

**AMENDED AND RESTATED DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
ELK VALLEY ESTATES**

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**AMENDED AND RESTATED DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
ELK VALLEY ESTATES**

THIS AMENDED AND RESTATED DECLARATION (herein "Declaration") is made this 13 day of October, 2009, by the Owners of Estates within the ELK VALLEY ESTATES Homeowners Association ("Association").

This Declaration shall be deemed to replace and supersede all prior declarations recorded for the Association, including that certain Declaration of Protective Covenants, Conditions and Restrictions filed July 10, 1989, and recorded in Book 487 at Page 343 of the records of the County Clerk of Teller County, Colorado (the "County Clerk"), as amended by a Supplemental (Amended) Declaration of Protective Covenants, Conditions and Restrictions filed October 10, 1989, and recorded in Book 497 at Page 36, and as corrected by a Correction of Error Declaration of Protective Covenants, Conditions and Restrictions filed June 22, 1990, and recorded in Book 520 at Page 172, and as supplemented by a Declaration of Limited Easements and Rights-of-Way filed June 26, 1990, and recorded in Book 520 at Page 251, and as restated by a Restated Declaration of Protective Covenants, Conditions and Restrictions, as Amended, recorded on January 23, 1992, in Book 589, Page 82, and as further amended by a Supplemental Declaration, recorded on January 8, 1996, at Reception No. 442325 in the records of the County Clerk of Teller County (collectively the "Prior Declaration").

The Prior Declaration provides for and allows for this Declaration in Article VII, Section 1 as follows:

Section 1. Duration. The covenants, conditions and restrictions of this Restated Declaration shall run with and bind the land, and shall be binding upon the Owners, their successors and assigns and all persons claiming under them, until October 3, 2011. On October 3, 2011, this Restated Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of more than seventy-five percent (75%) of the Estates in Elk Valley Estates is submitted by them which amends, changes or revokes said covenants, conditions and restrictions, either in whole or in part, and is thereafter recorded.

Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217, the required approval of seventy-five percent (75%) of the Owners for amendment is now void, and the Association may amend its Declaration at any time (rather than waiting until October 3, 2011).

Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217, the amendment requirement for this Declaration is now 67% of the Owners, and an amendment may be submitted at any time by the Owners.

Pursuant to the requirements set forth in Article VII, Section 1 of the Prior Declaration, at least 67% of the owners have approved this Declaration by signing an instrument evidencing such approval.

NOW THEREFORE, the Prior Declaration is replaced and superseded by the covenants, servitudes, easements and restrictions set forth below:

RECITALS

The "Elk Valley Estates Community" or "Property" is located in Teller County, State of Colorado. The Property is described as the following property located in Township 13 South, Range 69 West of the 6th P.M., Teller County, Colorado:

In Section 7:

Southeast Quarter of Southwest Quarter (SE1/4SW1/4);

In Section 8:

Southwest Quarter (SW1/4);

West Half of Southeast Quarter (W1/2SE1/4);

Southwest Quarter of Northeast Quarter (SW1/4NE1/4); and

Southeast Quarter of Northwest Quarter (SE1/4NW1/4);

In Section 17:

Northwest Quarter (NW1/4);

Southwest Quarter (SW1/4); and

Northwest Quarter of Northeast Quarter (NW1/4NE1/4);

In Section 18:

Northeast Quarter (NE1/4);

Northwest Quarter (NW1/4) (including Government Lots 1 and 2, Section 18);

Northeast Quarter of Southeast Quarter (NE1/4SE1/4); and

That part of the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) (also known as Government Lot 3, Section 18), lying North of that land deeded to Michael H. Smith and Lisa Smith in Book 423, Page 28, Teller County Records; and

The property described in the Supplemental Declaration recorded on January 8, 1996 at Reception No. 442325.

All as identified by Map filed October 10, 1989, in Plat Book K, Pages 53 through 57, and any other such Map as identified in the Supplemental Declaration recorded on

January 8, 1996 at Reception No. 442325, recorded together with and subject to those rights and responsibilities described in Declaration of Limited Easements and Rights of Way recorded June 26, 1990, in Book 520, at Page 251, and instruments therein referred to, all in Teller County, Colorado records, incorporated herein by reference, all hereinafter referred to as "Elk Valley Estates Community" or "Property." This Declaration is being imposed by the Association upon the Property.

The Association deems it desirable to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, which will protect and enhance the value, use, occupancy and enjoyment thereof, all for the purposes of protecting the value, desirability and attractiveness of the Property as is for all parties having or acquiring any right, title or interest in the Property and will convey the Property subject to the covenants, conditions, restrictions, easements, charges and liens as hereinafter set forth.

In order to preserve and protect in perpetuity the significant relatively natural habitats of wildlife, plants, or similar ecosystems of Elk Valley Estates, a Deed of Conservation Easement In Gross (the "Conservation Easement") has been granted to the State of Colorado, Colorado Division of Wildlife Commission, and to protect the native wildlife habitat and elk migration corridor, winter range and calving areas, which Conservation Easement is recorded July 10, 1989, in Book 488 at Page 1 and March 2, 1990, in Book 509 at Page 312, and amended by instrument recorded June 22, 1990, in Book 520 at Page 171, all in Teller County, Colorado records, and incorporated herein by reference. The covenants and conditions contained herein are in addition to, and should be interpreted and enforced with consideration for, the provisions set forth in the Conservation Easement, especially but not limited to those "PROHIBITED USES" set forth in that document, and interpreted and enforced with consideration for all Governmental codes, zoning, regulations and requirements.

NOW, THEREFORE, the Association covenants and agrees that the Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of the Property and the owners of said interests, their successors and assigns.

THESE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS SHALL RUN WITH THE PROPERTY ABOVE DESCRIBED AND SHALL BE BINDING UPON ALL PARTIES HAVING OR ACQUIRING ANY RIGHT OR TITLE IN SAID PROPERTY OR ANY PART THEREOF, AND SHALL INURE TO THE BENEFIT OF EACH OWNER THEREOF AND ARE IMPOSED UPON SAID PROPERTY AND EVERY PART THEREOF.

ARTICLE I DEFINITIONS

The following terms shall be used in this Declaration or any amendment or supplement thereto and shall have the following meanings unless the context clearly indicates otherwise:

Section 1. Act: Shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et. seq., as it may be amended.

Section 2. Architectural Review Committee or Committee or ARC: Shall mean and refer to the committee provided for in Article II of this Declaration.

Section 3. Articles: Shall mean the Articles of Incorporation of Elk Valley Estates Homeowners Association, filed in the office of the Secretary of State of the State of Colorado, as said Articles may be amended from time to time.

Section 4. Association: Shall mean and refer to Elk Valley Estates Homeowners Association, a Colorado nonprofit corporation, and its successors and assigns. This term may be used interchangeably with "E.V.E.", "HOA", "E.V.E. Homeowners Association", and E.V.E. HOA.

Section 5. Board: Shall mean the Board of Directors of the Association.

Section 6. Bylaws: Shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 7. Common Area(s): Shall mean and refer to all easements and other portions of the Property dedicated for the common use and enjoyment of Owners of the Estates, as hereinafter defined.

Section 8. Community Facilities: Shall mean and refer to all easements, real property and the improvements thereon owned or leased from time to time by the Association (or any successor association of Estate Owners, if any) for the common use and enjoyment of the Owners, including without limitation any of the following: fences, gates, electronically controlled gates, keyed gates, private streets and roads, utility lines located in Common Areas and the pond and limited easement for fire equipment located on Estate 28 insofar as the same may be necessary to fight fires as set forth in the Declaration of Limited Easements and Rights-of-Way filed June 26, 1990, and recorded in Book 520, at Page 251 of the records of Teller County, Colorado.

Section 9. Estates: Shall mean and refer to those certain 33 separate parcels within the Property (numbered 1 through 20, 21A, 23A, and 25 through 35) and more particularly shown on the Map filed October 10, 1989, in Plat Book K, Pages 53 through 57 in the records of Teller County, Colorado, together with any additional parcels which are subjected to this Declaration. The terms "Estate" and "Lot" may be used interchangeably.

Section 10. Governing Documents: Shall mean the Declaration, the Map, the Articles of Incorporation, the Bylaws and Rules of the Elk Valley Estates Homeowners Association, as they may be amended.

Section 11. Owner: Shall mean and refer to the record owner, whether one or more persons or entities, of the fee interest in any Estate which is a part of the Property,

except an owner who holds title or interest in any said Estate as security to secure the performance of an obligation. The terms "Member" and "Owner" may be used interchangeably.

Section 12. Rules: Shall mean the rules adopted by the Board of Directors, as the same may be amended from time to time.

Other terms used in this Declaration and not defined herein but defined in the ARC Guidelines (e.g. "structure") will have the meanings ascribed to those terms in the ARC Guidelines.

ARTICLE II ARCHITECTURAL REVIEW COMMITTEE

Section 1. Establishment of Committee:

a. **INITIAL COMMITTEE.** The Architectural Review Committee (herein sometimes also called the "ARC" or "Committee") shall consist of three (3) persons as elected by the Owners during the annual meeting. The terms are for 1 year. The Board of Directors has authority to remove ARC members for cause and fill their vacancies by appointment. For purposes of the foregoing sentence, the term "for cause" shall mean excessive absences, failure or refusal to follow the ARC Guidelines, as defined below, or any cause that would disqualify that person from serving on the Board, as provided in Section 5.2 of the Bylaws. The address of the Architectural Review Committee shall be the principal office of Elk Valley Estates which is 23254 Highway 67 South, Divide, Colorado 80814, as may be amended from time to time and on file with the Office of the Colorado Secretary of State. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Guidelines, if any, shall be kept.

b. **VACANCIES.** Should any member of the Committee be unable to continue to serve, resign, or die, then a successor shall be appointed by the Board.

c. **ADOPTION OF GUIDELINES.** The Architectural Review Committee may, with the consent of a majority of the Board, adopt and from time to time amend, supplement, and restate guidelines for the planning, design, location, materials, construction, installation, maintenance, repair and replacement of improvements on the Estates in Elk Valley and the processes involved in the review and approval or disapproval of the foregoing (collectively, the "ARC Guidelines"); provided, however the ARC Guidelines shall not conflict or be inconsistent with the provisions of this Declaration, as amended, supplemented and/or restated from time to time. If any provision contained in this Declaration or in the ARC Guidelines adopted from time to time renders non-conforming an existing residence or other structure which has previously been legally existing in Elk Valley, the Owner of that residence or other structure shall nevertheless be allowed to maintain that residence or other structure in its current state and to replace or reconstruct that residence or other structure as previously existed in the

event of its damage or destruction.

d. **LIMITATION.** The establishment of the Architectural Review Committee and the systems herein imposed for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify, or otherwise have control over their residences as may otherwise be specified in this Declaration.

Section 2. Approval and Conformity of Plans. No structure, or component(s) or exterior appearance thereof, shall be erected, placed, altered, moved, modified, reconstructed, removed or demolished within Elk Valley Estates without the approval of the Architectural Review Committee. The Committee may make reasonable provisions and requirements of any builder or owner to insure the conformance of such structures when erected to the plans submitted and approved. The Committee may also make reasonable provisions and requirements of any demolition company and Owner to prevent or minimize any dust or debris from being cast onto other Lots, to insure the safe and prompt removal of any demolished building materials from Elk Valley, and to insure the appropriate restoration of the former building site if a replacement structure is not promptly commenced thereon.

a. **SUBMITTAL OF PLANS.** Plans and specifications for all buildings and structures to be erected within Elk Valley Estates shall be submitted to the Architectural Review Committee for review and approval prior to construction. The Committee shall approve or disapprove such plans within thirty (30) days from the receipt of complete plans. The ARC may determine what is considered complete, so as to commence the 30-day timeframe. Failure by the Committee to take action on approving or disapproving plans and specifications as submitted within said thirty (30) day period shall constitute approval thereof.

b. **REQUIREMENTS.** Presentations for approval by the Committee shall be made as follows:

- (1) Preliminary design stage of the design concept for approval;
- (2) Preliminary stake out of the structure for approval;
- (3) Exterior design, materials and colors for approval;
- (4) Driveway design, for purposes of reviewing snow removal feasibility;

and

(5) Building envelope and/or corral area description and drawing (This presentation will require a drawing in form acceptable to the Committee with the location of the building envelope and/or corral shown by a circle or other geometric form containing an area of up to two acres surrounding the location of the silver and maroon T-post which is located on the Estate or surveyed from two points, or, if the building envelope and corral areas are to be separate areas when permitted, then the second area shall be drawn or surveyed from a yellow and green T-post based on the two known points and forming a geometric form).

c. **COMPLETION AND COMPLIANCE.** Upon completion of a structure, the Committee will verify that the work has been completed in

accordance with the final approval of the Committee. The Committee shall have full control and the right to require that an Owner comply with the plans as finally approved by the Committee.

d. REVIEW CONSIDERATIONS. In approving or disapproving plans submitted to the Committee, it may take into consideration the general desirability of the structure and the design and harmony of the plan with the terrain and the surrounding neighborhood. The Committee may disapprove any plans submitted, or if construction has commenced, it may halt construction and require corrective action, if it finds lack of suitability of the materials with which the structure is to be, or is being, built, faulty workmanship, or an unacceptable manner in which the structure is being built.

e. LIMITATION; ENVELOPE. The Architectural Review Committee shall not refuse approval for the construction of a structure on the grounds that the Estate upon which it is to be constructed should not be used as a building site. The building envelope approved at initial sale may be changed only with the written approval of the Architectural Review Committee.

f. DISAPPROVAL; RESUBMITTAL. Upon the disapproval of the plans submitted, the Architectural Review Committee shall state in writing the reasons for such disapproval and shall give the Owner submitting the plans a reasonable time to make the plans acceptable and in conformity with the changes desired by the Committee. The changes required shall be accomplished by the builder or architect and the plans shall be resubmitted within the time given by the Committee.

g. PLANS AND DRAWINGS. All plans submitted to the Architectural Review Committee shall be in writing and shall be accompanied by drawings in sufficient detail in order to give the Committee an opportunity to determine the ultimate design, appearance, construction and materials to be contained in the proposed structure and to determine compliance with other requirements contained herein. The Committee may require the plans to be resubmitted in more specific detail than originally submitted to enable it to make a qualified determination and said requirement shall be considered disapproval by the Committee until sufficient detail is received.

h. ENGINEERING; STRUCTURAL DEFECTS. Plans and specifications are not approved for engineering design. By approving such plans and specifications, the Architectural Review Committee, the members thereof, and the Association shall not be deemed to have assumed liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

i. COMMUNITY FACILITIES. The provisions of this Article shall also apply to the construction of any improvements intended to be conveyed to the Association as Community Facilities.

Section 3. Design Compatibility. The Architectural Review Committee shall review all materials and colors to be used on structures to be built within Elk Valley Estates. Repainting and maintenance of dwellings, garages, fences or other structures shall be in accordance with the original scheme established for Elk Valley Estates by the Architectural Review Committees.

Section 4. Right to Appeal. An Owner whose plans have been disapproved or conditionally approved may appeal any decision of the Committee to the Board of Directors. The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in this Article and/or the architectural guidelines. Any decision of the Committee may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 5. Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and undue hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines. Financial hardship shall not be grounds for a variance unless such financial hardship is brought about by reason of the peculiar or unique topography or location of the Lot.

Section 6. Waivers. The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 7. Liability. The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

ARTICLE III USE RESTRICTIONS

Section 1. Single Family Residential. The Property described herein shall be used for private single family residential purposes only. No residence shall be erected, altered, or permitted to remain on any Estate other than one detached single family dwelling of not less than 2,000 square feet of finished and heated area on the main floor, with at least a two-car garage. At an Owner's option, the Owner may have one or more of the following structures: one guest cabin for intermittent occupancy, a private garage, and/or a barn, which are to be properly designed in order to conform to the overall design of the

single family dwelling. The square footage and number of levels of the single family dwelling shall be computed exclusive of basements (even if it is finished or has outdoor access), guest cabins, garages, barns or other outbuildings. All such structures are to remain within the two (2) acre "building envelope."

Notwithstanding the above, the record Owners of Estates upon the effective date of this Declaration need not comply with the above building guidelines and shall be subject to the former building guidelines under Article III, Section 1 of the Prior Declaration.

Section 2. Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of an Estate upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

a. **DEFINITIONS.** "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of an Estate by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Estate by the child or parent of an Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Estate as such Owner's primary residence shall not constitute leasing.

b. **SHORT TERM LEASES.** Short term occupancies and rentals (of less than 90 days) of Estates shall be prohibited, without prior written permission from the Association.

c. **WRITTEN LEASES.** All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Governing Documents of the Association.

d. **TENANT INFORMATION.** Each Owner who leases his or her Estate shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

e. **DEFAULT.** All occupancies, leases and rental agreements of Estates shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

f. **CONTACT INFORMATION.** All Owners who reside at a place other than the Estate shall provide to the Association an address, phone number(s), and email addresses (if available), where the Owner can be reached in the case of

emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

g. **RULES AND REGULATIONS.** The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 3. Trash and Unsightly Items. All trash, garbage containers, propane tanks, recreational vehicles, trailers, boats, machinery and equipment shall be prohibited unless hidden from public view at all times and must be shielded so as not to be unsightly, as determined by the ARC, from any street or other Estate within Elk Valley Estates.

Section 4. Modular or Temporary Structures. No modular or temporary structure shall be allowed. Notwithstanding the foregoing, a construction trailer may be maintained on a Lot during the period of construction of a residence but shall be promptly and safely removed without damage to the roads and Common Facilities when construction is completed. In no event shall the construction trailer be used as a residence during the period of construction, and all construction shall be diligently and continuously pursued to completion subject to delays caused by weather, shortage of materials, and other causes beyond the reasonable control of the Owner.

Section 5. Signs. No sign or signs of any kind may be displayed on an Estate, except Political Signs as permitted under Colorado law. "Political Signs" are signs intended to impact the outcome of an election or passage of ballot item. Political Signs may be displayed no earlier than 45 days prior to an election day and must be removed no later than seven days after. Political Signs may be displayed only in accordance with the Rules and Regulations or ARC Guidelines adopted by the Association, if any, which may prescribe size, number and location regulations.

Section 6. Preservation and Special Easements. Easements for preservation, installation and maintenance of utilities, and special easements, are reserved as shown on the map filed with the Clerk and Recorder of Teller County, Colorado.

Section 7. Nuisances. No obnoxious or offensive trade or activity shall be carried on upon any part of the property comprising Elk Valley Estates nor shall anything be done which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners residing within the property.

Section 8. Animals. Except as hereinafter provided, no animals, livestock or poultry may be kept on any Estate except horses, dogs, and cats. Notwithstanding the foregoing, one or more animals that are the subject of a bona fide 4-H project may be kept on an Estate but only if approved by the Board and all Owners of Estates abutting the applicable Estate. If approved, the Board and other Owners may impose such terms and conditions as they may determine in their sound discretion, including, without limitation, a limit on the number of such 4-H animals (including a single animal, if so

determined). A maximum of 6 animals combined is permitted, but with an individual maximum of 2 dogs, 2 cats and 3 horses (i.e., no more than the maximum of each type of animal within the 6 total is permitted). Variances to the foregoing numbers and types of animals will be considered on an individual basis, and with prior approval by the Board. Any enclosure for animals shall not exceed one acre, shall be a pole corral, or of like nature, designed in conformity with the single family structure, including the type of materials used, and must be submitted to the Architectural Review Committee for approval prior to the building thereof. Canines must be restrained at all times because of the wildlife in the area.

Section 9. Foundations. All foundations for buildings shall be designed on the basis of the recommendation from an approved soil testing laboratory.

Section 10. Water and Sewer. Owners shall drill water wells and/or install cisterns at their sole expense. Owners shall construct individual sewage facilities at their sole expense. All wells, cisterns, and sewage facilities shall meet or exceed the governmental requirements.

Section 11. Utilities. The main electric and telephone lines along the Southern boundary of the Property shall be above ground. All other utilities installed after the date of this document shall be installed underground.

Section 12. Solar and View. Owners shall not construct anything that materially blocks the sun, or the view, from another Owner's dwelling, or from a probable dwelling site if the dwelling is not yet constructed. An area, not to exceed 50 feet from the edge of each dwelling, may be cleared of trees, and maintained clear for solar and view purposes. Solar devices are permitted but must be part of the structure and not unsightly. The ARC may adopt regulations in the ARC Guidelines as to the dimensions, placement and external appearance of the solar devices.

Section 13. Landscaping and Trees. All natural surface areas disturbed by construction shall be promptly returned to their natural status by replanting of native grasses and trees. All sites, following completion of construction, shall be landscaped and completely planted in native grasses and trees. The Architectural Review Committee shall review limited construction of gardens, lawns and exterior living areas such as patios. Living trees naturally existing upon an Estate, except to the extent necessary for construction purposes or otherwise approved in writing in advance by the Architectural Review Committee, shall not be cut, trimmed or removed from the property except as may be approved by the Architectural Review Committee, or as required to conform to the Conservation Easement In Gross, to control disease and/or fire hazards.

Section 14. Fences. No fence, wall or similar type of barrier of any kind shall be constructed or maintained on any Estate for any purpose whatsoever, except such as are allowed by the provisions of the Deed of Conservation Easement In Gross. Any wire or chain fence, if allowed, must not be unsightly, and must be screened.

Section 15. County Requirements. All buildings erected on any Estate in Elk

Valley Estates shall meet the requirements of the County of Teller as to materials, specifications and design.

Section 16. Construction. Upon the commencement of construction of any structure, said construction shall proceed without interruption unless prevented by strikes or acts of God, to a point where the exterior of the structure is completed. Rough grading and finish grading will be done as soon as possible and all yards will be kept presentable with no trash, weeds, rubbish, debris or unsightly materials or objects of any kind being allowed to accumulate thereon which may be considered an eyesore or a windblown nuisance.

Section 17. Vehicles. No commercial vehicles, trailers, campers, boats, trucks or similar equipment shall be stored or parked on any Estate, street or driveway unless in a closed garage or unless the same are engaged in transportation to and from a residence. For purposes of this section, a 1-ton or smaller vehicle (sometimes known as a pickup truck) shall not be deemed to be a commercial vehicle. No vehicle, automobile, truck or other equipment of any kind shall be stored on any Estate or street for the purpose of making any repairs, rebuilding or the altering thereof. No vehicles shall be allowed to drive off of the streets and roads within ELK VALLEY ESTATES; said prohibited vehicles shall include but not be limited to cars, trucks, dirt bikes, motorcycles, all-terrain vehicles, snowmobiles and the like. Upon (i) the vote of 67% of the Owners at a duly called meeting at which a quorum is present in person or by proxy, or (ii) the written consent of 67% of the Owners, the Association may adopt rules and regulations regarding the storage and/or screening of personal vehicles (i.e. non-commercial vehicles) outside of the Owners' garages overnight.

Section 18. Estate Maintenance. Owners shall keep Estates properly maintained. No materials shall be stored on any Estate in Elk Valley Estates, except in connection with construction of improvements thereon. In the event that an Owner fails to keep his Estate properly or permits trash to accumulate thereon, the same may be replaced to a clean and acceptable condition by the Association and the cost of such work shall be charged to the Owner, to become a lien upon the Estate until paid.

Section 19. Mineral Rights. No drilling, quarrying, or mining operations of any kind shall be permitted upon, in or under the Elk Valley Estates property nor, subsequent to the recording of this Declaration, shall wells, tanks, tunnels, or mineral excavations or shafts be installed upon, in or under the surface of the property, except such temporary derrick or other structure designed for use in boring for water pursuant to well permit for each Estate, which shall be concluded as soon as possible.

Section 20. Aerials; Antennae; Other Similar Structures. Except as otherwise provided herein, no television, radio, or other electronic antenna or device of any type, whether on a structure or free standing, shall be erected, constructed, placed or permitted to remain visible provided the Architectural Review Committee may allow the same if screened, masked and/or properly camouflaged. No antenna or transmission device within a structure shall be allowed if the same shall interfere with the reception of AM/FM radio or television.

Notwithstanding the above, Permitted Antennas may be installed without ARC approval, subject to the following requirements. A "Permitted Antenna" is defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on the Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on an Estate.

Section 21. Lighting. Owners must consult the Architectural Review Committee as to the placement of outdoor lighting to maintain conformity throughout, and lights must not shine so as to invade adjacent Estates unduly. Lights must be directed down, not out, and shielded. Where visible from the main roads within Elk Valley Estates, the wattage of outdoor lights must be approved by the Architectural Review Committee.

Section 22. Setback Requirements. There shall be no general rule for the location of improvements with relation to the property lines, however, the location of such improvements shall receive the advance approval of the Architectural Review Committee as being within the specified building envelope and must meet the requirements of the County of Teller, Colorado.

Section 23. Conservation. Each and every provision of the Deed of Conservation Easement In Gross is incorporated herein by this reference as if fully set forth and all conditions and restrictions upon use set forth therein shall also be imposed upon the property by this Declaration.

Section 24. No Re-Subdivision. No Estate nor any other portion of the Property shall be subdivided or re-subdivided so as to create two or more parcels out of what was formerly one Estate or parcel, or substantially reduce the size of any Estate or parcel, without the express written consent of all Owners. Nothing herein shall be deemed to prohibit boundary adjustments in conformance with the above.

ARTICLE IV ELK VALLEY ESTATES HOMEOWNERS ASSOCIATION

Section 1. The Association. The Association is a non-profit Colorado corporation, charged with the duties and invested with the powers prescribed by law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. Board of Directors. The Association shall have a Board of Directors, as provided in this Declaration, and the duties and authority of which may be clarified further in the Articles, Bylaws, and Rules. Any action taken pursuant to the rights, powers, and duties granted to the Association by the Governing Documents may be taken by the Association only upon the vote of its Board (unless specifically reserved in the foregoing governing documents for action by the Owners). The affairs of the Association shall be conducted by, and the Association shall act through, its Board and such officers as the Board may elect or appoint, in accordance with this Declaration, the Articles, and the Bylaws, as the same may be amended from time to time. The Association may act only as determined by a majority vote of the Board, except where a vote of more than a majority of the Board is specifically required in this Declaration, the Articles or the Bylaws.

Section 3. Conveyance to Association. The Declarants sold and conveyed to Elk Valley Estates Homeowners Association all of the Common Areas and Community Facilities above defined as shown by the recorded plat thereof, for the use of all Owners and as an appurtenance to the Estate of each Owner, less and except all oil, gas, and other minerals, and subject to this Declaration, easements, restrictions, rights of way and zoning ordinances of record. The conveyance of that Access and Parking Easement on Estate 13 for National Forest described in Book 520 at Page 167 of Teller County, Colorado, records, as amended by instrument recorded at Book 582 at Page 194 of said records, is subject to the following restrictions: Hours of use of the National Forest Parking Area shall be limited to the period between one half hour before sunrise until one half hour after sunset each day. Said easement shall be limited to access and a parking lot, and shall not be used for social gatherings, parties, picnics, or other uses except for access to the National Forest and a parking lot utilized to obtain access to the National Forest. No music, loud noise, boisterous or obnoxious activity shall be permitted on said easement, and no artificial lights other than vehicle lights while the vehicle is in motion shall be permitted on said easement. Absolutely no fires shall be permitted within the easement boundaries.

Section 4. Powers and Duties of Association. The Association shall have such rights, powers, and duties as set forth in this Declaration, the Articles and Bylaws, as same may be amended from time to time, which shall include, but not be limited to, the following:

a. **LIABILITY INSURANCE.** The Association shall obtain comprehensive public liability insurance and directors' and officers' liability insurance, in such limits as it shall deem desirable, and workers' compensation

insurance and other liability insurance as may be applicable or desirable. Insureds may include the Association, the Owners, the Board, committee members, and managing agents (if any). The premiums for liability insurance are common expense included in the assessments made by the Association.

b. **OTHER INSURANCE.** The Board, at its option, may elect to cause the Association to obtain one or more blanket insurance policies or umbrella insurance policies, as to one or more of the types of insurance deemed advisable by the Board with such policy limits and insureds as may be determined by the Board. If such policy or policies are obtained, the premiums shall be common expenses paid from the assessments made by the Association.

c. **REPAIR.** Repair, maintain, replace, refinish or complete any Community Facility or improvement or portion thereof upon any Common Area.

d. **ROADS, ETC.** Construct, repair, replace, maintain, resurface or refinish any road improvement or surface upon any portion of the Common Area, whether used as a road, street, parking area, drainage area, or utility easement.

e. **TREES AND VEGETATION.** Maintain, remove, replace or treat injured and diseased trees or other vegetation in any such area, and plant trees, shrubs, and ground cover to the extent that the Association deems desirable for the conservation of water and soil or for aesthetic purposes subject to the limitations in the Deed of Conservation Easement.

f. **SIGNS.** Place and maintain upon any Common Area such signs as the Association may deem appropriate for the proper identification, use and regulation thereof.

g. **OTHER.** Do all such other and further acts which the Association deems necessary to implement and enforce the terms and conditions of this Declaration, and maintain, preserve and protect the Common Areas and Community Facilities and the beauty thereof, and in connection therewith to grant additional easements within the Common Areas and Community Facilities as deemed necessary, in accordance with the general purposes specified in this Declaration. The Association shall be the sole judge as to the appropriate maintenance, preservation and protection of all grounds within the Common Areas.

Section 5. The Rules. The Association may from time to time adopt, amend, repeal, and enforce rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of any area by any Owner, or by any lessee, invitee, guest, or family member of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended, or repealed, shall be available to each Owner.

Section 6. Enforcement. For each violation by an Owner, or lessee or their

respective family members, guests, or invitees, of the provisions of the Governing Documents, the Board may suspend an Owner's voting rights and (except for ingress and egress to and from Owner's Estate) the right of the Owner, or lessees, or their respective family members, guests, or invitees, to use the Common Areas and the Community Facilities, for so long as the violation continues. In no event shall the Association or Board be liable to one or more Lot owners by reason of the Association's or Board's delay or failure to enforce any Rule against another Owner, unless the Association's or Board's action or inaction is discriminatorily taken or withheld.

In addition to the suspension provided herein, the Board may do the following:

- a. **INJUNCTION.** Seek an injunction or other redress in a court of law. Any Owner or lessee against whom such injunction or redress is sought shall be liable for attorneys' fees and costs incurred by the Board on behalf of the Association, and such amounts may be collected in the same manner as assessments as provided herein. Any suspension or injunctive action must be approved by the Board, and all decisions of the Board shall be final.
- b. **FINES.** Levy fines for violation of the Governing Documents upon providing notice of the violation and an opportunity for a hearing to the Owner, as may be further clarified in an enforcement and fine policy adopted by the Board of Directors.
- c. **SELF-HELP.** Exercise self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Estate and the Owner as an assessment) or taking action to abate any violation of the Governing Documents.
- d. **REMOVAL.** Require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Estate in violation of the Governing Documents and to restore the Estate to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration.
- e. **RECORD NOTICE OF VIOLATION.** Record a notice of violation against the Owner and the Lot, and provide a copy of the record to the Owner.

The remedies provided in this paragraph are cumulative and may be exercised simultaneously with, and in addition to, the remedies provided in this Declaration for collection of assessments.

Section 7. No Personal Liability. No member of the Board, or of any committee of the Association, or any officers of the Association, or any manager of the Association

shall be personally liable to any Owner, or to any other party, including the Association, 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, or the Architectural Review Committee, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful misconduct. The Association shall indemnify such individuals from such liability in accordance with applicable Colorado law.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of an Estate shall be a member of the Association.

Section 2. Voting. Owners shall vote only by Estate, and each Estate shall have one vote, as further clarified in the Amended and Restated Bylaws. Fractional votes shall not be allowed.

Section 3. Rights of Members. Each member shall have such other rights, duties, and obligations as set forth in the Governing Documents as same may be amended from time to time.

Section 4. Transferability. The Association membership of an Owner shall be appurtenant to the Estate of said Owner. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of record of ownership to the Owner's Estate and then only to the transferee of ownership to such Estate, or by intestate succession, testamentary disposition, foreclosure of a deed of trust or mortgage of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Colorado. Any attempt to make a prohibited transfer shall be void. Any transfer of record of ownership to an Estate shall operate to transfer said membership to the new Owner thereof.

Section 5. Power to Borrow. The Association may borrow for Association purposes, but principal borrowings in the aggregate in excess of 25% of the then established annual dues of the Association shall require the prior approval of at least sixty-seven percent (67%) of the Owners. No Owners shall be required to become personally obligated on debts of the Association to third parties, unless they do so voluntarily. No debt financing may extend over a period of more than ten (10) years. The Association may not pledge real estate or fixtures, but may pledge its tangible personal property and may assign its income to secure its debts.

ARTICLE VI COVENANT FOR ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Owner of any Estate by acceptance of a deed therefor, whether or not it shall be so expressed in

such deed, is deemed to covenant, and agree to pay to the Association such assessments as may become applicable to their respective Estates, as provided below. Such assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent if any, shall be the personal obligation of the Owner of such Estate at the time when the assessment or other charges became or fell due. The annual assessment and such other assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Estate and shall be a continuing lien upon the Estate against which each such assessment or charge is made.

If any Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the assessments by waiver of the use or enjoyment of the Common Areas or Community Facilities or by abandonment of the Estate against which the assessments are made.

All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. All assessments shall be assessed against all Estates uniformly.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in Elk Valley Estates, for the maintenance and improvement of the Common Areas and Community Facilities, including, but not limited to, snow removal, road grading and repair, maintenance and electricity for the entrance area, and for maintaining the overall aesthetic beauty of Elk Valley Estates, insurance, and to cover the cost of services and materials incidental thereto and incidental to the operation of the Association, including the establishment of reserves for repair and replacement of capital items.

Section 3. Amount of Assessments; Limits on Increases. The amount of the regular annual assessment shall be uniform among all Owners and shall be based on an annual budget adopted annually by the Board, all as required by the Act. All regular assessments shall be made on an annual basis and shall be effective and levied as of January 1 of each calendar year. The Board may set the regular assessments in any amount for any assessment period; provided however, any increase shall be subject to the limitations set forth below unless the increase is first recommended by the Board and approved by the vote of at least sixty-seven percent (67%) of the Owners of the Estates subject to the increase. No regular assessment and no extended driveway assessment for any Estate shall be increased in any one year by more than twenty-five percent (25%) of the previous year's regular or extended driveway assessment, as applicable, unless otherwise approved by sixty-seven percent (67%) of the Owners.

Section 4. Date of Commencement of Assessments; Due Dates. The regular

assessment period shall be the calendar year. Each Assessment shall be established at least 15 days in advance of each assessment period. Written notice of the assessment (s) shall be sent to every Owner subject thereto. The due date (or dates, if made payable in installments) shall be established by the Board. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Estate have been paid.

Section 5 Special Assessments. Notwithstanding anything herein to the contrary, in the event that the Board determines that an emergency exists, or an unforeseen circumstance has occurred, which requires the Association to take immediate or prompt action in order to respond to such emergency or circumstance in the exercise of the Association's powers and duties, and that the Association's assets and finances are inadequate to so respond to such emergency or circumstance and to also pay when due the anticipated expenses for normal operations of the Association during the remainder of the assessment period, the Board shall call a special meeting of the Owners for purposes of voting upon a special assessment for responding to the emergency or circumstance.

Upon the affirmative vote of a majority of the Owners present at such meeting at which a quorum is present, the Owners may assess special assessments for the purpose of responding to such emergency or circumstance, subject to the limitations herein set forth. The special assessments shall not increase the base regular assessment for purposes of calculating the maximum assessments for the following year, and maximum assessments for the following year shall be calculated without regard to the special assessments. The due date for payment of such special assessments shall be established the Board.

Section 6. Supplemental Assessments. The Association shall have the right to impose as a supplemental assessment against any one or more Owners, as applicable and at any time, as provided in this Article, the following:

a. **MAINTENANCE/REPAIR.** Those amounts expended by the Association for the benefit of any individual Estate or any occupant thereof, including but not limited to maintenance or repair specific to an Estate (e.g., dead tree removal, trash removal, etc.), and maintenance, repair, and replacement to the Common Area or Community Facilities caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration; provided, however, the Association shall not undertake any such work until it has given the applicable Owner(s) written notice of the Association's intent to undertake such work (which notice shall specify such work in reasonable detail), and a reasonable opportunity for the applicable Owner(s) to complete the work, but the Association shall not be obligated to give such written notice and opportunity to cure if it reasonably deems emergency action necessary to prevent imminent danger to persons or property, but shall nevertheless give telephonic notice that it is undertaking such work. The Association shall have limited easement to enter any Estate to perform such work;

b. **FINES.** All fines and costs assessed against an Owner pursuant to the Governing Documents.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Each Owner of any Estate shall be deemed to covenant and agree to the enforcement of the assessments in the manner herein specified. If any assessment, or installment thereof, is not paid by the due date specified by the Board, the following remedies apply:

a. **LATE FEES/INTEREST.** Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within the grace period allowed by the Board, if any, after the due date thereof, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

b. **LAWSUIT.** Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Estate. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

c. **FORECLOSURE.** Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Estate at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Estate, the Board may take possession and rent said Estate or apply for the appointment of a receiver for the Estate without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 8. Assignment of Rents. If an Estate is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association; provided, such assignment shall not be enforced unless and until the Owner of the leased Estate is in default in the payment of that Owner's assessments as hereinafter provided. If the Assessments owed by the Owner of a rented Estate are more than 30 days delinquent, the Board may collect, and the occupant or lessee shall pay to the Board, the rent for any Estate owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Board's request. The Association shall send notice to the Owner by any reasonable means at least

10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Board's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Estate rental or a waiver of the Owner's obligations as provided in the Declaration. The Board shall not exercise this power where a receiver has been appointed with respect to an Estate or Owner, nor in derogation of the exercise of any rights to rents by the holder of a first lien security interest of an Estate. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Estate in the same manner as any other Assessment under this Declaration.

Section 9. Lien Priority. The lien of the Association under this Article is prior to all other liens and encumbrances on an Estate except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Estate (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Estate. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Estate shall not affect the lien for said Assessments or charges except that sale or transfer of any Estate pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Estate from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

ARTICLE VII GENERAL PROVISIONS

Section 1. Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 2. Amendment of Declaration. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon written approval of at least 67% of the eligible Association vote. Notwithstanding the foregoing, to the fullest extent permitted by applicable law, if any provision of this Declaration requires a vote of greater than 67% of the Members or requires unanimous approval of the Members, then amendment of that provision requires the same number of votes as specified in that provision or unanimous approval, as applicable. Further, if the Association or Board is

specifically prohibited from taking any action by any provision of this Declaration, then it shall take the unanimous vote of the Members to amend that provision to allow such action. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Teller County, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 3. Waiver. The Association shall have the right to waive in writing the application of any of the restrictions contained in this Declaration or in the Rules (but not assessments) in any instance where exceptional circumstances or conditions may exist, as determined in the sole discretion and sound judgment of the Board of Directors.

Section 4. Severability. Invalidity of any covenant, condition or restriction herein contained by the judgment of any court of competent jurisdiction shall not invalidate the remainder of the covenants, conditions and restrictions which shall remain in full force and effect.

Section 5. Notices. Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postpaid, to the last known address of the record Owner of the Estate as shown on the records of the Teller County Clerk and Recorder at the time of such mailing.

Section 6. Enforcement; Costs of Enforcement. The covenants, conditions and restrictions contained in this Declaration shall be enforceable by the Association, the Board, and any Owner of any Estate within ELK VALLEY ESTATES. Subject to the policies and procedures for such enforcement as adopted from time to time by the Association, including provisions for alternative dispute resolution as required by Colorado law, such enforcement may be made by an action at law or in equity brought against the persons violating or attempting to violate any of the covenants, conditions or restrictions herein contained. Such action may be brought to prevent or cure such violation by specifically enforcing the covenants, conditions or restrictions herein contained, including, but not limited to, requiring the removal of any unauthorized improvements, vehicles or other nuisance. The party bringing any such enforcement action may also seek damages for such violation. In no event shall the failure to enforce any covenant, condition or restriction be deemed a waiver of the right to do so thereafter. In any action to enforce this Declaration or the Rules, collect fines and/or damages or pursue other relief as a result of breach hereof, whether in a court of law or equity, or otherwise, the prevailing party shall be entitled to collect all of its costs and expenses (whether legal or otherwise), including attorney's fees, the costs of investigation, settlement, expert witnesses, additional costs incurred in enforcing this Declaration or enforcing and collecting any judgment rendered hereon and interest as permitted by law.

Section 7. Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration.

This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 8. Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 9. Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 10. Challenge to this Amendment. All challenges to the validity of this amendment must be made within one year after the date of recording of this document.

[Remainder of this page intentionally left blank]

The undersigned, being the president and the Secretary of the Elk Valley Estates Homeowners Association hereby certify that at least 67% of the Owners have approved this Declaration by signing an instrument evidencing such approval. Upon recording in the records of the County Clerk of Teller County, Colorado, this Declaration shall supersede and replace the Prior Declaration in its entirety.

Elk Valley Estates Homeowners Association,
a Colorado nonprofit corporation

By: *Kevin Sterling*
President, Kevin Sterling

ATTEST:

Vince Scarlata
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF Teller)

The foregoing Declaration was acknowledged before me by Kevin Sterling, as President and by Vince Scarlata, as Secretary, of Elk Valley Estates Homeowners Association, a Colorado nonprofit corporation, on this 13 day of October, 2009.

Janet M. Selby
Notary Public

My commission expires: 2/2013

