

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
ELK MEADOWS ESTATES**

THIS Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Meadows Estates is made on the date hereinafter set forth by the Owners Association of Elk Meadows Estates, Incorporated, a Colorado nonprofit corporation (the "Association").

**RECITALS**

A. Elk Meadows Estates was created when George W. Pearce, Joan C. Pearce, E. Ray Coffey and Lillian Coffey, (hereafter referred to as "Declarants"), as Declarants and owners of certain real property, executed the original Restrictive Covenants for Elk Meadows Estates recorded in the real property records of the Clerk and Recorder of Ouray County, State of Colorado ("the Clerk") on August 28, 1971, reception number 129902 at Book 197, pages 138 – 143; additional Covenants for Elk Meadows Estates were recorded with the Clerk on August 21, 1972 at reception number 117794. Amendments to the Covenants were recorded with the Clerk on June 12, 1974 at reception number 119615, on September 10, 2007 at reception number 195964 and on September 12, 2007 at reception number 196007.

B. A Plat Map of the Elk Meadows Estates Filing No. 1 was recorded with the Clerk on June 28, 1972 at reception number 117623; an amended Plat for Filing No. 1 was recorded with the Clerk on September 19, 1973 at reception number 118999; a Plat for Filing No. 2 was recorded with the Clerk on December 5, 1973 at reception number 119194; an amendment to the Plat for Filing No. 2 was recorded with the Clerk on December 5, 1973 at reception number 119194; a Plat for Filing No. 3 was recorded with the Clerk on December 5, 1973 at reception number 119195; a Plat for Filing No. 4 was recorded with the Clerk on May 10, 1976 at reception number 121917; an amendment to the Plat for Filing No. 1 was recorded with the Clerk on July 28, 1977 at reception number 123447; an amendment to the Plat for Filing No. 2 was recorded with the Clerk on July 28, 1977 at reception number 123448; an amendment to the Plat for Filing No. 3 was recorded with the Clerk on July 28, 1977 at reception number 123449; an amendment to the Plat for Filing No. 4 was recorded with the Clerk on July 28, 1977 at reception number 123450; and a Plat for Filing No. 5 was recorded with the Clerk on July 28, 1977 at reception number 123451.

C. The original Bylaws for the Association were not recorded, but amendments to the Bylaws were recorded with the Clerk on August 7, 1992 at reception number 151306. Amendments to the Articles of Incorporation were recorded with the Clerk on July 9, 2001 at reception number 175175 and on August 6, 2004 at reception number 185419. Two Board resolutions were recorded with the Clerk on August 6, 2004, with reception numbers 185418 and 185420.

D. The documents referenced in Paragraphs A and B above, and any subsequent amendments, supplements or annexations shall be referred to as the "Original Declarations." The Original Declarations created a planned community and imposed upon the real property described in the Original Declarations and all property thereafter annexed, certain terms,

provisions, covenants, conditions, restrictions, easements, right-of-way, reservations, uses, limitation and obligations, which run with and are binding upon that real property, to protect and enhance the quality, value, aesthetic, desirability and attractiveness of the real property and the Owners of that Common Interest Community (“Community” or “Subdivision”).

E. The Owners, and the Owners Association of Elk Meadows Estates, Incorporated, desire to amend and restate all provisions of the Original Declarations by virtue of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Meadows Estates (the “Declaration”), and intend upon the recording and continued validity of this Declaration that the Original Declarations, including the recorded Bylaws, shall be superseded by this Declaration.

F. The Owners, and the Owners Association of Elk Meadows Estates, Incorporated, desire to opt in to the provisions of the Colorado Common Interest Ownership Act (as may be amended from time to time) as set forth in Colorado Revised Statutes §§ 38-33.3-101 et seq.

NOW THEREFORE, the Original Declarations are amended and restated as follows:

## **ARTICLE 1 DEFINITIONS**

Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

### **Section 1.1 Act**

“Act” shall mean and refer to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. as it may be amended from time to time. The adoption and recording of this Declaration shall constitute an election under C.R.S § 38-33.33-118 to be fully subject to the Act.

### **Section 1.2 Articles**

“Articles” shall mean and refer to the Articles of Incorporation of the Owner’s Association of Elk Meadows Estates, Incorporated, a Nonprofit Corporation, as amended.

### **Section 1.3 Association**

“Association” shall mean and refer to the Owners Association of Elk Meadows Estates, Incorporated, a Colorado nonprofit corporation, its successors and assigns.

### **Section 1.4 Board**

“Board” shall mean and refer to the Board of Directors of the Association.

### **Section 1.5 Budget**

“Budget” shall mean a written, itemized estimate of the income to be derived and the expenses to be incurred by the Association on an annual or more frequent basis in performing its functions under this Declaration and prepared pursuant to Article 5 of this Declaration.

### **Section 1.6 Bylaws**

“Bylaws” shall mean and refer to the Bylaws of the Association, as they may be amended from time to time.

### **Section 1.7 Common Area**

“Common Area” shall mean all portions of the Property excluding Lots, and including those areas designated on the Plats or any Supplemental Plat as tracts, private roads, greenbelts or open space, if any, which are owned and/or maintained by the Association for the common use and enjoyment of the Members, and including, but not limited to, water distribution systems, wells, sewer systems, treatment plant and lines, signage, parks, tracts or other open or landscaped space and easements for the use and benefit of the Owners, as more fully described in Exhibit “B” attached hereto.

### **Section 1.8 Common Expenses**

As used in this Declaration, “Common Expenses” include all charges levied by and for the benefit of the Association according to the Governing Documents, including, but not limited to: (i) annual or more frequently-determined costs and expenses of the Association resulting from owning, leasing, using, maintaining, or otherwise controlling any real or personal property and the Common Area; (ii) expenses incurred by the Association pursuant to Section 5.2; (iii) large expenditures of the Association, including but not limited to, capital expenditures (funded wholly or partially by the levying of “Special Assessments” as defined in Section 5.5); and (iv) amounts necessary to fund reserves pursuant to Section 5.8 below.

### **Section 1.9 Common Expense Assessments or Assessments**

In addition to the definition included in the Act, these terms shall include the following items levied against a particular Owner and Lot: (i) the Owner’s interest in the Common Expenses, subject to reapportionment pursuant to Section 5; (ii) late charges, attorneys’ fees, fines, and interest charged by the Association at the rate as determined by the Board; (iii) charges against a particular Owner and the Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Governing Documents by the Owner or Guests; (iv) charges levied against an Owner pursuant to Section 5.7 due to Owner’s negligence or misconduct (“Default Assessment”) and (v) any sums permitted by the Governing Documents or the Act to be assessed against a particular Owner or Lot (including but not limited to, “Special Lot Assessments”), levied pursuant to Section 5.6.

### **Section 1.10 First Mortgage, First Mortgagee**

“First Mortgage” means any mortgage, deed of trust, contract of sale or other document pledging a Lot as security for the payment of a debt or obligation recorded upon a Lot as shown in the public records of Ouray County which is not subject to any prior or senior lien or encumbrance, except this Declaration, liens for taxes or other liens which are given priority by the statute. “First Mortgagee” means the holder of any First Mortgage, including without limitation any person, corporation, partnership, trust, company or other legal entity which takes, holds, owns, or is secured by a First Mortgage.

### **Section 1.11 Guest**

“Guest” shall mean and refer to any person who: (i) resides with an Owner within the Residence or on the Lot; (ii) is a guest, licensee, or invitee of an Owner, or (iii) is an occupant, lessee, tenant or contract purchaser of a Lot, and any family member, guest, or invitee or cohabitant of any such person.

### **Section 1.12 Improvement**

“Improvement” shall mean all structures and improvements located upon or made to a Lot of every type or kind, including, without limitation, buildings, sheds, garages, carports, roads, driveways, parking areas, fences, playground equipment, gardens, septic systems, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks and walkways.

### **Section 1.13 Lot**

“Lot” shall mean a physical portion of the Property which is designated for separate ownership or occupancy and the boundaries of which are depicted upon the Plat or any Supplemental Plat, also referred to as a “site” and a “parcel” in the Original Declarations. For the purpose of conforming the terms and provisions of this Declaration to the terms and provisions of the Act, the term “Lot” shall be analogous to the term “Unit” as the term is defined in the Act. The term “Lot” shall not include: (a) any property owned by a public body; (b) Common Area; or (c) roads, alleys or easements.

### **Section 1.14 Member**

“Member” shall mean and refer to every person or entity that holds membership in the Association as an Owner of a Lot in the Property.

### **Section 1.15 Owner**

“Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, and contract sellers, but excluding those having such interest merely as security for the performance of an obligation (i.e. a Mortgagee).

**Section 1.16 Plat**

“Plat” shall mean the plat, recorded June 28, 1972 in the real property records of Ouray County, Colorado at reception number 117623 and any other amended, supplemental or additional plats, filings or survey exemptions thereof designating Lots.

**Section 1.17 Property**

“Property” or “Properties” shall mean and refer to that real property described in the Original Declarations, as more particularly described in Exhibit “A” attached hereto and incorporated by this reference, together with all easements, rights, and appurtenances to that real property, and the buildings and Improvements erected or to be erected on the real property.

**Section 1.18 Residence**

“Residence” shall mean and refer to a single family residential dwelling Lot constructed upon any of the Lots shown upon any Plat of the Properties.

**ARTICLE 2 MEMBERSHIP****Section 2.1 Membership**

Every Owner of a Lot within the Property, as shown on the Plat for Elk Meadows Estates shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. No shares of stock shall be issued, or required as a prerequisite for membership. All shares of stock issued prior to the effective date of this Declaration shall be void.

**ARTICLE 3 VOTING RIGHTS****Section 3.1 Voting Rights**

Each Lot shall be allocated one (1) vote. When more than one person or entity holds an ownership interest in any Lot, all those persons shall be Members. The vote for their Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**ARTICLE 4 PROPERTY RIGHTS****Section 4.1 Owner’s Easement of Enjoyment**

Every Owner shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot; provided, however, that such right and easement of enjoyment in and to the Common Area shall be subject to the following:

**4.1.1 Power to Borrow.** The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money from a federally-insured lending institution for the purpose of maintaining or improving the Common Area and facilities and those portions of the Lots or other areas within the Property, if any, for which the Association has maintenance responsibilities, or for other purposes consistent with the Act, Articles of Incorporation, the Bylaws and/or this Declaration; to pledge future assessments or mortgage the Common Area for that purpose, provided the right of the Association to borrow money and to give security for indebtedness under this section shall require a meeting of the members as allowed for in the Bylaws. The loan and pledging future assessment income or other collateral for the loan shall be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present.

**4.1.2 Suspension of Voting Rights.** Ownership of a Lot within the Association shall be subject to the right of the Association to suspend the voting rights of any Owner for any period during which any assessment against his or her Lot remains unpaid. However, the Association shall not suspend voting rights without first affording the Owner the “Notice and Hearing” process according to the procedure set forth in the Association Responsible Governance Policies. As more specifically set forth in the Association Responsible Governance Policies, “Notice and Hearing” consists of formal written notice to the Member of a Board hearing at which the Board will consider enforcement action, in a hearing and with an opportunity for the Member to present evidence and argument.

**4.1.3 Easements.** The right, power, and authority of the Association to grant any easement, right-of-way, license, lease, dedication, or grant of any similar interest affecting the Common Area, to the extent permitted by the Act and as more specifically provided in Section 4.3 below.

## **Section 4.2 Delegation of Use**

Any Owner may delegate his right of enjoyment to the Common Area and facilities to Guests, including the members of his family, his tenants, or contract purchasers who reside on the Property.

## **Section 4.3 Alienation of Common Area**

Except as provided above, the Common Area shall not be sold, abandoned, subdivided, hypothecated, transferred or otherwise encumbered by the Association without the written consent of sixty-seven percent (67%) of the votes in the Association; provided, however, that the granting of easements for utilities, including cable television, or for other public purposes consistent with the intended use of such Common Area shall not be a prohibited transfer within the meaning of this section.

# **ARTICLE 5 COVENANT FOR PAYMENT OF ASSESSMENTS TO ASSOCIATION**

## **Section 5.1 Creation of Lien and Personal Obligation for Assessments**

Each Lot, and each Lot Owner, by acceptance of a deed for a Lot, whether or not it is specifically expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay Assessments to the Association pursuant to the Governing Documents. Such Assessments are the personal obligation of the Owner of a Lot at the time when the Assessment or other charges become due. The Assessments shall be a charge on each Lot and shall be a continuing lien on the Lot against which each Assessment is made. All Assessments are payable in the amounts and in the manner specified in the levy of those Assessments. No Owner may claim or deduct any offsets or reductions for any reason, including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration.

## **Section 5.2 Purpose of Assessments**

In addition to such other purposes as set forth in the Act, Assessments shall be used for the purposes of promoting the health, safety, and welfare of Owners and Guests, and in particular:

5.2.1 To enforce all provisions of the Governing Documents;

5.2.2 To exercise all rights and powers and to discharge all duties and obligations of the Association pursuant to the Act and the Governing Documents;

5.2.3 To discharge all expenses incurred by the Association in the alteration, enhancement, construction, reconstruction, repair, maintenance or replacement of the Common Area and all portions of the Property the Association is required to maintain including all Improvements owned by the Association or maintained by the Association, including fixtures and personal property related to those Improvements;

5.2.4 To discharge all expenses incurred by the Association in the alteration, maintenance, repair and replacement of any property the Association may elect to so alter, maintain, repair or replace pursuant to the Governing Documents, including but not limited to Common Areas and roads;

5.2.5 To pay the costs of providing utilities to and within the Property for which the Association is responsible; and

5.2.6 To fund any operating deficit or the reserves pursuant to Section 5.8, and to fund any expense the Association deems necessary to meet its financial obligations.

## **Section 5.3 Apportionment of Common Expenses**

All Common Expense Assessments shall be assessed against all Lots uniformly for the Common Expense liability, except as otherwise provided in this Declaration, and in the Board's sole discretion:

5.3.1 The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

5.3.1.1 Those amounts spent by the Association for improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner and/or his or her Guests, provided that the Association shall first provide the Notice and Hearing process; and

5.3.1.2 All fines and costs assessed against an Owner pursuant to the Governing Documents, provided that no fines may be assessed without providing the Owner the Notice and Hearing process.

5.3.1 Fees, charges, taxes, impositions, late charges, fines, attorneys' fees, expert witness fees, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments.

#### **Section 5.4 Annual Assessment/Commencement of Common Expense Assessments**

The Common Expense Assessment may be made on an annual basis or more frequent basis against all Lots based on the Association's budget of the cash requirements needed by it to provide for the administration and performance of its duties during the fiscal year. The budget shall be adopted pursuant to Section 303(4) of the Act. Common Expense Assessments shall be due and payable in either a lump sum or in periodic installments as determined by the Board. The omission or failure of the Board of Directors to levy an Assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

#### **Section 5.5 Special Assessments**

During any fiscal year, the Board also has the right to levy and assess against the Owners, in a manner similar to Assessments for Common Expenses, a Special Assessment for those purposes as may be necessary or appropriate to maintain the community to the standards the Board deems appropriate, after not less than thirty (30) calendar days' notice to the Owners ("Special Assessment"). Special Assessments may include, without limitation, assessments for the cost of any construction, reconstruction, repair or replacement of any Common Area, including fixtures and personal property, to the extent those costs exceed the amount contemplated by the approved budget for that fiscal year. Within thirty (30) calendar days after the determination by the Board to levy any Special Assessment, the Board shall set a date for a meeting of the Owners in accordance with the Bylaws. At that meeting, the proposed Special Assessment may be vetoed by a vote of the Owners representing a majority of the total Lots, present or voting by proxy (or of the total written ballots received if it is a written ballot in lieu of a meeting). If not vetoed, then the Special Assessment shall be considered ratified and will be collectible as a Common Expense Assessment.

#### **Section 5.6 Special Lot Assessment**

The Association may also levy a Special Lot Assessment, including fines, against any Owner and the Owner's Lot, to reimburse the Association for costs incurred in bringing an Owner and his Lot into compliance with the provisions of the Governing Documents. After the Notice and



Hearing process described herein, the Board may vote to levy a Special Lot Assessment, which shall then be collectible as a Common Expense Assessment.

### **Section 5.7 Default Assessments**

If the need for maintenance, repair, or replacement of any portion of the Community is caused by or in any way results from the negligent or willful act or failure to act, or the misconduct of an Owner or an Owner's Guest, then the expenses, costs, and fees incurred by the Association to perform that maintenance, repair, or replacement will be a personal obligation of that Owner, and that obligation will be a Default Assessment, collectible as a Common Expense Assessment. However, prior to levying a Default Assessment, the Association shall provide the Owner the Notice and Hearing procedure.

### **Section 5.8 Reserves/Surplus**

The Association shall establish a reserve fund for the maintenance, repair and replacement of that Common Area and the portions of the Property the Association is required to maintain, and which must be periodically maintained, repaired or replaced. The reserve fund will be funded through a portion of the Common Expense Assessments. Any surplus funds derived from Assessments shall be either transferred to the reserve fund or paid to the Owners or credited to them to reduce their future Assessment obligations, in the Board's sole discretion. By accepting the deed to a Lot, each Owner authorizes, and directs, the Board to make this determination each year.

### **Section 5.9 Notice to Mortgagees**

Mortgagees may make a written request for notice of delinquencies to the Association. If requested in advance, then the Association will mail Mortgagees a copy of notices of delinquency, by certified mail, return receipt requested, to the name and address on the request for notice.

### **Section 5.10 Effect of Non-Payment of Assessments**

The Association may exercise any or all of the following remedies in the event any Assessment provided for in this Declaration, or any installment of an Assessment, is not fully paid within ten (10) calendar days after the date due ("Overdue Assessment"):

5.10.1 Interest and Late Charges. Any Overdue Assessment shall bear interest at the rate of eight percent (8%) per annum, or at any lesser rate which may be set by the Board from time to time, beginning on the date due. In addition, the Association may assess a monthly late charge on any Overdue Assessment, in the amount as the Board may set from time to time.

5.10.2 Personal Judgment. After following any required procedures in the Association's Responsible Governance Policy governing collections, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay any Overdue Assessment, or monthly or other installments of an Assessment, with or without also proceeding

to foreclose its lien against that Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for Overdue Assessments, or any monthly or other installment of an Assessment, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien against the Lot.

5.10.3 Foreclosure of Lien. In addition to an action at law or in equity, or both, against the Lot Owner, and after following any required procedures in the Association's Responsible Governance Policy governing collections, the Association may proceed at any time when allowed by law to foreclose its lien against such Owner's Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to preclude the Association from later again foreclosing or attempting to foreclose its lien for any subsequent Assessments, or monthly or other installments of an Assessment, which are not fully paid when due. The Association has the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, and cast the votes appurtenant to that Lot, and to convey or otherwise deal with the Lot. The buyer of a Lot shall be jointly and severally liable with the seller for any Overdue Assessment against the Lot which accrued prior to the conveyance, without prejudice to the buyer's right to recover from the seller the amounts paid by the buyer toward the Overdue Assessment. Whether or not the Association forecloses its lien, it may apply for and be entitled to, the ex parte appointment of a receiver for a Lot, in which case the Owner of that Lot is liable for all costs and expenses associated with securing and maintaining the appointed receiver, including but not limited to receiver's fees, attorneys' fees and costs.

5.10.4 Recovery of Costs. As a part of the costs of any action or foreclosure proceeding to recover Overdue Assessments, the court shall charge the Owner for all the Association's costs of suit, expenses and reasonable attorneys' fees incurred by virtue of the failure of the Owner to timely pay Assessments when due, including attorneys' fees and costs for preparing and recording any lien notice, and all of the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action or foreclosure proceedings. These amounts shall be recoverable by the Association from any Owner personally obligated to pay them, and shall be recoverable from the proceeds of the foreclosure sale of that Owner's Lot.

### **Section 5.11 Lien Priority**

The lien for all Assessments levied by the Association pursuant to the Act, and as described by this Article 5, is prior to all other liens and encumbrances on the Lot, except:

5.11.1 Liens and encumbrances recorded before the Original Declarations were recorded;

5.11.2 Liens for real estate taxes and other governmental assessments or charges against the Lot when priority is authorized by law;

5.11.3 A First Security Interest on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent the Association's lien is made superior by the Act.

This Subsection does not affect the priority of mechanics' or materialmen's liens. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Section is required, except that a notice of delinquent Assessment must be recorded before commencement of a foreclosure. Sale or transfer of any Lot shall not affect the Assessment lien, however, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a First Mortgagee shall extinguish that portion of the Association's lien that is subordinate to the First Mortgage. No such sale, transfer, foreclosure, or any proceeding in lieu of foreclosure, including a deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Owner from continuing liability for any Assessments becoming due after a sale, transfer or foreclosure or any proceeding in lieu of foreclosure, nor from Assessments which were levied prior to the sale and remain unpaid. No sale or transfer shall relieve a Lot from the Association's lien rights for any Assessments thereafter becoming due. Where the holder of a recorded First Mortgage or other purchaser of a Lot obtains title to the Lot as a result of foreclosure or conveyance in lieu, that acquirer of title, his successors and assigns, shall not, except as provided by Subsection 5.11.3 above, be liable for Assessments levied by the Association which became due prior to the acquisition of title to a Lot by that acquiring party. The unpaid share of Common Expenses or other Assessments shall be deemed to be Common Expenses collectible from all of the Lots including the acquirer, his successors and assigns.

#### **Section 5.12 Statement of Unpaid Assessments**

The Association shall provide statements of unpaid assessments as provided by the Act.

#### **Section 5.13 Failure to Fix Assessment**

The omission or failure to establish any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Owners from their obligations to pay the Assessment.

#### **Section 5.14 No Waiver or Abandonment**

No Owner may be exempt from liability for payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of the Lot against which the Assessments are made.

#### **Section 5.15 Encumbrancer's Rights**

Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Assessments payable with respect to a Lot, and upon such payment the encumbrancer shall have a lien on that Lot for the amounts paid.

#### **Section 5.16 Homestead Exemption**

Each Owner hereby agrees that the Association's lien on a Lot for Assessments described in this Document is not subject to the provisions of any federal or state homestead exemptions. Each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance for any Lot

within the Community shall signify that Owner's waiver of all homestead exemptions.

## **ARTICLE 6 ARCHITECTURAL STANDARDS AND REVIEW COMMITTEE**

### **Section 6.1 Building Construction, Residence Types and Plumbing**

Every building constructed on any site shall be of neat appearance, well-constructed, and properly maintained by the Owner. Exterior construction shall be finished within two (2) years from the date of initial excavation. A governmental certificate of occupancy shall be obtained within three (3) years from the date of initial excavation.

All residences must be single family type. Apartment houses, duplexes, or the like are prohibited.

No commercial or industrial business-type structures or other improvements shall be built upon or any site.

All residences must have indoor plumbing. All residences must have a septic tank/system and leach line or be connected to the community sewer system. Any septic system must be constructed in accordance with Colorado State and Ouray County health laws, and the setback requirements for buildings shall also apply to septic tanks and leach lines.

### **Section 6.2 Setback Requirements**

All structures constructed upon any Lot, including sewage disposal systems, but excepting fences, walls or landscaping, shall be set back from all property lines at least twenty-five (25) feet unless the contours of the Lot or other fact render this setback requirement unworkable. Variance from this setback requirement may be granted upon approval of the Architectural Review Committee ("ARC") and if required, by Ouray County. The criteria for authorizing a variance to the setback requirement will include, but not be limited to, consideration of whether the variance requested will unduly interfere with the enjoyment, use or view of any adjacent Lot.

### **Section 6.3 Modular or Mobile Homes**

Modular homes, if approved by the County and the ARC, shall be allowed. Mobile homes may be allowed on any Lot, as approved by the ARC and in accordance with Ouray County regulations, and when set upon a foundation provided that the mobile home is no more than one year old when placed on the Lot and is at least twelve feet wide.

### **Section 6.4 Yard Space Requirements**

Owners shall follow setback requirements and all other Governing Documents with regard to size and location of Improvements. There is no specific requirement for yard space and yards may consist of unimproved land with natural vegetation, provided that it is not a fire hazard.

### **Section 6.5 Recreational Vehicles and Camping**

Recreational vehicles, travel trailers, campers, tents, and the like may not be placed on any Lot as

a permanent residence, except for vacation purposes up to three (3) months in any twelve (12) month period. Such items may be used for a convenience residence while a permanent residence is being constructed, and in that event the same may remain on the site during construction.

## **Section 6.6 Architectural Review Committee**

**6.6.1 Composition of Committee.** The ARC shall consist of no fewer than three (3) persons appointed by the Board of the Association, at least one of whom must be a Board member. The ARC is subject to the direction of the Board and must report to the Board as and when directed to do so. The Board may remove ARC members at any time for any reason or no reason.

**6.6.2 Review by Committee.** Any new structure over two hundred square feet (200 sf) requires prior ARC approval. The Owner must provide all documentation, forms, and applications submitted to Ouray County and all approvals of same, as well as plats and surveys for the Lot and the proposed structure. The Association reserves the right to adopt Architectural Criteria that will govern other Improvements to property made by Owners in accordance with Section 6.6.3 below.

**6.6.3 Procedures.** The Board of Directors, with the assistance of the ARC, shall adopt written rules and regulations, procedures and policies for submission, approval and completion or proposed Improvements (referred to herein as the “Architectural Criteria”). The initial Architectural Criteria are attached hereto and incorporated herein by this reference and may be amended, supplemented or otherwise modified after the effective date of this Declaration by a majority of those votes cast by the Owners at a meeting called for that purpose at which a quorum is present. The Architectural Review Committee shall make its best efforts to approve or disapprove all plans in the timeframes provided in the Architectural Criteria. The ARC may request additional documentation during the review process as is deemed reasonable and appropriate by the Committee.

**6.6.4 Vote.** A majority vote of the ARC is required to approve an application. All denials by the ARC may be appealed to the Board by the applicant Owner. All approvals by the ARC may be appealed to the Board by any other affected Owner.

**6.6.5 Records.** The ARC or the Association’s management company shall maintain written records of all applications submitted to it and all actions taken by it, subject to any policy pertaining to records inspection or retention.

**6.6.6 Liability.** The Association, the Board of Directors, the ARC, and its members shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction as described in this Section or in the Act.

**6.6.7 Variance.** The ARC may grant reasonable variances or adjustments from any conditions imposed by this Article in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained in this

Article. Such variances or adjustments shall be granted only where granting them shall not be materially detrimental or injurious to other property or Improvements in the Property and shall not militate against the general intent and purpose of this Article.

### **Section 6.7 Minor Violation of Setback Restrictions**

If upon the erection, or reconstruction in the original location and configuration, of any Residence upon any Lot it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of the Lots immediately adjoining the Lot upon which the violation or infringement occurs, and such waiver shall be binding upon all other Owners who are subject to this Declaration. Nothing in this Article shall prevent the prosecution of a suit for any other violation of the restrictions contained in this Declaration. A “minor violation” for purpose of this Section is a violation of not more than one (1) foot beyond the required setback lines.

### **Section 6.8 Failure to Obtain Approval**

If any Improvement subject to this Article is erected or maintained without the approval of the ARC, the Association, in addition to any other available remedies, and subject to the applicable provisions of the Act, may impose reasonable fines after notice and an opportunity for the Owner to be heard. The Association shall reserve the right to require an Owner to remove or modify any Improvement which was erected without ARC approval and may seek injunctive relief and claims for money damages.

## **ARTICLE 7 MAINTENANCE**

### **Section 7.1 Association’s Responsibility**

The Association shall maintain the Common Area and any structures, facilities and Improvements located on the Common Area, and the roads, utilities and systems for which it expressly or legally has accepted responsibility, regardless of where those items are located within the Property, as more fully described in Exhibit B. Additionally, the Association shall maintain perimeter barbed or smooth wire cattle fencing around the Community.

### **Section 7.2 Board’s Determination**

Determination of whether any such repair or maintenance is the obligation of the Association shall rest solely with the Board, which shall also have the sole responsibility for determining the timing, scope, and parameters of such maintenance and the kind and type of materials used in such repair and maintenance.

### **Section 7.3 Owner’s Negligence**

If the need for maintenance or repair is caused through the willful or negligent act of any Owner, his agent, family, Guests or invitees, the cost of that maintenance or repair shall be added to and become part of the Assessment to which that Owner’s Lot is subject. However, the Owner shall

first be provided the Notice and Hearing procedure.

#### **Section 7.4 Owner's Responsibility**

Except as otherwise provided in Section 7.1 of this Article, each Owner shall be responsible for the maintenance, repair and/or reconstruction, of their Lot and all structures and Improvements on the Lot including, without limitation, the Residence, landscaping, grading, fences, drainage, water and sewer lines, septic tanks and waste disposal systems, wells and other utilities.

#### **Section 7.5 Duty to Maintain**

The grounds, structures, and Improvements on each Lot shall be maintained in good repair and in manner consistent with the general aesthetic standards of the community. Upon the Owner's failure to do so, the Association may levy reasonable fines for non-compliance following the Notice and Hearing procedure, and may pursue any other remedies available at law, including but not limited to seeking injunctive relief. The cost of such enforcement shall be the personal obligation of the Owner of the Lot and shall be subject to all of the terms and provisions applicable to Assessments as provided in Article 5 of the Declaration, including, without limitation, interest, late charges and lien rights.

### **ARTICLE 8 USE RESTRICTIONS**

#### **Section 8.1 General Restrictions**

The use of the Common Area and the Lots and Improvements on them shall be subject to the restrictions established in this Declaration.

#### **Section 8.2 Use of Common Area**

The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board or the Association.

#### **Section 8.3 No Violations of Law**

No use shall be made of the Common Area, Lots and Improvements thereon which would in any manner violate the statutes, rules, regulations, orders or decrees of any court or governmental authority having jurisdiction over the Property.

#### **Section 8.4 Items on Common Area**

No Owner shall place any items or structures upon the Common Area, nor shall any Owner do any act which would temporarily or permanently deny free access to any part of the Common Area to any or all Owners.

#### **Section 8.5 Common Area Ingress/Egress**

No use shall be made of the Common Area which will deny ingress and egress to those Owners having access to Lots only over Common Area and the right of ingress and egress to said Lots is hereby expressly granted.

### **Section 8.6 Commercial Use**

No business or industrial or commercial activity of any kind whatever shall be conducted on any Lot or upon any portion of the Property, unless the activity is a garage or yard sale held by an Owner or resident, or satisfies the following restrictions:

- a) The activity is conducted and carried out entirely within the Residence;
- b) There is no sign or advertising of the activity anywhere on the Property;
- c) There is no odor, noise, vibration, smoke, dust, heat or glare noticeable outside the Residence, even when doors and windows are open;
- d) The activity is clearly secondary to the use of the Residence as a residential dwelling Lot and does not change the character of the Residence as a residential property;
- e) The activity does not violate the laws, statutes, ordinances or regulations of any governmental entity having jurisdiction over the Property;
- f) There are no materials stored outside of the Residence; and
- g) The activity does not unreasonably increase traffic within the Property.

Garage or yard sales are subject to rules adopted by the Board, including but not limited to rules on signs, time and frequency.

### **Section 8.7 Animals**

Dogs, cats, or other commonly maintained household pets may be kept on any Lot, provided that they are not kept, bred, or maintained for any commercial purpose and do not make objectionable noises, odors or otherwise constitute a nuisance, an unreasonable annoyance, or a material inconvenience to any other resident.

No livestock may be kept, bred, or maintained on any Lot. Livestock is defined as domesticated animals raised in an agricultural setting to produce commodities such as food, leather, or wool. Each Lot Owner shall be financially responsible and liable for any damage caused by any pet or any expense incurred by the Association as a result of the keeping of that pet on a Lot, or visiting the Lot.

Animals other than commonly maintained household pets may be permitted as determined by the Architectural Criteria or by variance permitted by the Architectural Review Committee and/or the Board.

Dogs will not be permitted to run loose in the Subdivision.

### **Section 8.8 Signs**

No sign, poster, billboard, or advertising device or display of any kind, shall be erected, placed,



or permitted to remain on any Lot, or the Common Area without prior, written approval from the ARC provided however that Owners shall be permitted one temporary sign of not more than five square feet (5 sf) and containing the word “For Sale” or “For Rent” per Lot which is placed in a window or along the front of a Lot parallel to the road and at least three feet (3’) from the road. Political signs are permitted on the Lots to the extent required to be permitted by law, subject to the rules and regulations of the Association.

### **Section 8.9 Sheds and Outbuildings**

Storage and outbuildings must meet setback requirements. Storage units and outbuildings require ARC approval if they are over two hundred square feet (200 sf).

### **Section 8.10 Damage to Common Area**

Damage to any portion of the Common Area and/or Improvements located thereon caused by an Owner or his family or Guests, including road damage caused by construction vehicles, shall be paid for by said Owner if after the Notice and Hearing procedure the Board so votes. The term “damage” shall not include ordinary wear and tear.

### **Section 8.11 No Noxious, Offensive, Hazardous or Annoying Activities**

No noxious or offensive activity shall be carried on upon any part of the Property, nor shall anything be done or placed on or in any part of the Property which is or may become a nuisance or cause a material disturbance to others or which may be hazardous to others.

**8.11.1 General Nuisances Prohibited.** No sound shall be emitted from any Lot which is unreasonably loud or annoying. No odor shall be emitted from any Lot which is noxious or offensive to others. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. No unsightliness or waste shall be permitted on or in any part of the Property. Without limiting the generality of the foregoing, no Owner shall keep or store anything on or in any of the Common Area.

**8.11.2 Hazardous Activities Prohibited.** No activities shall be conducted anywhere within the Property that might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Common Area or upon any Lot. Fire bans shall be strictly observed.

**8.11.3 Board Authority, But Not Duty, to Enforce.** Notwithstanding the foregoing, the Board shall have the authority but not the duty to enforce the above restrictions on noxious, offensive or nuisance-like violations that the Board deems not to affect the community-at-large.

### **Section 8.12 Leasing**

Tenants shall be subject in all respects to the provisions of the Declaration, Articles of Incorporation, Bylaws, Architectural Criteria, and rules and regulations. Short-term rentals shall be in full compliance with the Ouray County Short-Term Rental Ordinance.

### **Section 8.13 Parking**

No boats, trailers, campers, RVs or mobile homes may be parked on the roads or on other Common Areas. Passenger vehicle parking on the roads during winter is strongly discouraged. Vehicles that are parked on the roads in such a manner as to impede the safe passage of traffic may be towed immediately at the vehicle owner's expense. Neither the Association nor its Board, agents or contractors shall be liable for any damage to vehicles or other items parked on the roads as a result of snowplowing, road maintenance work or other activities. The placement of boats, trailers, campers, RVs and mobile homes may be further regulated upon the Lots by Architectural Criteria.

### **Section 8.14 Abandoned or Inoperable Vehicles**

No abandoned, junked or inoperable automobiles or vehicles of any kind shall be stored or parked on the roads or other Common Areas. An "abandoned, junked or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other vehicle which does not have an operable propulsion system installed therein, or which has characteristics of being abandoned or junked such as flat tires, broken windows or the like, or which has an invalid registration or expired license plates. In the event that the Association shall determine that a vehicle is an abandoned, junked or inoperable vehicle, then a written notice describing that vehicle shall be mailed or personally delivered to the Lot Owner, if known and conspicuously placed upon the vehicle. If the abandoned, junked or inoperable vehicle is not removed within seven (7) calendar days of the date of such notice, the Association shall pursue the Notice and Hearing process, at which hearing the Board may consider authorizing formal legal action to resolve the matter, including the imposition of fines, a Court order commanding removal of the vehicle, reimbursement of any towing and storage charges and reimbursement of all attorneys' fees and costs incurred.

### **Section 8.15 Unsightly Conditions**

No unsightly article shall be permitted to remain on any Lot so as to be visible from adjoining Lots, the streets or the Common Area. Lots and Improvements thereon shall be maintained in a good, clean and attractive condition, but commensurate with the general aesthetics of the community given its rural character. No garbage, trash or debris shall be allowed to accumulate on any Lot, nor shall it be deposited on the Common Areas, or on any road within the Property, unless placed in a suitable container solely for the purpose of garbage pickup. No abandoned, junked or inoperable vehicle or other junked equipment or debris shall be stored on any Lot. All equipment for the storage or disposal of garbage, slash or recycling shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an unsightly manner provided however, that dumpsters, receptacles or storage containers may be permitted on a Lot temporarily, not to exceed thirty (30) calendar days without written approval, in order to facilitate construction, remodeling or to prepare for moving, with prior written approval of the Board. If any junk or unsightly condition exists and is not removed within seven (7) calendar days of the date of such notice, the Association shall pursue the Notice and Hearing process, at which hearing the Board may consider authorizing formal legal action to resolve the matter,

including the imposition of fines, a Court order commanding correction of the condition, reimbursement of any actual removal and storage charges incurred and reimbursement of all attorneys' fees and costs incurred.

### **Section 8.16 Restrictions on Sewage Disposal Systems**

No cesspool, septic tank, leaching field or other sewage disposal system shall be installed within the Property without the prior written consent of the ARC. Any sewage disposal system installed for property within the Property shall be subject to applicable laws, rules, and regulations of any governmental authority have jurisdiction.

## **ARTICLE 9 EASEMENTS**

### **Section 9.1 Common Area**

The easements over and across the Common Area shall be those shown or provided for upon the recorded Plat, and such other easements that may be of record or as may be established pursuant to the provisions of this Declaration.

### **Section 9.2 Encroachments**

Each Lot and the Common Area shall be subject to: (1) an easement for minor encroachment of Residences, including without limitation, overhangs or fences onto adjoining Lots or the Common Area; (2) encroachment of the Common Area Improvements onto any Lot; and (3) any encroachments occurring thereafter as a result of settling or shifting of any structure. A valid easement shall also exist for said encroachments and for their maintenance, repair, and replacement. If any structure is partially or totally destroyed and then rebuilt, the Owners of the Lots agree that such minor encroachments as rebuilt in their original configuration must be permitted.

## **ARTICLE 10 INSURANCE**

### **Section 10.1 Insurance on the Common Area**

The Association shall maintain insurance covering all Improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance on the improvements located on the Common Area to the extent reasonably available, specifically a policy of property insurance in an amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, excavation and other items normally excluded from coverage) of the Improvements located on the Common Area with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and if necessary, an "increased Cost of Construction Endorsement" or "Contingent Liability for Operating of Building Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:

- a) loss or damage by fire or other hazards covered by the standard extended coverage

endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage;

b) such other risks as shall customarily be covered with respect to projects similar in construction, location and use; and

c) A comprehensive policy of public liability insurance covering all of the Common Area insuring the Association in an amount not less than one million dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and, if applicable, garage keeper's liability, workmen's compensation insurance for employees of the Association, and such other risks as shall be covered with respect to projects similar in construction, location, and use.

### **Section 10.2 Fidelity Insurance**

The Association shall maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity bonds or policies shall meet the following requirements:

a) all such fidelity bonds or policies shall name the Association as an obligee; and

b) all such fidelity bonds or policies shall be written in an amount at least equal to the greater of (i) the estimated maximum of funds, including reserves, in the custody of the Association at any given time or (ii) three (3) months' aggregate assessments on all Lots plus reserves; and

c) such fidelity bonds or policies shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

### **Section 10.3 Director and Officer Liability Insurance**

The Association shall purchase Directors' and Officers' insurance in an amount reasonably necessary to protect the Directors and Officers as determined by the Board from time-to-time.

### **Section 10.4 Other Insurance**

The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association's responsibilities and duties.

### **Section 10.5 Deductibles**

Any loss falling within the deductible portion of such policy shall be a common expense shared by all of the Owners. Notwithstanding the foregoing, after Notice and Hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner or their Guests, and assess such

deductible portion or uninsured portion of a loss as a Default Assessment against such negligent Owner and his or her Lot, subject to all provisions of this Declaration applicable to such Assessments. Notwithstanding anything herein to the contrary, the Association shall not be obligated to file a claim with its property insurance carrier; to the extent that the Association elects not to file such claim, it will “self-insure” the loss to the extent it exceeds the deductible limit; any amounts under the deductible shall be paid for by the party responsible for the maintenance of the damaged item(s), subject to the Association’s right to pursue Owners for their negligent acts or omissions causing such damage.

### **Section 10.6 Notice of Cancellation**

If the Insurance described in this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association shall promptly cause notice of that fact to be hand delivered, or sent by United States Mail, postage prepaid, to all Owners.

### **Section 10.7 Owner’s Personal Liability and Property Insurance**

It is recommended that each Owner carry adequate property, fire and personal liability insurance on their Lot and the structures and Improvements thereon.

## **ARTICLE 11 DAMAGE OR DESTRUCTION**

### **Section 11.1 Damage to Common Area**

In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Areas, the Association shall present to the Members a notice of a Special Assessment for approval by the membership in accordance with Article 5, Section 5.5. If such Assessment is approved, the Association shall make such assessment and proceed to make repairs or reconstruction. If such Assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by written consent of sixty-seven percent (67%) of the votes in the Association, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees of their respective Lots, if any. The Assessment as to each Owner and Lot shall be equal to the Assessment against every other Owner and Lot. Such Assessment shall be due and payable as provided by resolution of the Board, but not sooner than sixty (60) calendar days after written notice thereof. The Assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the Improvements on that Lot, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

## **ARTICLE 12 CONDEMNATION**

### **Section 12.1 Condemnation**

If at any time all or any part of the Common Areas shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply:

a) **Proceeds.** All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

b) **Complete Taking.** In the event that all of the Common Areas are taken or condemned, or sold or otherwise disposed of, in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners equally and payment of said proportion shall be made payable to the Owner and the First Mortgagee of his Lot jointly.

c) **Partial Taking.** In the event that less than the entire Common Area is taken or condemned, or sold or otherwise disposed of in lieu of, or in avoidance thereof, the Condemnation Award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the Common Area remaining, as is applicable, unless Owners representing at least sixty-seven percent (67%) of the votes in the Association agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be used by the Association for its future maintenance obligations.

## **ARTICLE 13 GENERAL PROVISIONS**

### **Section 13.1 Enforcement**

The Association (after Notice and Hearing), or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any rights under this Declaration shall in no event be deemed a waiver of the right to do so in the future.

### **Section 13.2 Amendment**

Except as otherwise provided by the Act or this Declaration, the provisions of this Declaration may be amended, in whole or in part, at any time and from time to time, by vote or agreement of Owners of at least sixty-seven percent (67%) of the Lots in the Association, based upon one vote per Lot. Amendments to the Declaration shall be executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of such designation, by the President of the Association and recorded in the Ouray County Clerk and Recorder's Office.

### **Section 13.3 Term of the Declaration**

The provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall run with and bind the land in perpetuity.

### **Section 13.4 Termination**

This Declaration shall not be revoked nor shall the Association be dissolved unless such action is

approved in writing by Owners of eighty percent (80%) or more of the total Lots in the Association. Such revocation shall be effective when duly recorded in the office of the Clerk and Recorder of Ouray County; provided, however that any amendment or revocation must comply with the statutes of Colorado and the resolutions and ordinances of Ouray County, Colorado and any other governmental entity having jurisdiction over the Property.

### **Section 13.5 Attorneys' Fees, Costs and Expert Witness Fees**

In any proceeding at law or in equity against any person or persons violating or attempting to violate any provisions of this Declaration, the Architectural Criteria, the Association's rules and regulations, the Bylaws or the Articles of Incorporation, either to restrain violation and/or recover damages, or to enforce any lien or right created by this Declaration, the prevailing party shall be awarded its costs, including reasonable attorneys' fees and expert witness fees. In any action wherein the Association is awarded costs and/or attorneys' fees and/or expert witness fees against an Owner, such costs and/or fees shall become an Assessment against said Owner's Lot.

### **Section 13.6 Interpretation**

The terms of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration of the Common Interest Community and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

### **Section 13.7 Singular Includes 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, the feminine, and neuter.

### **Section 13.8 Captions**

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

### **Section 13.9 Conflict of Provisions**

In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of conflict between the provisions of the Articles of Incorporation and the Bylaws, the Articles shall control.

### **Section 13.10 Registration of Mailing Address, Changes**

Each Owner shall register his or her mailing address with the Association. Unless otherwise provided in the Act, the Declaration, Articles or Bylaws, all notices or demands intended to be served upon an Owner shall be sent by First Class Mail, postage prepaid, addressed in the name

of the Owner at that registered mailing address. In the event an Owner fails to register a valid mailing address, then the Association may send notice to the street address of the Lot owned by the Owner within the Property.

**Section 13.11 Challenge to this Declaration**

All challenges to the validity of this Declaration must be made within one (1) year after the date of recording of this Declaration.



**Section 13.12 Severability**

Invalidation of any one of the provisions, covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force an effect.

In witness whereof, the undersigned, being the President and Secretary of the Owners Association of Elk Meadows Estates, Incorporated, hereby certify that the Association has obtained approval of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Meadows Estates, a residential community, from Owners representing at least Sixty-seven (67%) of the votes in the Association, and that the Ouray County District Court has granted the petition of the Association and ordered the proposed Amended and Restated Declaration approved under C.R.S. § 38-33.3-217.

Dated: September 27, 2019

OWNERS ASSOCIATION OF ELK MEADOWS  
ESTATES, INCORPORATED, a Colorado nonprofit  
corporation

By: Belinda Chisholm  
Elk Meadows Owners Association, President

By: Scott Alamprese  
EMHOA, Secretary

STATE OF COLORADO    )  
  )ss.  
COUNTY OF OURAY    )

The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Meadows Estates was acknowledged before me by Belinda Chisholm, as President and Scott Alamprese as Secretary of the Owners Association of Elk Meadows Estates, Incorporated, a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: March 27, 2022

Sabrina L. King  
Notary Public

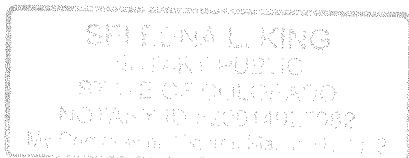


Exhibit A

**THE PROPERTY**

A tract of land located in Lot 2 of Section 5, Township 44 North, Range 8 West, N.M.P.M. Ouray County, Colorado, as described in the master plan of Elk Meadows Estates

Exhibit B

**COMMON AREA**

1. Roads and alleys within the Property owned by the Association.
2. Easements established for the benefit of the Association
3. Greenbelts and open space owned by the Association
4. Water treatment plant and pumping station building owned by the Association
5. Water wells owned by the Association
6. Water distribution lines and meters owned by the Association
7. Sewage disposal system and waste water treatment plant owned by the Association
8. Solar arrays and electricity generation systems owned by the Association
9. Fire station building owned by the Association