams, meadows, forests, and wildlife populations. The Property is designed and developed to provide a limited number of single-family home sites within the Property, and is intended to be managed to preserve and enhance these natural resources for the present and future benefit of all Owners. The Association shall act to protect the natural resources within the Elk Stream Ranch.

[C.R.S. §38-33.3-113; C.R.S. §38-33.3-209.4 to C.R.S. §38-33.3-209.7; C.R.S. §38-33.3-303; C.R.S. §38-33.3-303.5; C.R.S. §38-33.3-316 C.R.S. §38-33.3-317]

5.07 Membership

(a) *Qualifications.* There shall be one Membership appurtenant to each Parcel in the Elk Stream Ranch Subdivision. 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.

(b) *Transfer of Membership.* The Association Membership of each Owner shall not be transferred, pledged, or alienated in any way except upon the transfer of legal and equitable title to said Parcel, and then only to the transferee of such title. Any transfer or encumbrance of a Membership other than as permitted herein shall be void and have no force or effect. Any valid transfer of legal and equitable title to said Parcel shall operate automatically to transfer said Membership to the new Owner thereof.

5.08 Meetings of Owners. Meetings of Owners shall be held in accordance with the applicable provisions of the Bylaws. The Owners shall hold at least one meeting annually.

(a) *Powers and Duties of the Owners.* A vote of the Owners, in accordance with the Governing Documents, is required to:

(i) Elect or remove the Directors of the Association;

(ii) Amend the Declaration in accordance with Section 11.03 of this Amended Declaration, which requires the affirmative vote or agreement of Parcel Owners of Parcels to which sixty-seven percent (67%) of the votes in the Association are allocated, and compliance with other provisions of Section 12.03;

(iii) Terminate the Association, the Declaration or the Elk Stream Ranch Subdivision common interest community in accordance with Section 12.02 of this Amended Declaration, which requires the affirmative vote or agreement of Parcel Owners of Parcels to which sixty-seven percent (67%) of the votes in the Association are allocated, and compliance with other provisions of Section 12.03 and the Act;

(iv) Determine the qualifications, powers and duties, or terms of office, of Directors, in accordance with Sections 3.01, 3.02, and 3.03 of the Bylaws and Article 8 of the Bylaws of the Association, which shall further require the approval of fifty-one percent (51%) of the votes of the Owners of the Association at a regular meeting or a special meeting of the Owners called for that purpose; or

(b) *Removal of Directors.* The Owners by a sixty-seven percent (67%) vote of all Owners present and entitled to vote at any meeting of Owners at which a quorum is present, may remove any Director, with or without cause.

[C.R.S. §38-33.3-303; C.R.S. §38-33.3-308; C.R.S. §38-33.3- 309; POLICY #4-2010; POLICY #8-2010]

5.09 Voting. The Association shall have a single class of voting membership, with each Parcel having a single Membership which shall be entitled to one (1) vote. Voting shall be conducted in accordance with the applicable provisions of the Bylaws and the Act. A Member who is delinquent in any sums owed to the Association is automatically suspended from having voting rights. A Member who has entered into a Repayment Plan with the Association shall have voting rights as long as the Member is not delinquent in making payments according to the repayment plan. If a member is delinquent in complying with the terms of the repayment plan, their voting rights are automatically suspended.

[C.R.S. §38-33.3-207; C.R.S. §38-33.3-309; C.R.S. §38-33.3-310]

5.10 Board of Directors and Officers.

(a) *Management of the Association.* The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws, as each may be amended from time to time. The Board shall be elected by the Owners in accordance with the provisions set forth in the Bylaws. 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/its duties as Directors, and shall owe the duty of undivided loyalty and honesty to Association and the Owners. Each Board member shall avoid actions of self-interest, self-dealing, or conflicting interests. The Board shall operate in accordance with applicable provisions of the Bylaws and Association Policies.

(b) *Directors.* The Board shall consist of three (3) Directors who shall be elected in accordance with the Bylaws. The number of Directors may be increased in accordance with the provisions of the Articles and Bylaws. The Directors shall hold office until the election or appointment of their successors, or as otherwise directed in the Bylaws. The Board may fill vacancies in its membership for the unexpired portion of any term.

(i) *Qualifications of Directors.* The Directors of the Association shall be individuals that are Owners of a Parcel in Elk Stream Ranch and in good standing. 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) *Personal Liability.* No member of the Board, or any committee of the Association, 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/them, acted in good faith and without wanton or willful acts or omissions.

(d) *Limitation on Powers of the Board.* Except as otherwise 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 the Directors of the Association;
 - (ii) Amend the Declaration;
 - (iii) Terminate the Association, the Declaration or the Elk Stream Ranch Subdivision common interest community;
 - (iv) Determine the qualifications, powers and duties, or terms of office, of Directors;
- [C.R.S. §38-33.3-303(3)(a), and Bylaws Sections 3.01, 3.02 and 3.03]

(e) *Removal of Directors and Committee Members.* The Owners, by a sixty-seven percent (67%) vote of all Owners represented and entitled to vote at any meeting at which a quorum is present, may remove any Director or committee member, with or without cause.

(f) *Investment of Reserve Funds.* With regard to the investment of reserve funds of the Association, the officers and members of the Board shall be subject to the standards set forth in C.R.S. §7-128-401, in accordance with C.R.S. §38-33.3-209.5.

(g) *Conflicts of Interest.* The Board and any committee thereof shall comply with the Association's Conflict of Interest Policy. [POLICY #7-2010]

[C.R.S. §38-33.3-303; C.R.S. §38-7-128 to 401; POLICY #3-2010, POLICY #4-2010; POLICY #7-2010]

5.11 Contracts.

(a) *Good Faith.* Every contract or duty of the Association imposes an obligation of good faith in its performance or enforcement.

(b) *Unconscionable Agreement or Term of Contract.* The court, upon finding as a matter of law that a contract or contract clause relating to the Association was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result. Whenever it is claimed, or appears to the court, that a contract or any contract clause relating to the Association is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence in accordance with C.R.S. §38-33.3-112.

(c) *Liability.* Neither the Association nor the members of its Board shall be liable for any act, omission or improper exercise by any third party of any properly delegated duty or power.

(d) *Management Contract.* The Association's contract with a managing agent shall be terminable for cause without penalty to the Association. Any such contract shall be subject to renegotiation. Any managing agent, employee, independent contractor, or other person acting on behalf of the Association shall be subject to the Act and Governing Documents to the same extent as the Association itself would be.

[C.R.S. §38-33.3-112; C.R.S. §38-33.3-113; §38-33.3-302]

5.12 Insurance. The Association shall at all times maintain insurance policies and coverage in compliance with the provisions of C.R.S. §38-33.3-313 and to the extent feasible in compliance with Fannie Mae and FHA guidelines regarding hazard, flood, and liability insurance.

(a) *Owner's Rights.* A Parcel Owner may file a claim against the policy of the Association to the same extent, and with the same effect, as if the Parcel Owner were a named insured if the following conditions are met:

- (i) The Parcel Owner has contacted the Board in writing, and in accordance with the Governing Documents, regarding the subject matter of the claim; and
- (ii) The Parcel Owner has given the Association at least fifteen days to respond in writing, and, if so requested, has given the Association's agent or representative a reasonable opportunity to inspect the damage; and
- (iii) The subject matter of the claim falls within the Association's insurance responsibilities.

(b) *Fidelity Insurance.* The Association shall maintain fidelity bonds or insurance covering anyone who handles or is responsible for funds held or administered by the Association, whether or not compensated for any such services. Fidelity bonds or insurance shall be in conformance with Fannie Mae and FHA guidelines to the extent practical. [C.R.S. §38-33.3-112; C.R.S. §38-33.3-113; C.R.S. §38-33.3-313; C.R.S. §10-4-110.8]

ARTICLE 6
ASSESSMENTS, COMMON EXPENSES, RESERVE FUNDS, BUDGETS,
FINANCIAL STATEMENTS, AND AUDITS
[C.R.S. §38-33.3-315; POLICY #5; POLICY #9]

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. [C.R.S. §38-33.3-316(6)].

(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 Subdivision shall be assessed the Common Expense Liability for each Parcel for 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 eight percent (8%) 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 periods shall commence on the first day of August of each year and terminate on July 31 of each 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 for any fiscal year prior to the first day of that fiscal year, 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. [C.R.S. §38-33.3-303(4)].

(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 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 a fiscal budget or an amendment to a fiscal 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 Owners, 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 whom 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 - Enforcement of Covenants and Rules]

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 Liability or credited to the Owners to reduce their future Common Expense Assessments or reserve fund accounts, as may be approved by the Owners at a regular meeting or a special meeting of the Owners 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 - Reserve Policy]

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]

ARTICLE 7 ENFORCEMENT AND REMEDIES

[C.R.S. §38-33.3-123; C.R.S. §38-33.3-316; POLICY #5; POLICY #6; POLICY #8]

7.01 Assessment Lien.

(a) *Statutory Lien.* The Association shall have a statutory lien on each Parcel for any Assessment levied against that Parcel and for any fines, late charges, penalties, interest and attorneys fees, disbursements and costs of collection imposed against the Owner of such Parcel under any Association Governing Document. All Assessment Liens of the Association shall be administered in accordance with the provisions of C.R.S. §38-33.3-316. The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the date set by any valid Association acceleration of installment obligations.

(b) *Priority.* An Assessment Lien is prior to all other liens and encumbrances on a Parcel, except:
(i) Liens and encumbrances recorded prior to the recordation of the original Declaration;
(ii) Liens for real estate taxes and other governmental assessments or charges against the Parcel; and
(iii) A First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent permitted by the Act.

(c) *Record Notice.* The recording of the Declaration constitutes record notice and perfection of an Assessment Lien on each Parcel. No further recordation of any claim of any Assessment Lien is required.

(d) *Extinguishment.* An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured thereby becomes due.

(e) *Legal Actions.* The Association is not prohibited from taking other actions or filing suits to recover sums secured by an Assessment Lien or from taking a deed-in-lieu of foreclosure. The Association shall be entitled to costs and reasonable attorney fees incurred by the Association in obtaining a judgment or decree in any action or suit brought by the Association.

(i) If any Member fails to timely pay assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

(ii) For any failure to comply with the provisions of the Governing Documents other than the payment of assessments or any money or sums due to the Association, the Association, any Member, or any class of Owners

adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

(iii) In any civil action to enforce or defend the provisions of the Governing Documents, the court shall award reasonable attorney fees, costs, and costs of collection to the prevailing party. [C.R.S. §38-33.3-123]

(iv) The remedies provided by the Declaration or the Act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in the Act or by other rule of law.

(v) Any right or obligation included in the Act or Declaration is enforceable by judicial proceeding. [C.R.S. §38-33.3-114].

(f) *Receivers.* In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments against the Parcel.

(g) *Foreclosure.* An Assessment Lien may be foreclosed in like manner as a mortgage on real estate. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

(i) The Association may only foreclose on the lien if the balance of the assessments and charges secured by its lien equals or exceeds six (6) months of common expense Assessments based on a periodic budget adopted by the Association and the Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific Parcel on an individual basis. The Board may not delegate its duty to act in this manner to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the Association or a holder or assignee of the Association's lien in connection with an action that is dismissed for this reason may be assessed against the Member. [C.R.S. §38-33.3-316(11)(a)].

(h) *Waiver of Homestead Exemptions.* By acceptance of the deed or other instrument of conveyance of a Parcel, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, as the same may apply to the Assessment Lien.

(i) *Claim of Lien.* Upon default of any Owner in the payment of any General, Special or Default Assessment required hereunder, the Association may cause a claim of lien to be recorded in the office of the Clerk and Recorder in the county in which the Parcel is situated. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Parcel against which the same has been assessed, and the name of the record owner thereof. Each delinquency shall constitute separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and relief of such delinquent sums and charges. The Association may demand and receive the cost of recording of such release before recording the same. Any purchaser or encumbrancer, acting in good faith and for value, may rely upon such notice of satisfaction and relief as conclusive evidence of the facts recited therein.

[C.R.S. §38-33.3-316]

7.02 Enforcement

(a) *Enforcement Methods.* All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. Each provision of the Declaration with respect to an Owner or a Parcel shall be enforceable by the Association by any and all remedies available at law or in equity, including, but not limited to, all or any combination of the following remedies:

(i) A proceeding for injunctive relief;

(ii) A suit or action to recover damages, including actions that may be brought in small claims courts pursuant to C.R.S. §13-6-403;

(iii) In the discretion of the Board, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from participation in any Association affairs, including voting; and

(iv) The Association acting through the Board shall have all other rights and remedies available to it under the Declaration and Governing Documents, at law or in equity.

(b) *Legal Proceedings.* If any Parcel Owner fails to timely pay Assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

(c) *Owner's Right of Enforcement.* Except as otherwise provided herein and for any failure to comply with the provisions of the Governing Documents other than the payment of Assessments or any money or sums due to the Association, any Parcel Owner, or any group of Parcel Owners adversely affected by such failure to comply shall have the

right to enforce any or all of the provisions of the Governing Documents with respect to any Parcel within the Property, by any and all remedies available at law or in equity. Any such Owner or group of Owners may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

(d) *Attorney Fees.* In any civil action to enforce or defend the provisions of the Governing Documents, the court shall award reasonable attorney fees, costs, and costs of collection to the prevailing party.

(e) *Outcome of Litigation.* In connection with any claim in which a Parcel Owner is alleged to have violated a provision of the Governing Documents and in which the court finds that the Parcel Owner prevailed because the Parcel Owner did not commit the alleged violation, the court shall award the Parcel Owner reasonable attorney fees and costs incurred in asserting or defending the claim; and the court shall not award costs or attorney fees to the Association. In addition, the Association shall be precluded from allocating to the Parcel Owner's account any of the Association's costs or attorney fees incurred in asserting or defending the claim. With regard to any litigation regarding enforcement of the Governing Documents, a Parcel Owner shall not be deemed to have confessed judgment to attorney fees or collection costs.

(f) *Time Limitation on Actions.* Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the Governing Documents, or to compel the removal of any building or Improvement because of the violation of the terms of any such provision unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained. [C.R.S. §38-33.3-123(2)]

(g) *Non-Waiver.* Failure by the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, Assessment, charge, lien or other provision of the Declaration or any other Governing Document shall in no way be deemed to be a waiver of the right to do so thereafter. No action shall be brought against the Association for or on account of its failure to bring any action for any breach of the Declaration.

(h) *Violations and Nuisances.* Every act or omission whereby any provision of the Governing Documents is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Association or any Owner or Owners of Parcels with the Property.

(i) *Violation of Law.* Any violation of any state, municipal or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the Property, is hereby declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures set forth in the Governing Documents.

(j) *Remedies Cumulative.* Each remedy provided by the Governing Documents is cumulative and not exclusive.

[C.R.S. §38-33.3-123]

7.03 Administrative Enforcement Measures. The Board, or the DRC subject to the Board's approval, may establish procedures and rules to address covenant violations as administrative enforcement measures.

(a) *Enforcement.* If an Owner violates any term or condition set forth in the Governing Documents, or any conditions of a DRC approval, the Board or the DRC with respect to DRC decisions, shall have the following rights and remedies:

(i) By written notice to the Owner, request that the Owner cure the violation within a reasonable period of time as stated in the written notice;

(ii) By written notice to the Owner, revoke any approval previously granted to the Owner by the Board or DRC as applicable, in which event the Owner shall, upon receipt of such notice, immediately cease any activity regarding the prior approval, including any construction, alteration or landscaping covered by the approval so revoked; and

(iii) Following an opportunity for the Owner to be heard regarding the matter by an impartial decision maker, the Board may enter upon the Owner's Parcel and cure such violation on behalf of the Association at the Owner's sole cost and expense and cure the default or violation. If the Association cures any such violation, the costs and expenses thereof shall be assessed to the Owner as a Default Assessment. The Owner shall pay to the Association the amount of the Default Assessment within thirty (30) days after the Owner receives notice of the Default Assessment from the Association or as otherwise directed by the Board.

(b) *Disrepair.* If any Owner permits any Improvement which it is responsible to maintain to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Board may take action to enforce the condition of disrepair as a violation of the Governing Documents.

7.04 Fines.

(a) Notwithstanding any provision of the Act or Governing Documents to the contrary, the Association may not fine any Parcel Owner for an alleged violation unless:

(i) the Association has adopted, and follows, a written policy governing the imposition of fines; and

(ii) the policy includes a fair and impartial fact-finding process concerning whether the alleged violation actually occurred and whether the Parcel Owner is the one who should be held responsible for the violation. This process may be informal but shall, at a minimum, guarantee the Parcel Owner notice and an opportunity to be heard before an impartial decision maker.

(b) An "impartial decision maker" means a person or group of persons who have the authority to make a decision regarding the enforcement of the Association's covenants, conditions, and restrictions, including its architectural and design requirements and the other Rules and Regulations of the Association, and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general Membership of the Association. If, as a result of the fact-finding process it is determined that the Parcel Owner should not be held responsible for the alleged violation, the Association shall not allocate to the Parcel Owner's account any of the Association's costs or attorney fees incurred in asserting or hearing the claim. Notwithstanding any provision in the Act or Governing Documents to the contrary, a Parcel Owner shall not be deemed to have consented to pay such costs or fees.

[C.R.S. §38-33.3-209.5]

ARTICLE 8 DESIGN REVIEW

[C.R.S. §38-33.3-303; POLICY #3; POLICY #4;
POLICY #5; POLICY #8; POLICY #11]

8.01 Improvements to Parcels. All construction of Improvements on a Parcel and any alteration to the exterior appearance of any existing Improvement on a Parcel shall require written approval of the Design Review Committee for the purposes of determining compliance with the Declaration and Governing Documents, in accordance with adopted DRC Design Review Procedures. The Board may act in the same capacity in the absence of the action of the DRC.

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

(i) Review all proposals for Improvements within Elk Stream Ranch Subdivision;

(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.

(b) *Scope.* The DRC review shall be limited to compliance with the Elk Stream Ranch Subdivision Declaration and all applicable Governing Documents including the Design Review Procedures. The Member shall be separately responsible for compliance with any applicable federal, state, county or local laws, rule and regulations, including applicable building, plumbing and electrical codes, health department regulations, and all other regulations and laws outside of the Governing Documents. Such responsibilities include obtaining any permits or approvals of other governing entities.

8.02 Design Review Committee.

(a) *Design Review Committee.* The DRC is established as a standing committee of the Board and its members are appointed by the Board and serve at the pleasure of the Board.

(b) *Conduct.* The conduct of the DRC shall be in accordance with the provisions of the Bylaws and Governing Documents of the Association.

8.03 Annual Inspection of Elk Stream Ranch Subdivision.

(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 Subdivision to assess the compliance of the external appearance of Improvements with the Governing Documents.

ARTICLE 9 COVENANTS, CONDITIONS AND RESTRICTIONS

[C.R.S. §38-33.3-205; POLICY #5; POLICY #11]

9.01 Applicability. Except as otherwise provided in the Declaration, the covenants, conditions and restrictions set forth in the Declaration shall apply to all Parcels and Common Elements. Any use, condition, covenant or restriction addressed in this Article may be subject to additional Rules and Regulations contained in the Governing Documents.

(a) *Additional Laws and Regulations.* The covenants, conditions and restrictions in this Article 9 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.

(b) **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.

9.02 Governing Documents. Each Owner shall comply with, and shall require its Guests to comply with, all provisions of the Governing Documents that apply to such Owner or such Owner's Parcel.

9.03 Compliance with Laws. Nothing shall be done or kept at the Property or on any Parcel in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

9.04 Compliance with Insurance. Except as may be approved in writing by the Association, nothing shall be done by any Owner and nothing shall be kept at the Property or on any Parcel by any Owner that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance. [C.R.S. §38-33.3-313]

9.05 Use of Parcels.

(a) *Residential and Limited Agricultural Uses Allowed.* All Parcels shall be used primarily for Residential Uses. One (1) single-family residence with a garage (attached or detached), one (1) guest house and additional ancillary buildings for ranch and agricultural purposes for up to a total not to exceed five (5) Buildings are allowed for each parcel. A 'Building' shall consist of a detached structure enclosing a minimum of 80 square feet within its walls or supports.

(i) *Limited Agricultural Uses Allowed.* Limited agricultural use, such as horse breeding or training, cattle or llama raising, hay growing, or other similar agricultural uses are allowed, provided that the number of livestock on a Parcel shall not exceed one animal per five acres, and any such uses shall be reasonably conducted in an effort to minimize any disturbance to neighboring Parcel Owners. Commercial agricultural uses such as feedlots, pigs or pig farms, sheep or sheep farms, slaughterhouses, and other such operations which could cause a nuisance to other Parcels are prohibited.

(ii) *Agricultural Uses Subject to Review.* Owners shall submit proposals for permitted agricultural uses and home-based occupations to the Design Review Committee for approval prior to conducting operations, which proposals shall describe the type of animals, the operations, and any related barns, corrals or other structures along with proposed designs. The DRC shall review the proposals for agricultural uses in the same manner as proposals for other Improvements, and shall approve, require changes, or deny the proposal based on the criteria herein, in the Design Review Procedures, and whether the proposed operation can be conducted in harmony with neighboring Parcels and the character of Elk Stream Ranch.

(iii) *Commercial Uses Prohibited.* Except as approved by the DRC for limited agricultural uses or acceptable home based occupations, no business or commercial building may be erected on any Parcel and no businesses or commercial enterprise or other non-residential use may be conducted on any part of the Property. Commercial use includes hunting on any Parcel.

(iv) *Home-based Business Uses.* Certain home occupations permitted by Montezuma and La Plata County Zoning Ordinances, as applicable, may be maintained within the main dwelling although no commercial signage/advertising will be allowed anywhere within the Common Elements of the Elk Stream Ranch Subdivision. A home-based business or occupation may be operated in a residence provided it does not interfere with the residential character of the neighborhood or Elk Stream Ranch Subdivision, is secondary to the use of the residence as a dwelling place, causes no undue parking or traffic problems, and has no outward appearance of business or commercial use.

1) Home occupations, rental activity, and permitted agricultural uses shall not: create significant vehicular traffic; require storage of any significant materials, machinery, inventory or other items; require processing of materials or the finish of products or the assembly of parts produced off-site; require significant additional parking at such Parcel, whether for customers, delivery or otherwise; or otherwise violate any provision of the Declaration. Retail businesses on the Property are strictly prohibited.

(v) *Residential Use Restrictions.* Except as otherwise expressly permitted by the Declaration or in the Governing Documents or other Association approval, an Owner of a Parcel, after Improved with a residence, may use such residence only as a permanent or vacation residence for itself and its Guests. No Owner shall lease its residence for less than a period of three (3) months. No Owner of a parcel with a residence shall conduct any hospitality business, profession, occupation or trade involving the residence from its residence, including, without limitation, the operation of a "corporate suite," "short term suite," "bed and breakfast," "chalet," "time-share," "interval ownership," plan or similar

plan, or any use that would contravene applicable laws, regulations, or policies with respect to the eligibility of the Elk Stream Ranch Subdivision or any Parcels therein to qualify for federally-backed mortgage programs.

(b) *Use of Common Elements.* All Owners and their Guests may use the General Common Elements and the Limited Common Elements designed to serve their Parcels for the purposes for which such Common Elements are intended. Neither an Owner nor a Guest may use any Common Element in any manner that unreasonably interferes with the rights of other Owners in and to the Common Elements. No Owner shall cause, or permit its Guests to cause waste to any Common Element. The Owners rights to use the Common Elements are subordinate and subject to all of the rights and powers of the Association with respect to the Common Elements, including, without limitation, the Association's right and power to adopt rules regulating the use of the Common Elements.

(c) *Land Use Limitations.* The following land uses are specifically prohibited in Elk Stream Ranch Subdivision:

(ii) *Hunting.* No hunting and no discharge of firearms may be conducted in the Elk Stream Ranch Subdivision except to protect an Owner or Guest from potential danger. All Hunting activities shall be conducted in accordance with Policy #18.

(iii) *Vehicles.*

1) *Recreational Vehicles.* The use of all on- and off-road vehicles, including but not limited to, trucks, automobiles, motorcycles, and snowmobiles, ATV's, "dirt bikes", and other "off-road" type recreational vehicles shall be confined to designated Association Roads within the Elk Stream Ranch Subdivision and any easements established for common recreational use and in conformance with the Governing Documents. A Member may use such Recreational Vehicles on their own Parcel as long as the use does not create hazards, nuisances, damage to Common Elements or other problems.

2) *Inoperable Vehicles.* All vehicles located on a Parcel must be operational and must have current licenses. Any motorized vehicle or watercraft that is inoperable for a period of longer than thirty (30) days shall be stored in a closed garage, barn or other permanent structure. No vehicle may be left on a Parcel when the Member vacates property after seasonal use unless stored in an enclosed garage, barn or other permanent structure.

3) *Campers.* A camp trailer, motor home or pick-up camper may occupy a Parcel for recreational purposes only, and shall not become a permanent dwelling nor be left on Parcel when not in use unless stored in an enclosed garage, barn or other permanent structure. Recreational vehicles and campers in actual use by Owners and Owner's Guests are allowed where feasible on a Parcel for a period not to exceed fourteen (14) days at any time for a maximum thirty (30) days in any calendar year.

4) *Temporary Living Facilities During Construction.* A camper may be permitted to be used during construction of Improvements on a Parcel as part of a DRC approval, provided that the camper is located on the Parcel on which construction is occurring and it shall be removed within fourteen (14) days of substantial completion of the Improvement. Mobile homes or construction trailers may be temporarily placed on a Parcel for a period not to exceed twelve (12) months during construction of a permanent dwelling and only after obtaining approval from the DRC.

(iv) *Temporary Improvements.* No temporary structure or Improvement shall be placed upon any Parcel without DRC approval.

(v) *Mining and Drilling.* No Parcel shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or any other hydrocarbons, minerals, rocks, stones, gravel, or earth, except that the Association may, by appropriate permit, grant, license or easement, allow the drilling of wells for the extraction of water for domestic use and landscape irrigation if such use is in accordance with applicable governmental authorities. The Association may also grant an Owner the right to use certain materials from the Parcel in conjunction with the construction of an Improvement, subject to the DRC approval of the proposed land and material use.

9.06 Utilities.

(a) *Utility Connections.* All Parcels in the Subdivision have access to connect to the Domestic Water System, power and phone utilities that may be installed in the access and utility easement areas as shown on the Plats for utility services to the Parcels. All power, gas, electric, service access lines, telephone and cable TV and similar lines shall be located underground and shall follow designated driveways to the building site or as determined by the DRC. Disturbed areas shall be revegetated immediately after installation.

(b) *Utility Transmission Facilities.* All Improvements on a Parcel relating to the transmission of utilities to the Parcel, including power, gas, electric, service access lines, telephone and cable TV and similar facilities, shall be installed and maintained below the surface of the ground to the extent practical, and shall follow the Association Roads and designated driveway to the building site to the extent practical, even if the distance is longer than other possible service routes.

(c) *Member Responsibility.* The Owners shall contact the various utility companies and at their own expense, arrange for the connection of utilities from the primary distribution lines to their homesite or associated outbuildings.

Owners may install utility service lines for service to their Parcel subject to approval by the DRC and the requirements of the utility service provider.

(d) *Antennas.* No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted without the prior written consent of the DRC and appropriate screening.

(e) *Disturbed Areas.* All disturbed areas resulting from the construction of utility Improvements shall be revegetated immediately after installation.

9.07 Sewage Facilities. Each Member is responsible for developing sewer systems for their Parcel such as septic tanks and leach fields and obtaining a septic system permit from the Montezuma County or the San Juan Basin Public Health Department, as applicable. Prior to occupancy, all residential structures on any Parcel shall be provided at the Member's expense with adequate and approved water supply and sewage treatment facilities installed and approved in accordance with applicable state law and as enforced by county health departments. No septic tank or drain field shall be located within one-hundred feet (100') feet of a watercourse, irrigation ditch, drainage or well unless approved by the applicable county health department and the DRC. At any such time in the future that a sewer line for a sewer treatment facility or centralized spreading field is available for hookup to structures on the Parcels, and as the Board shall so determine, all Parcels shall cease utilizing septic tanks and drain fields and shall utilize such sewer treatment facility or spreading field. Septic, drain field and domestic well locations may be approved in locations outside of the designated Building Envelopes as a variance by the DRC.

9.08 Watercourses, Irrigation Ditches, and Drainage Features. All watercourses, irrigation ditches, and drainage features on any Parcel shall be managed in the best interests of the Association. There shall be no alteration, Improvement, or interference with any established watercourse, irrigation ditch, or drainage pattern over any Parcel within the Property unless approved in writing by the DRC. Any alteration, Improvement, or interference with any watercourse, ditch, or drainage shall also comply with applicable local, state, and federal regulation.

(a) *Alterations.* Proposed alterations of established watercourses, irrigation ditches, and drainage features shall be approved by the DRC and the Board. An established watercourse, ditch or drainage feature is one that exists on a Parcel prior to any grading or Improvement of the Parcel or Property, or as shown on any plans approved by the DRC or an approved Improvement site plan for the Parcel.

9.09 Maintenance of Existing Vegetation. Existing native vegetation shall not be over-irrigated or mowed to the extent that it is damaged or dies. Any alteration of vegetation within seventy-five feet (75') of all watercourses, as measured from the mean high-water mark, must have prior written approval of the DRC. To minimize impacts to existing vegetation, all utilities, improvements, hook-ups, wires, pipes, conduit, lines, cables and the like shall follow the designated Driveway to the building site to the extent practical, even if the distance is longer, except as otherwise approved by the DRC.

(a) *Fines.* The Association may not levy fines against a Member for violations of declarations, bylaws, or rules of the Association for failure to adequately water landscapes or vegetation for which the Member is responsible when water restrictions or guidelines from the local water district or similar entity are in place and the Member is watering in compliance with such restrictions or guidelines. The Association may require proof from the Member that the Member is watering the landscape or vegetation in a manner that is consistent with the maximum watering permitted by the restrictions or guidelines then in effect. [C.R.S. §38-33.3-106.5; C.R.S. §38-33.3-302(1)(k); C.R.S. §37-60-126(11)(a)].

9.10 Removal of Timber and Existing Vegetation.

(a) Removal of mature timber and other native vegetation shall be prohibited within Elk Stream Ranch Subdivision, with the following exceptions, provided they are made in accordance with the Community Wildfire Protection Plan ("CWPP"), if any:

(i) Removal and cutting of Gambrel Oak and other brush-type vegetation shall be liberally permitted to encourage the reduction of fire hazards by Owners, and prior to removal of such vegetation a brief sketch and description of the area to be cleared shall be submitted to the DRC for approval;

(ii) Mowing of grass in meadows shall be permitted;

(iii) Owners are responsible for annual noxious weed or plant abatement on their Parcel. Owners shall be responsible for removal of all noxious weeds from their Parcel and comply with Montezuma and La Plata County, as applicable, noxious weed control regulations. Musk weed, thistle or other noxious weeds and plants must be sprayed or eradicated to minimize the spread of such weeds and plants;

(iv) Plans for timber and existing vegetation removal for building construction, yards and gardens, private Driveway corridors, and view corridors must be submitted for review and approved by the DRC as Improvements prior to any removal activity, and shall comply with landscaping and re-vegetation requirements; and

(v) Other actions in accordance with the Elk Stream Ranch Subdivision CWPP.

9.11 Wildlife Management. The Property and each Parcel will be managed to promote a variety of wildlife populations and habitat. An important goal of the Elk Stream Ranch Subdivision is to maintain and enhance wildlife populations and habitat through a variety of management techniques including: restoration, establishment and maintenance of native vegetation and grass meadows, controls on dogs to prohibit wildlife harassment, restrictions on artificial feeding programs and bans on commercial hunting. No Member or Guest shall feed or provide food in any manner for wildlife within Elk Stream Ranch. Owners may construct protective fencing on their Parcel to protect any landscaping from wildlife damage subject to DRC approval in accordance with the Governing Documents.

9.12 Animals.

(a) *Household Pets.* No more than four (4) dogs and a total of four (4) cats or other indoor household pets may be kept on a Parcel, and no such household pets shall be kept, bred, or maintained for any commercial purpose. The right to keep household pets shall be subject to the Rules and Regulations and other Governing Documents, and any such right may be subject to temporary or permanent revocation by the Board if any animal behavior creates a nuisance.

(i) Household pets may be allowed to roam free of a leash when on the Member's Parcel, but shall not be allowed on other Parcels without consent. When in common areas, household pets shall be on a leash unless they can be effectively controlled by the Member's voice or other commands.

(b) *Assistance and Service Animals.* Reasonable accommodations shall be allowed for persons with disabilities with a documented need for an assistance or service animal.

(c) *Domestic Animals.* Domestic animals (cats and dogs) may be kept on any Parcel provided they are confined to that Parcel.

(i) *Enclosures.* Pens or other enclosures for sheltering domestic animals shall be maintained in a clean, orderly and sanitary condition.

(ii) *Nuisances.* In the event any animal becomes obnoxious, troublesome, dangerous, excessively noisy or destructive to wildlife, or if the Member is unable to or fails to confine the animal to their Parcel, the animal shall be removed at the Member's expense. Significant wildlife species inhabit this area and, if Owners do not take preventive measures concerning their domestic animals, interaction with wildlife will cause harm to the wildlife. Owners and their Guests should be aware that harassment or harm to wildlife by their domestic pets could result in civil and/or criminal penalties. Dogs shall not be allowed to bark so as to annoy other Owners. Excessive barking shall be considered a nuisance.

(iii) *Dog Runs.* All dog runs must be constructed with quality materials. Location of dog run must be hidden from view of the view corridors of adjacent Parcels.

(c) *Other Animals.* One farm animal per five acres owned are allowed (no pigs or sheep are allowed). Farm animals must be kept within fenced areas and shall not be allowed to create a nuisance for adjacent Parcels.

(d) *Animal Control.* All animals that are allowed under the Declaration shall be kept under the control of the Owner or tenant at all times. Improvements may be proposed for structures and facilities to ensure the proper control of allowed animals. Large animals must be contained in fenced areas with fencing materials sufficient to adequately control and manage any large animals. Electric fencing materials may be approved by the DRC in accordance with the Association's Policy on Temporary Electric Fences. Any animal found at large within the Elk Stream Ranch, other than cattle or other livestock as may be allowed under any Association-approved grazing lease, shall constitute a nuisance. All Owners are responsible for fencing out any livestock that may be located within the Property due to a grazing lease, whether or not the Owner elects to allow grazing on its Parcel. All dog runs and farm animal enclosures for animals other than large animals must be located within the building envelope.

9.13 Fencing.

(a) *Perimeter Fencing.* Perimeter fencing shall not exceed fifty-two inches (52") in height and shall not be of a solid, private nature.

(i) *Where visible from Association Roads.* Fencing that is significantly visible along Association roads shall be of wood post and rail materials except as approved by the DRC. Metal fencing shall be powder coated and/or treated with an accelerant with final finish being completed within 30 days of installation. The completed finish, on all fencing, shall blend in with the natural environment. PVC, Plastic, Chain-link, and Metal Pipe Fencing are not permitted. Fence height may not exceed fifty-two inches (52").

(b) *Wire Fencing.* All new wire fencing shall be barbless. Wire fencing shall be allowed on portions of Parcels not significantly visible from Association roads.

(c) *Electric Fencing for Large Animals.* Electric fencing materials for controlling large animals may be approved by the DRC in accordance with the Association's Policy on Temporary and Electric Fences

(d) *Other Fencing.* The DRC may approve any other proposals by Owners for fencing for purposes of wildlife management, snow management, erosion control and other stated purposes.

(e) *Maintenance.* It is the Member's responsibility to maintain fences which separate the Subdivision from adjacent agricultural land, stock drives or public roads used as stock drives.

(f) *Common Fencing.* Owners may share the expense of Parcel line fencing along common boundaries with other Owners. It is the Owner's responsibility to maintain fences which separate the Subdivision from adjacent agricultural land, stock drives or public roads used as stock drives.

9.14 Driveways. Driveways shall be constructed based on the following parameters:

(a) *Driveway Location Factors.* Driveways shall be located so as to create the least disturbance to the landscape, considering all relevant location factors. In designating the location of a driveway corridor, the DRC may consider factors such as the relationship of the location of the building area to the main road, traffic and sight considerations regarding the main road, topography and geographic challenges, and orientation regarding sun and light.

(a) *Driveway Corridor.* All driveways shall be constructed within the area designated as the driveway corridor on approved site plans, and shall be located so as to create the least disturbance to the landscape, considering all relevant locational factors.

(i) *Locational Factors.* In designating the location of a driveway corridor, the DRC may consider factors such as the relationship of the location of the Building Envelope to the main road, traffic and sight considerations regarding the main road, topography and geographic challenges, and orientation regarding sun and light.

(b) *Natural Grade.* Driveways shall be at or near the natural grade where possible, and cut and fill disturbances shall be held to a minimum and in no case shall exceed 4 to 1 slopes. Where it is necessary for a driveway to alter the natural grade, the driveway shall have ditches and culverts, and other features as needed to allow free flow of drainage water to other drainage and watercourse elements and prevent erosion and other hazards or nuisances.

(c) *Driveway Materials.* Driveways may be constructed of decomposed granite, asphalt, concrete, bricks or masonry pavers, and gravel, if maintained, is also acceptable.

(d) *Entrance Features.* Owners may construct entrance features on their Parcel, and they may be constructed of log, stone, steel or any combination thereof.

(e) *Drainage.* Where access roads for a Parcel intersects with the Association Roads, a drainage culvert of not less than 12 inches in diameter and twenty feet (20') in length shall be installed at the Member's expense. The culvert shall be installed during construction of the Member's Driveway. Private entrances shall also be constructed with a crown and ditches such that water does not drain onto Association Roads.

(f) *Maintenance.* All driveways and entrance features shall be maintained in good condition by the Member.

9.15 Landscaping. Landscaping on Lots that compliments the natural geographic setting of the Elk Stream Ranch Subdivision is encouraged. Landscaping proposals shall be reviewed based on the following general parameters:

(a) *Native Vegetation.* The native vegetation is to be preserved to the extent practical in all areas outside of the building area.

(b) *Outside of Building Envelope.* Landscaping in open meadows is prohibited except for the use of native grasses, trees and shrubs. The addition of certain trees is encouraged, including species such as spruce, pine, fir, mountain ash, maple, aspen and birch. Trees such as Russian Olive, Tamarisk and Eucalyptus are considered noxious and undesirable and are not allowed. If any such species exist on a Parcel they should be eliminated. Temporary watering systems may be allowed until any allowed landscaping is stabilized subject to the terms of an approved landscaping plan.

(b) *Within Building Area.* Landscaping in areas within building areas shall be based on an approved landscaping plan. Landscaped areas within building areas should provide a gentle transition to the surrounding natural character of the Parcel. Changes in landscaping over time, in general accordance with the character of an approved landscaping plan do not require DRC approval.

(c) *Landscaping Materials.* The use of native trees, shrubs and grasses in landscaping plans is preferred and encouraged. Sod shall be allowed only around the building area. Sprinkler systems designed for agricultural use, above-ground sprinkler systems, and wheel lines or center pivot systems shall not be permitted.

(d) *Excavation.* No excavation shall be conducted except in connection with Improvement plans approved by the DRC or Board. "Excavation" means any disturbance of the surface of the land that results in removal of earth, rock, or other substance to a depth of more than eighteen (18) inches below the natural surface of the land.

(e) *Defensible Space.* Owners are encouraged to establish adequate defensible space around structures and other Improvements regarding the high forest fire potential in the area, in accordance with the provisions of the Elk Stream Ranch CWPP. The guidelines in the Colorado State University Cooperative Extension, publication No. 6.302, "Creating Wildfire Defensible Zones," define Zone 1, Zone 2 and Zone 3 defensible zone requirements. Owners shall be responsible for development and maintenance of Zone 1, 2 and 3 defensible spaces around new structures before occupancy of residences and outbuildings.

(f) *Solar Access.* Landscaping shall not reduce or block solar access or scenic views to adjacent properties.

9.16 Site Improvement Restrictions. In addition to other applicable provisions of the Governing Documents, the following restrictions apply to the Improvement of a Parcel:

(a) *Single Family Residence.* Single family residential structures designed to accommodate no more than a single family, domestic help and Guests may be constructed on each Parcel. Guest quarters and barns may be attached or detached. All residence and other significant structures must be of a similar design and architectural style. Mobile, modular, and factory built homes are specifically and expressly prohibited.

(b) *Residential Construction Requirements.* All construction upon the property shall be new construction. No previously erected building, structure, or improvement shall be moved to or placed upon any Parcel. All primary residences must be built on a permanent foundation.

(c) *Number of Buildings Per Parcel.* No more than one primary residence with a garage (attached or detached), one guest house, and two barns may be allowed per Parcel.

(d) *Minimum Size.* Each primary residential structure erected upon a Parcel shall have a floor area of not less than 1,500 square feet and no more than 12,000 square feet. Detached Guest quarters shall have a floor area of not less than 1,000 square feet and no more than the greater of 3,000 square feet or 50% of the main residence square footage, exclusive of a basement, porch or garage. The square footage of garages, patios, decks, storage rooms located outside of the main residential area, porches, overhangs, and similar areas shall be excluded from the calculation of minimum size.

(e) *Height Limitation.* No portion of any residential structure shall be more than thirty-five feet (35') in height. Maximum building height is determined by measuring the vertical distance from the average ground level of the building footprint to the highest point of the roof ridge.

(f) *Preservation of Significant Views.* All views are important at Elk Stream Ranch including: views from a Parcel to the mountains, watercourses and stream areas and to significant features beyond; and views from surrounding Parcels through the subject Parcel to the mountains, watercourses and stream areas and to significant features beyond. Views shall be preserved. The objective is to create as many opportunities for views as possible, within the constraints posed by the site.

(g) *Unsuitable Building Areas and Unstable Slopes.* Unsuitable building areas shall be identified for a Parcel on Improvement plan drawings. Structures may be built on potentially unstable slopes only if they are engineered by a Colorado licensed Professional Engineer.

(h) *Setbacks.* No Improvements other than Driveways, domestic water wells, utility facilities, fences, pastures or landscaping shall be constructed within one hundred feet (100') of any Association Road, or within fifty feet (50') of the boundary of any other Parcel without DRC approval. No residence or privacy fencing shall be built within fifty feet (50') of any Parcel line. No outbuilding be built within fifty feet (50') of any Parcel line.

(i) *Maximum Allowable Site Impact Area Per Parcel.* The Site Impact Area per Parcel shall be an area identified on a site plan that is within or the same as the Building Envelope, and shall not exceed 125,663 square feet (or 2.85 acres), irrespective of the Building Envelope size. The Site Impact Area shall include the Building Footprint of any structure, the disturbed area of any excavation necessary for a building, any driveways located in the immediate vicinity of any building, and a 50-foot wide buffer around each building, driveway and excavated area. The driveway between the Building Envelope and Site Impact Area and an Association Road is not included in the calculation of the Site Impact Area. Wells, utilities, septic fields, landscaping, snow storage areas, fences and pasture areas are not included in the calculation of the Site Impact Area.

(j) *Clustering of Improvements.* Owners are encouraged to cluster buildings and major structures to preserve the open space character of the Elk Stream Ranch Subdivision. If terrain or other conditions prevent effective use of the designated Building Envelope or Site Impact Area, the DRC may allow modifications as may be appropriate and in accordance with the Governing Documents.

(k) *Building Envelopes and Site Impact Areas.* All Improvements shall be located within the Building Envelope and Site Impact Area as shown on any Map or as established in a site plan approved by the DRC. No portion of any building shall be any farther than six hundred feet (600') away from any portion of any other building on the same Parcel. All DRC-approved site plans or amended site plans showing the approved Building Envelope or Site Impact Area shall be recorded. Major relocation or alteration of a Building Envelope or Site Impact Area, as determined by the DRC, shall require approval of the Board and Members and the amendment of the Association Maps in accordance with the Governing Documents.

(l) *Order of Construction.* The primary single family residential structure or residence shall be the first structure built on a Parcel. If a Member desires to build a guest house prior to the primary residence, a deposit as defined in Section 5.02 of the Design Review Procedures shall be required.

9.17 Restrictions on Buildings and Improvements

(a) *Common Theme and Style.* All buildings and Improvements proposed for a Parcel must have a common theme and style of architecture. Preferred styles of architecture and building types include: log homes, ranch style, and farm. Pre-manufactured homes are discouraged. Greenhouses may not include plastic siding materials.

(i) *Relationship Between Structures.* The DRC will consider the architectural character proposed and the relationship of the main residence to other structures planned within the approved building envelope.

(ii) *Architectural Variety.* Within the theme and style chosen by the Owner/Applicant, the DRC will consider changes in the plane of walls and roofs, and other architectural efforts and features intended to provide variety, diversity, and visual interest to the overall effect of the development plan.

(b) **Building Exteriors**

(i) *Number of Exterior Wall Materials.* Exterior walls may be surfaced with one to four different materials.

(ii) *Color of Exterior Walls.* The color of exterior walls shall be muted earth tones that either match or compliment the surrounding natural environment.

(c) *Siding Materials.* All exterior siding materials shall have an appearance similar to those approved materials listed below and be of durable quality. Fire resistant siding materials are encouraged. Exterior siding materials recommended include: redwood, cedar, stone, log, brick, fiber cement siding (such as Hardiplank) and stucco. With DRC approval, durable and non-dentable metal that has been allowed to rust (such as corrugated steel or flat sheet weathering steel by Corten) may be used on lower portions of walls as protection from snow or as accent walls. Metal siding must be pre-treated prior to installation. Pre-treatments may include powder coating or chemical solution to give a finished 'rusted' appearance. Metal siding should match or compliment the surrounding natural environment. Untreated galvanized metal may not be installed to "rust/season" after the installation. Accent walls are not to exceed 50% of any exterior elevation plan. Brick-finished fireplace flues are allowed. Exterior siding materials consisting of vinyl, Pro-Panel (and similar), galvanized metal including steel, painted metal, concrete block, log-like siding, plywood and T-111 textured siding are not allowed.

(d) *Windows.* Windows may be constructed of finished wood or of wood covered with color-fast vinyl, painted metal or anodized aluminum or other finishes that may be approved by the DRC. Metal or metal covered windows must be coated with an approved finish.

(e) *Appurtenances.* No wall decoration, painted, relief or trimmed design work is recommended. Where it occurs, it should be confined to minor architectural accents that are compatible with the overall architectural design plan and theme for the Parcel and Building Envelope. Wood, stucco, concrete, and masonry-finished flues are permitted. Exposed metal chimneys are not permitted. Solar designs, collectors, and windmills shall be addressed on a case by case basis by the DRC.

(f) *Retaining Walls.* All retaining walls should be designed by a qualified engineer and are subject to DRC approval. All foundation walls or retaining walls with more than twelve inches (12") visible above grade shall have a surface treatment on the surface above finish grade that is compatible with the established architectural style and which shall constitute one of the exterior wall materials.

(g) *Exterior Lighting.* All outdoor lighting shall illuminate only the direct premises on which it is located and not neighboring Parcels. Exterior light sources should be shielded, with the principal illumination directed downwards, and the source of light should not be visible from the main Elk Stream Ranch Subdivision roads. All exterior lighting must be approved by the DRC. No "mercury vapor light" or similar lighting shall be allowed. All lighting must be approved by the DRC and be in accordance with the Association's Exterior Lighting "Dark Sky" Policy.

(h) *Scale of Buildings.* Changing the plane of walls, changing direction and providing some variety in the roof form is encouraged as it gives diversity and visual interest.

(i) **Roofs.**

(i) *Slopes.* Roof slopes should be between 5:12 and 12:12. Roofs with greater or lesser slopes will be considered on an individual basis.

(ii) *Shapes.* The following roof styles are encouraged: partial hip roof, gable roof, full hip roof, and joined shed roof. The following roof styles are also allowed but not recommended: single plane flat roof or single plane shed roof. The following roof types are not allowed: mansard roof, fake mansard roof, gambrel roof, curvilinear roof, domed roof, conical roof and A-frame.

(iii) *Overhangs.* Roofs should overhang walls a minimum of 24".

(iv) *Assembly.* Cold roofs are required unless the DRC determines otherwise.

(v) *Roof Surfacing Material.* The following types of roofing materials are encouraged: copper, zinc, slate, Kor-tan steel, Propanel, clay or concrete tile, and high grade asphalt shingles. Other similar roof materials that reflect new technology and products may be allowed. The following roofing materials are not allowed to surface roofs: highly reflective metal, sod, or wood materials. All roof flashing must be of a color harmonious with roof and upper wall surfacing unless approved by the DRC.

(vi) *Roof Appurtenances.* Skylights higher than one foot (1') above the roof plane or placed at an angle to the roof plane are not permitted. Wood, stucco, concrete, and masonry-finished flues are permitted. Exposed metal chimneys are not permitted. Solar designs, collectors, and windmills shall be addressed on a case by case basis by the DRC.

(j) *Antennas and Satellite Dishes.* No exterior antenna towers shall be placed upon, erected, or maintained on a Parcel that are significantly visible from the main Elk Stream Ranch roads or other Building Envelopes. Satellite dishes must be located within the Building Envelope and should not be visible as a prominent feature of the building or Improvement to which it is attached. Satellite dishes should be less than forty inches (40") in diameter. Wireless internet towers, antennas and dishes used as relays may be outside of the building envelope with DRC approval.

9.18 Maintenance of Buildings, Improvements and Landscaping.

(a) *Maintenance in Good Repair Required.* No Improvement upon any Parcel shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof. Any maintenance and/or repair of any Improvement shall not materially alter the appearance, color, or finish, of said Improvement without prior review and approval of the DRC. Owners are responsible for the appearance and maintenance of their Parcel in accordance with the stated purposes of the Elk Stream Ranch Subdivision. All Parcels must be kept neat and have an acceptable appearance. No accumulation of trash, junk, waste materials or weeds is allowed. All Owners will be responsible for removal of their own refuse.

(b) *Disrepair.* If any Owner permits any Improvement which it is responsible to maintain to fall into disrepair so as to create a dangerous, unsafe, unsightly, or unattractive condition, the Board may take action to enforce the state of disrepair as a violation of the Governing Documents.

(c) *Alteration of Common Elements and Other Parcels.* Except as otherwise expressly provided in the Declaration or Governing Documents, an Owner of a Parcel may not make any alteration of or install any Improvement to its Parcel that affects any Common Element or any other Parcel, without the prior written consent of the DRC or the Board.

9.19 Nuisances, Hazardous Activities and Unsightliness.

(a) *Nuisances.* No Person shall conduct any activity on the Property which creates a nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Member's Parcel so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Parcel or to its occupants. No noise, including but not limited to, noise or odorous disturbances created by people, animals, equipment, electronic device, audio receiver, television, stereo, musical instrument, and/or machinery, or any other audible nuisance shall be permitted which is offensive or detrimental to the occupants of any other Parcel in the vicinity thereof, or otherwise not in conformance with state law.

(i) *Odors.* No Member shall dump refuse or garbage on any Parcel nor shall a Member build, maintain, operate or construct, or in any way cause to be placed within fifty feet (50') of any Association Road or Parcel lines any structure or condition that will cause the accumulation or existence of animal waste or a condition causing an obnoxious odor.

(b) *Hazardous Activities.* No Member shall conduct any activity on any Parcel which is or might be hazardous to any other Person or property. No open fires shall be lighted or permitted on any portion of any Parcel except those controlled, and attended fires required for clearing or maintenance of land and previously approved by all applicable regulatory agencies, or those within a contained and safe area for cooking and recreational purposes, as long as no agency or Board issued burn ban is in effect. Fires for cooking and recreational purposes are allowed only if there is an adult Member or Guest present, and if not otherwise banned by the Association or other governmental entity.

(c) *Unsightly Articles and Vehicles.* No unsightliness shall be permitted on any Parcel. No unsightly articles shall be visible from the Association Roads within Elk Stream Ranch Subdivision. Without limiting the generality of the foregoing, trailers, motor homes, trucks (other than pickups), boats, tractors, vehicles (other than automobiles), campers (on or off a vehicle), snowmobiles, snow removal equipment, garden or maintenance equipment, camping and recreational equipment, dilapidated or unrepaired vehicles and similar equipment shall be kept screened from view from the Association Roads in Elk Stream Ranch Subdivision.

(i) *Towing of Vehicles.* The Association may tow vehicles from common areas only in compliance with C.R.S. §40-10.1-405(iv)(B).

(d) *Trash and Waste Materials.* Refuse, garbage, and trash shall be kept at all times in a covered container and appropriately screened from view from the primary roads in Elk Stream Ranch Subdivision. No lumber, grass, shrub or tree clippings, compost piles or plant waste, metals, bulk materials, unused building material, or refuse, trash, litter or other materials shall be kept, stored or allowed to accumulate on any Parcel except if appropriately screened from view from the Association Roads in Elk Stream Ranch Subdivision, except for slash piles intended to be burned in accordance with the Community Wildfire Protection Plan ("CWPP"). Firewood shall be stored on a Member's Parcel in a neat and orderly fashion. No burning of trash, garbage or other waste materials will be permitted on any Parcel or at the Property, except for weed and vegetation control in safe weather conditions, and the burning of slash piles in accordance with the CWPP.

All trash or refuse containers shall be wildlife proof, and shall only be allowed to remain outdoors from dawn to dusk on trash pick-up days.

(e) *Outdoor Lighting.* All outdoor lighting shall illuminate only the direct premises on which it is located and not neighboring properties.

9.20 Public Policy Considerations. Pursuant to C.R.S. §38-33.3-106.5, the Association shall not prohibit any of the following:

(a) *Flags.* The Association shall allow the display of flags on an Owner's Parcel when displayed in a manner consistent with the Act and federal law, and subject to the Rules and Regulations of the Association. Flags may be displayed on an Owner's property, in a window of a building, or on a balcony adjoining a building. The Association shall not prohibit or regulate the display of flags on the basis of their subject matter, message, or content; except that the Association may prohibit flags bearing commercial messages. The Association may adopt reasonable, content-neutral rules to regulate the number, location, and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole. [C.R.S. §38-33.3-106.5(1)(a)].

(b) *Signs.* The display of a sign shall be allowed by the Member or occupant of a building on property within the boundaries of a building or in a window of the building. The Association shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message, or content; except that the Association may prohibit signs bearing commercial messages. The Association may establish reasonable, content-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors.

(c) *Parking of Service Vehicles.* The Association shall allow the parking of a motor vehicle by the Owner or occupant of a Parcel on a road, Driveway, or guest parking area in the Elk Stream Ranch Subdivision if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(i) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(ii) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(iii) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(iv) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Parcel Owners or their Guests to use Association Roads, driveways, and Guest parking spaces within the Elk Stream Ranch Subdivision.

(d) *Clearing of Vegetation for Defensible Space.* The Association shall allow the removal by a Parcel Owner of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan or CWPP created for the property, and is no more extensive than necessary to comply with the CWPP. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. Any work conducted by an Owner shall comply with applicable Association standards regarding slash removal, stump height, revegetation, and contractor regulations. [C.R.S. § 38-33.3-106.5(e)].

(e) *Accommodations for Persons With Disabilities.* The Association shall allow reasonable modifications to a Unit, building or Common Elements as necessary to afford a person with disabilities full use and enjoyment of the Parcel in accordance with the federal Fair Housing Act of 1968, 42 U.S.C. Sec. 3604(f)(3)(A). [C.R.S. §38-33.3-106.5(g); C.R.S. §38-33.3-211].

(f) *Renewable Energy Devices.* The Association shall not effectively prohibit renewable energy generation devices, as defined in C.R.S. §38-30-168. Solar and wind devices must be allowed, subject to reasonable rules. See C.R.S. §8-30-168. [C.R.S. §38-33.3-106.5(1.5)].

(g) *Flammable Roofing Materials.* The Association shall prohibit the use of cedar shakes or other flammable roofing materials. [C.R.S. §38-33.3-106.5(2)]

(h) *Xeriscaping.* Any provision of the Governing Documents that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass is contrary to public policy under C.R.S. §37-60-125 and, on that basis, any such provision shall be unenforceable by the Association. The Association may adopt and enforce design or aesthetic guidelines or rules that apply to non-vegetative turf grass and drought-tolerant vegetative landscapes or regulate the type, number, and placement of drought-tolerant plantings and hardscapes that may be installed on a Member's property or on a limited common element or other property for which the Member is responsible. The Association may restrict the installation of nonvegetative turf grass to rear yard locations only. This paragraph does not supersede any subdivision regulation of a county, city and county, or other municipality. [C.R.S. §38-33.3-106.5(1)(i)(A)(I)].

(i) *Rain Barrels.* The Association shall not prohibit the use of a rain barrel, as defined in C.R.S. §37-96.5-102(1), to collect precipitation from a residential rooftop in accordance with C.R.S. §37-96.5-103.

(i) This provision does not confer upon a resident of a common interest community the right to place a rain barrel on property or to connect a rain barrel to any property that is leased, except with permission of the lessor; a common element or a limited common element of a common interest community or maintained by the Association; or attached to one or more other buildings, except with permission of the Owners of the other buildings.

(ii) The Association may impose reasonable aesthetic requirements that govern the placement or external appearance of a rain barrel. [C.R.S. §38-33.3-106.5(1)(j)].

(j) *Religious Items and Symbols on Entry Doors of Units.* The Association shall not prohibit the display of a religious item or symbol on the entry door or entry door frame of a unit; except that the Association may prohibit the display or affixing of an item or symbol to the extent that it:

(i) Threatens public health or safety;

(ii) Hinders the opening or closing of an entry door;

(iii) Violates federal or state law or a municipal ordinance;

(iv) Contains graphics, language, or any display that is obscene or otherwise illegal; or

(v) Individually or in combination with other religious items or symbols, covers an area greater than thirty-six square inches.

If the Association is performing maintenance, repair, or replacement of an entry door or door frame that serves a Member's separate interest, the Member may be required to remove a religious item or symbol during the time the work is being performed. After completion of the Association's work, the Member may again display or affix the religious item or symbol. The Association shall provide individual notice to the Member regarding the temporary removal of the religious item or symbol. As used in this provision, "religious item or symbol" means an item or symbol displayed because of a sincerely held religious belief. [C.R.S. §38-33.3-106.5(1)(c.5)].

(k) *Family Child Care Home.* The Association shall not prohibit the operation of a family child care home, as defined in section C.R.S. §26-6-102(13), that is licensed under part 1 of article 6 of title 26, CRS. This provision does not supersede any of the Association's regulations concerning architectural control, parking, landscaping, noise, or other matters not specific to the operation of a business *per se*. The Association shall make reasonable accommodation for fencing requirements applicable to licensed family child care homes.

(i) The Association may require the Member or operator of a family child care home to carry liability insurance, at reasonable levels determined by the Association's executive board, providing coverage for any aspect of the operation of the family child care home for personal injury, death, damage to personal property, and damage to real property that occurs in or on the Common Elements, in the unit where the family child care home is located, or in any other unit. The Association shall be named as an additional insured on the liability insurance the family child care home is required to carry, and such insurance must be primary to any insurance the Association is required to carry under the terms of the declaration. [C.R.S. §38-33.3-106.5(1)(k)].

9.21 Energy Efficient Measures. The Association shall not effectively prohibit the installation or use of an energy efficiency measure.

(a) An "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(i) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(ii) A garage or attic fan and any associated vents or louvers;

(iii) An evaporative cooler;

(iv) An energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device; and

(v) A retractable clothesline that is hidden from view from the Association Roads.

(b) The Association may establish reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, common interest communities shall consider:

(i) The impact on the purchase price and operating costs of the energy efficiency measure;

(ii) The impact on the performance of the energy efficiency measure; and

(ii) The criteria contained in the governing documents of the common interest community.

(c) Established Rules may not impede bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons and property.

(d) A Member does not have the right to place an energy efficiency measure on property that is owned by another person, leased (except with permission of the lessor), that is collateral for a commercial loan (except with permission of the secured party), or a Limited Common Element or General Common Element of a common interest community. [C.R.S. §38-33.3-106.7; C.R.S. §35-46-112; C.R.S. §35-46-113; POLICY #10-2010#5]

ARTICLE 10
CONDEMNATION
[C.R.S. §38-33.3-107]

10.01 Applicable Law. Any condemnation or eminent domain action affecting the Elk Stream Ranch Subdivision shall comply with the provisions of C.R.S. §38-33.3-107, other applicable provisions of the Act, and other applicable statutes or laws.

10.02 Condemnation of All Parcels. If the entire Elk Stream Ranch Subdivision is taken by condemnation or similar proceeding, the Elk Stream Ranch Subdivision shall terminate as of the date of the taking, and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association in accordance with the Act.

10.03 Condemnation of Fewer Than All Parcels.

(a) *Condemnation of Fewer Than All Parcels.* If individual Parcels or portions of Parcels, but less than all Parcels in the Elk Stream Ranch Subdivision are taken by condemnation or similar proceeding:

(i) any condemnation award payable in connection therewith shall be paid to the Association and Owners in accordance with the Act;

(ii) the Allocated Interests appurtenant to any Parcels or portions of Parcels taken shall be reallocated; and

(iii) the Declaration and Governing Documents shall be amended and any expenses related to such amendment shall be a Common Expense attributable to all Parcels.

10.04 Condemnation of Common Elements.

(a) *Condemnation of Common Elements.* If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Association and used by the Association:

(i) First, to repair any damage to Common Elements resulting from the condemnation or similar taking; and

(ii) Second, for any other Common Expenses.

(b) *Condemnation Award.* The Association shall not be required to pay all or any portion of the condemnation award received for the condemnation or similar taking of a Limited Common Element to the Owners of the Parcels served by such Limited Common Element, unless the Association deems it necessary or appropriate to do so.

ARTICLE 11
GENERAL

11.01 Term. The covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth in the Declaration shall run with and bind the Property and each Parcel until such a time as the Declaration and common interest community are terminated pursuant to the Declaration and the Act.

11.02 Termination. The Elk Stream Ranch Subdivision common interest community may not be terminated except in compliance with C.R.S. §38-33.3-218, C.R.S. §38-33.3-303 and other applicable provisions of law. [C.R.S. §38-33.3-218]

11.03 Amendment of Declaration. The Declaration may be amended only in compliance with C.R.S. §38-33.3-217, C.R.S. §38-33.3-303 and other applicable law, subject to the affirmative vote or agreement of Parcel Owners of Parcels to which sixty-seven percent (67%) of the votes in the Association are allocated. If the necessary votes and other required consents are obtained, the Association shall cause an amendment to the Declaration to be recorded in the Montezuma County and La Plata County records in accordance with the terms and conditions of the Act. [C.R.S. §38-33.3-217, C.R.S. §38-33.3-303]

11.04 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered in accordance with the Bylaws or other Governing Document provision.

11.05 Applicable Law and Interpretation.

(a) *Laws of Colorado.* The Declaration shall be construed and governed under the laws of the State of Colorado.

(b) *Liberal Construction.* The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and preservation of the Property in a manner designed to protect and enhance the aesthetic and economic value of the Property.

(c) *Interpretation.* Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of the Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and Property benefitted or bound by the covenant and the provisions hereof.

11.06 Severability. All provisions of the declaration and bylaws are severable. Any determination by any court of competent jurisdiction that any provision of the Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof. [C.R.S. §38-33.3-203, C.R.S. §38-33.3-111.]

11.07 Reference to Declaration. Deeds and instruments affecting any Parcel of the Elk Stream Ranch Subdivision may contain the provisions set forth herein by reference to the Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth herein shall be binding upon the grantee/Owner/Member or other person claiming interests or ownership through any deed or other instrument and its heirs, executors, administrators, successors and assigns.

11.08 Successors and Assigns of Declarant. Any reference in the Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

11.09 Captions, Titles, Number and Gender. All captions and titles of headings of Articles, sections and subsections in the Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof and shall not affect that which is set forth in any of the provision hereof. Wherever the context of the Declaration so requires, words used in the singular shall include the plural and words used in the plural shall include the singular. Wherever the context of the Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders, and words used in the feminine gender shall include the masculine and neuter genders.

11.10 Exhibits. All exhibits attached to the Declaration are a part of, and are incorporated into, the Declaration.

[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 Declaration of Covenants, Conditions, and Restrictions were duly adopted at a meeting of the Owners held on the ____ day of August, 2024, at which a quorum was present, called for the purpose of amending the Association’s Declaration, by the affirmative vote of the Owners representing no less than sixty-seven percent (67%) of the vote of the Owners of the Association, the results of which are on file in the Association records, as a complete replacement for the Association’s previous Declaration, and that the above and foregoing Amended and Restated Declaration now constitutes the Declaration of the Association.

DECLARANT:

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

ATTEST:

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

By: _____, Secretary
Its: Secretary
and member of the Board of Directors

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

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 DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

Exhibit A

Legal Description of Property Subject to Amended and Restated Declaration

Lots 1 through 35, Elk Stream Ranch Subdivision, Montezuma County and La Plata County, Colorado.