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Patricia Berger
Lake County Recorder

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

June 30, 2009

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Trail is executed and recorded by the Elk Trail Owners Association, Inc. This Amended Declaration shall completely replace and supersede the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Trail recorded on August 16, 2007 at Reception No. 347034 of the records of the Lake County Clerk and Recorder.



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

Arkansas Valley Company, L.L.C., a Colorado limited liability company, with a mailing address of Box 909, Leadville, Colorado, 80461 ("Declarant") hereby declares that the property described in Exhibit "A" shall be held and conveyed subject to the following terms, covenants, restrictions and conditions, which shall run with the above described property and be binding on all parties having any right, title, or interest therein or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

The Elk Trail Concept

It is the intent of Declarant to develop a peaceful, open, wildlife-friendly, aesthetically pleasing, rural neighborhood in a relatively natural forested environment, with most dwellings spaced relatively closely in one direction to foster a feeling of community, but open enough in the perpendicular direction to provide abundant forested open space and distant views. Lots are divided into Building Envelopes, in which structures may be built, and Open Space areas, which are restricted from most forms of development by Lot Owners. Further details may be found in this Declaration, in the Articles of Incorporation, Bylaws, and Policies and Procedures for the Elk Trail Owners Association, and in the Architectural Design Guidelines and the Rules and Regulations of the Association.

It is important that prospective homeowners carefully read this Declaration and associated Documents to determine whether the Elk Trail concept is harmonious with their personal feelings about what is important in a rural residential community, and that they are completely comfortable with the restrictions and obligations entailed in living here as members of this community.

**ARTICLE I
DEFINITIONS**

These definitions shall apply throughout this Declaration and all Documents related to this Declaration.

Section 1.1. Agencies: The Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 1.2. Allocated Interests: The Common Expense liability and votes in the Association, allocated to Lots in the Common Interest Community as provided herein. The Common Expense liability for each Lot shall be a fraction, the numerator of which is one and the denominator of which is the total number of Lots then in the Common Interest Community.

Section 1.3. Architectural Review Committee: The committee appointed by the Declarant during the Period of Declarant Control as defined in Section 4.4 or by the Association thereafter, to review and approve or disapprove plans for Improvements submitted by any Owner, as more fully provided in Article VIII of this Declaration.

Section 1.4. Articles of Incorporation: The Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.5 Association, or ETOA: The Elk Trail Owners Association, Inc., a nonprofit corporation.

Section 1.6. Board of Directors, or Board: The Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant.

Section 1.7. Building Envelope: That area shown on each Lot upon which Improvements may be constructed. Driveways, parking areas, septic systems, wellheads, utility entrances, irrigation systems and other below-grade or at-grade improvements, as approved by the Architectural Review Committee, may extend beyond the building envelope.

Section 1.8. Bylaws: The Bylaws of the Association as they may be amended from time to time.

Section 1.9. Common Elements: Any Property within the Common Interest Community owned by the Association. The Common Elements initially owned by the Association upon conveyance by Declarant are described as Tracts A, B, C, and D on the Plat, the easements for Underground Utilities and Emergency Egress, and the easements and fixtures for Fire Cistern, Fire Hydrant, Sign, and Perimeter/Access Control.



Section 1.10. Common Expenses : The expenses or financial liabilities for the operation of the Common Interest Community. These expenses include:

- A. Expenses of administration, maintenance, repair or replacement of any Common Elements or property owned or maintained (under an easement, license or contract) by the Association;
- B. Expenses declared to be Common Expenses by the Documents;
- C. Expenses agreed upon as Common Expenses by the Board;
- D. Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held or maintained (under an easement, license or contract) by the Association; and
- E. The costs and expenses imposed on the Association, benefiting fewer than all the Lots, which shall be a Common Expense assessed exclusively against those Lots benefited.

Section 1.11. Common Expense Assessments: The funds required to be paid by each Owner in payment of a Common Expense liability, including Annual Common Expense Assessments, Special Assessments, and Common Expenses attributable to fewer than all Lots.

Section 1.12. Common Interest Community: The real property subject to this Declaration.

Section 1.13. Declarant: Arkansas Valley Company, L.L.C., a Colorado limited liability company or its successors or assigns.

Section 1.14. Declaration: This document, including any amendments and plats.

Section 1.15. Design Guidelines, or Architectural Design Guidelines, or Guidelines: Those guidelines adopted by the Board of Directors for the purpose of providing guidance to the Architectural Review Committee in carrying out its responsibilities, and guidance to Owners for planning, designing, and constructing Improvements.

Section 1.16. Director: A member of the Board of Directors.

Section 1.17. Documents: The Declaration and Plat, the Articles of Incorporation, the Bylaws, the Policies and Procedures, the Architectural Design Guidelines, and the Rules and Regulations, as amended from time to time.

Section 1.18. Dwelling Unit: A residence constructed on one Lot within the Common Interest Community and any replacement thereof, including the patio, deck, basement and garage, if applicable. Dwelling Unit shall include the Lot upon which such Dwelling Unit is constructed.

Section 1.19. Eligible Mortgagee: The holder of a first Security Interest in a Lot, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Lot. The notice must include the address of the Lot on which it has a Security Interest. This notice shall include a request that the Eligible Mortgagee be given the notices and other rights described in Article XIV.

Section 1.20. First Security Interest: A Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.21. Guest: (a) Any person who resides with an Owner within the Common Interest Community; (b) a guest or invitee of an Owner; or (c) an occupant or tenant of a Dwelling Unit within the Common Interest Community, and any member of his or her household, invitee or cohabitant of any such person.

Section 1.22. Improvement: Any improvement to be constructed, installed, erected, expanded, modified, demolished, or altered on any Lot including but not limited to: (a) any building, outbuilding, garage, carport, stairway, walk, deck, porch, driveway, patio, patio cover, awning, solar collector or panel, fence, screening wall, retaining wall, exterior light fixture, post, pole, flagpole, recreational or sporting equipment, trampoline, sign, satellite dish, antenna, tank, heat exchanger or other exterior mechanical equipment, water softening equipment, structure, fixture, or other improvements, including water, septic, and utility facilities; (b) the grading, excavation, filling, paving, bricking, cobbling, or similar disturbance to the surface of the Lot including, without limitation, change of grade, ground level, and drainage pattern; (c) landscaping, planting, pruning, clearing or removing of trees, shrubs, grass or perennial plants; and (d) any application, change, alteration, modification, expansion, or addition of exterior paint, siding, screening, masonry, blocks, bricks, stones, or other finish, including any change of exterior appearance, finish material, color or texture.

Section 1.23. Lot: Each platted lot which is a physical portion of the Common Interest Community, other than Common Elements, designated for separate ownership or occupancy, the boundaries of which are described on the Plat. Each Lot Owner owns and pays taxes on a proportionate share of the Common Elements.

Section 1.24. Majority of Owners: The owners of more than fifty percent (50%) of the votes in the Association.

Section 1.25. Manager: A person, firm, corporation or other business entity employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.26. Member: Each Owner, as set forth in Sections 1.29 and 4.1 below.



Section 1.27. Notice and Hearing: The right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon, as provided for herein, or in the Bylaws or in any Rules and Regulations or Architectural Design Guidelines.

Section 1.28. Open Space: Those areas shown as open space throughout the Common Interest Community on the Plat. Open Space includes the areas of the Common Elements designated as open space, Restricted Private Open Space, and Private Open Space. Open Space upon each Lot is private property, with access controlled by the Owner subject to the Covenants and Rules of the Association and recorded easements. Sharing of access to Open Space on each Lot with other Owners is encouraged by the Association, but is not required and may be limited by each individual Owner, including the Declarant.

Section 1.29. Owner: The Declarant, Builder or other Person who is the owner of record of the fee simple title to any Lot, including that Lot's undivided interest in the Common Elements, but not a Person having an interest in a Lot solely as security for an obligation. The Declarant is the initial owner of any Lot created by this Declaration.

Section 1.30. Period of Declarant Control: That period of time defined in Section 4.4 below.

Section 1.31. Person: A natural person, corporation, trust, partnership, association, joint venture, government subdivision or agency or other legal or commercial entity or combination thereof.

Section 1.32. Plat: The plat for Elk Trail Subdivision filed in the office of the Lake County Clerk and Recorder, Lake County, Colorado, on June 18, 2007, at Reception No. 346460 as it may be amended from time to time.

Section 1.33. Policies and Procedures: Policies and Procedures, supplemental to the Bylaws, that guide the Board of Directors in the conduct of the Association's business.

Section 1.34. Private Open Space: Open Space that has not been restricted by agreement with the County to remain as Open Space in perpetuity, and whose Open Space restrictions are governed only by the Association. Private Open Space includes all areas of the individual Lots that are not specifically designated as either Building Envelope or Restricted Private Open Space. It is the intention of Declarant that Private Open Space shall remain as Open Space in perpetuity, but modifications of the Rules and Regulations and Architectural Design Guidelines for Private Open Space may be effected as deemed necessary or desirable by the Association pursuant to its Bylaws. Private Open Space is maintained by the Owner in accordance with Architectural Design Guidelines and Rules and Regulations, and access by others is controlled by the Owner, subject to any recorded easements.

Section 1.35. Property: The land and all Dwelling Units and Improvements that are subject to this Declaration.

Section 1.36. Restricted Private Open Space: Open Space designated on the Plat that has been restricted through the subdivision process to remain as Open Space in perpetuity. Both the Association and the County have an interest and the authority to enforce the Restricted Private Open Space provisions as outlined in this Declaration. The Association may have further enforcement rights, as outlined in its Rules and Regulations and in its Architectural Design Guidelines. Silvicultural maintenance may be performed by the Association and/or by the Owner subject to Association standards and prior written Association approval.

Section 1.37. Rules, or Rules and Regulations: Rules and regulations adopted and amended from time-to-time by the Board of Directors pursuant to this Declaration for the regulation of the Common Interest Community.

Section 1.38. Security Interest: An interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation.

Section 1.39. Special Assessments: Those Common Expenses Assessments defined in Subsection D of Section 7.1 below.

Section 1.40. Special Declarant Rights: Rights reserved for the benefit of a Declarant to (1) complete Improvements indicated on the Plat; (2) maintain sales offices, signs advertising the Common Interest Community, and models; (3) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community; (4) appoint or remove an officer of the Association or any Board of Directors member during any Period of Declarant Control; (5) appoint or remove any Architectural Review Committee member as set forth in Section 8.3; or (6) any other rights authorized by this Declaration or Colorado law.

ARTICLE II

SCOPE OF THE COMMON INTEREST COMMUNITY AND ASSOCIATION

Section 2.1. The Common Interest Community : The name of the Common Interest Community is Elk Trail

Section 2.2. The Association : The name of the Association is Elk Trail Owners Association, Inc.

Section 2.3. Number of Lots : The Common Interest Community contains 15 Lots.

Section 2.4. Identification of Lots : The identification number of each Lot is shown on the Plat.

Section 2.5. Lot Boundaries : The boundaries of each Lot are located as shown on the Plat.



**ARTICLE III
THE COMMON ELEMENTS**

Section 3.1. Title to the Common Elements : The Declarant hereby covenants that it will convey to the Association fee simple title to the Common Elements prior to the conveyance of the fifth Lot within the Common Interest Community to an Owner other than Declarant.

Section 3.2. Duty to Accept the Common Elements Transferred by Declarant : The Association shall accept title to the Common Elements deeded by Declarant and agrees to own and maintain any property, including all Improvements located thereon, and personal property relating thereto, transferred to the Association by Declarant as Common Elements. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all liens and encumbrances (other than the lien of real estate taxes not then due and payable).

Section 3.3. Owners' Easements : Every Owner shall have a nonexclusive right and easement for use of appropriate portions of the Common Elements, subject to Rules of the Association therefor, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 3.4. The Association's Rights : The rights of each Owner shall be subject to the Special Declarant Rights of the Declarant reserved herein and the following rights of the Association:

- A. To borrow money to improve the Common Elements.
- B. To convey or dedicate all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant or a Builder, and provided written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. The granting of permits, licenses and easements for public utilities or for other purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause.
- C. To adopt and distribute to Owners Architectural Design Guidelines and Rules and Regulations with which each Owner and their Guests shall comply.
- D. To suspend the voting rights of a Member for any period during, and for up to sixty (60) days following, any infraction or breach by such Member or a Guest of such Member of any provision of the Declaration, the Bylaws, or of any Rule or Regulation unless such breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues and for up to sixty (60) days thereafter.
- E. To take such steps as are reasonably necessary to protect the Common Elements against foreclosure.
- F. To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of appropriate portions of the Common Elements by Owners and Guests for any purpose(s) the Board may deem to be useful, beneficial or otherwise appropriate.
- G. To close or limit the use of the Common Elements or portions thereof temporarily, if needed; or to close or limit the use of the Common Elements permanently if approved by the Members entitled to cast at least eighty percent (80%) of the votes in the Association in person or by proxy at a meeting duly held.
- H. To limit use of Common Elements by specific Owners or their Guests if the Association has found that they have damaged the Common Elements or abused their previous use of the Common Elements.

**ARTICLE IV
THE ASSOCIATION; PERIOD OF DECLARANT CONTROL**

Section 4.1. Membership : Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall terminate on transfer of a fee simple title by the Owner, and may not be separated from the ownership of a Lot. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration shall be amplified by the Articles of Incorporation, Bylaws, Policies and Procedures, Rules and Regulations, and Architectural Design Guidelines.

Section 4.2. Two Classes of Membership: The Association shall have two classes of voting membership. Class A Memberships shall be non-Declarant Owners, who shall be entitled to one vote for each Lot owned in the Common Interest Community. Class B Memberships shall be the Declarant, who shall be entitled to three votes for each Lot owned in the Common Interest Community. Upon expiration of the Period of Declarant Control, the Class B Memberships shall automatically convert to Class A Memberships. If more than one person holds the membership interest, the vote for such Lot shall be exercised as the persons holding such interest shall determine between



themselves, provided that in no event shall more than one vote be cast with respect to any Lot owned by a Class A Member.

Section 4.3. Authority of Board : Except as otherwise provided in this Declaration or the Bylaws, the Board of Directors may act in all instances on behalf of the Association.

Section 4.4. Declarant Control of the Association :

A. There shall be a "Period of Declarant Control" during which a Declarant, or Persons designated by the Declarant, may appoint and remove the officers and members of the Board. The Period of Declarant Control terminates no later than the earlier of:

- (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than the Declarant; or
- (ii) Five (5) years after the last conveyance of a Lot by the Declarant in the ordinary course of business to an Owner or Owners other than Declarant.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

B. Not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of Directors of at least three (3) members. The Board shall elect the officers. The Owners elected to the Board shall take office upon election.

C. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a vote of sixty-seven percent (67%) of all persons present and entitled to vote at a meeting of the Owners at which a quorum is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by the Declarant.

D. Declarant and Declarant's appointees shall not be subject to conflict of interest provisions of the Documents.

Section 4.5. Association Records, Inspection, and Disclosure : Association shall keep records and provide inspection and copies to interested parties as required by state law and as detailed in the Policies and Procedures.

Section 4.6 Owner Disclosures Upon Lot Sale.

A. In every contract for purchase and sale of a Lot in the Project, the Owner shall furnish to buyer, at Owner's expense, copies of the following documents:

- i. Bylaws and Rules and Regulation of the Association;
- ii. Recorded Declaration;
- iii. Minutes of the most recent annual Owners' meeting and minutes of any of the Board of Directors meetings that occurred within the six months immediately preceding the Title Deadline;
- iv. The Association's operating budget;
- v. The Association's annual income and expenditures statement; and
- vi. The Association's annual balance sheet.

The Association shall use its best efforts to accommodate a request by the selling Member for the Association's records.

B. Every contract for sale of a Lot shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

"THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION.



PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.”

**ARTICLE V
SPECIAL DECLARANT RIGHTS**

Section 5.1. Special Declarant Rights : The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- A. To complete Improvements indicated on Plats filed with the Declaration;
- B. To exercise any Special Declarant Right reserved herein or authorized by law;
- C. To maintain construction and sales offices, and signs advertising the Common Interest Community and models;
- D. To use and to permit others to use easements through the Common Interest Community for construction, and to discharge Declarant's obligations under this Declaration;
- E. To appoint or remove any officer of the Association or a Board of Directors member during the Period of Declarant Control subject to the provisions of Section 4.4 of this Declaration;
- F. To amend the Declaration and the Plat in connection with the exercise of any Special Declarant Rights;
- G. To appoint or remove any Architectural Review Committee member; and
- H. To exercise any other Declarant right created by any other provision of this Declaration.
- I. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities in, on or over the Property for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on, and for the use and benefit of, the Property. Notwithstanding anything herein to the contrary, Declarant does not reserve and specifically disclaims any right or easement hereunder to construct underground utility lines, pipes, wires, ducts, conduits and other facilities either above or below ground upon that portion of any Lot where improvements may be located as specified by the Building Envelope requirements as shown on the recorded plat of said Lot.
- J. The right to replat the Common Interest Community into fewer Lots or additional or fewer Common Elements, and to convert Lots into Common Elements, provided however, that no replatting or conversion will be permitted without first obtaining the consent of the Board of County Commissioners of Lake County, Colorado, if required by Colorado law or the Lake County Development Code.

Section 5.2. Rights Transferable : Any Special Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Lake County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 5.3. Limitations on Special Declarant Rights : Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant or any Transferee of Rights pursuant to Section 5.2 for the period of Declarant control of the association specified in Section 4.4.

Section 5.4. Interference with Special Declarant Rights : Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

Section 5.5. Construction and/or Sales Offices : The Declarant, their duly authorized agents, representatives and employees may maintain any Lot owned by the Declarant as a model Dwelling, Lot, or construction/sales office.

Section 5.6. Construction; Declarant's Easement : The Declarant reserves the right to perform warranty work, and repairs and construction work on easements and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed without the consent or approval of the Board of Directors. The Declarant has an easement through each Easement and the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or Special Declarant Rights. This easement includes the right to convey utility and drainage easements to public utilities, municipalities or metropolitan or special improvement districts, or the State to fulfill the plan of development.



Section 5.7. Signs and Marketing : The Declarant reserves the right for Declarant to post signs and displays in the Common Elements in order to promote sales of Lots and Improvements. Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

Section 5.8. Declarant's Personal Property : The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Common Elements that is owned by them and has not been represented as property of the Association. The Declarant reserves the right to remove from the property (promptly after the conveyance of the last Lot) any and all goods and improvements owned by them and used in development, marketing and construction, whether or not they have become fixtures.

**ARTICLE VI
MAINTENANCE**

Section 6.1. Common Elements : The Association shall manage, operate, insure, maintain, repair and replace all of the Common Elements, and any drainage structure or facility or other public improvements required by local governmental entities, including without limitation, infiltration trenches, fire fighting facilities, snow removal from the fire fighting facilities, and any other maintenance obligations noted on the Plat, so long as such facilities remain under Association use and control.

Section 6.2. Lots : Owners shall maintain, repair and replace, at their own expense, all portions of their Lot. This shall include control of trash and other accumulated items that may be unsightly to other Owners, and removal of snow from the driveway. The Association shall have the right to enter and perform cleanup and maintenance services neglected by the Owner, and assess the Owner for any costs incurred.

Section 6.3. Right of Access : Any person authorized by the Board of Directors shall have the right of access to all portions of any Lot for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Common Interest Community, for the purpose of performing inspections, installations, alterations or repairs, and for the purpose of reading, repairing and replacing utility meters, water meters, water depths, effluent samples, and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency or legal deadline, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

Section 6.4. Repairs Resulting From Negligence : Each Owner shall reimburse the Association for any damages to the Common Elements caused intentionally, negligently or by the failure to properly maintain, repair or make replacements to a Lot including drainage. If such expense is caused by misconduct, a fine may be assessed following Notice and Hearing. If damage is inflicted on any Lot as a result of entry thereon by the Association, through maintenance access under Section 6.3, the Association will be responsible to repair such damage.

**ARTICLE VII
ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

Section 7.1. Apportionment of Common Expenses : Except as provided in Section 6.4 and Section 7.2, all Common Expenses shall be assessed against all Lots on a uniform and equal basis. All Common Expenses shall be assessed against all Lots in accord with the Allocated Interests. If Lots are added to or removed from the Common Interest Community, then the Common Expense liability shall be reallocated and any Common Expense Assessment not yet due shall be recalculated.

A. Initial Annual Common Expense Assessment. The Association may commence making Common Expense Assessments at any time determined by the Board. Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses.

B. Annual Common Expense Assessment. Subject to the provisions of Section 7.1.A above, Annual Common Expense Assessments shall be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association. The Annual Common Expense Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.

C. Levy of Assessments. The Annual Common Expense Assessment shall be levied on an annual basis in advance against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments may be collected in annual installments, or in any other manner as determined by the Board of Directors. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Lot to an Owner other than the Declarant occurs. The assessments shall be used exclusively to promote the recreation, health, safety and welfare of the residents



of the Dwelling Units, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Documents, or by law; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

Special Assessments shall be levied in accordance with Subsection D of this Section 7.1.

The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the assessment thereafter. No assessment may be levied retroactively.

Common Expenses attributable to fewer than all Lots may be levied at any time, shall be due and payable as established by the Board, and are exempt from any voting requirements by the membership required for Special Assessments called for under the Declaration.

D. Special Assessments. In addition to the Annual Common Expense Assessments authorized in this Article, but subject to the limitations set forth herein, the Association, with the approval of the votes of sixty-seven percent (67%) of the votes entitled to be cast by the Members voting in person or by proxy at a meeting duly called for this purpose, may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of: (1) defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of the Common Elements, including fixtures and personal property related thereto; or (2) for repair or reconstruction of any damaged or destroyed Improvements located on said Common Elements; or (3) for funding of snow removal from streets prior to conveyance to the County; or (4) for the funding of any operating deficit incurred by the Association. Any Special Assessment shall be levied against each Lot in a uniform and equal manner. A meeting of the Members called for the purpose of considering the establishment of a Special Assessment shall be held in conformance with Subsection E of this Section 7.1. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

E. Notice and Quorum for any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Subsection D of this Section 7.1 shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If the required quorum is not present at a subsequent meeting, the proposed Special Assessment shall be deemed disapproved by the Members, but future proposals may be submitted to the approval of the Members pursuant to the provisions of this Subsection E.

Section 7.2. Common Expenses Attributable to Fewer than all Lots : The following Common Expenses may be assessed to one or more, but fewer than all, of the Lots:

- A. Any insurance premium increase attributable to a particular Lot by virtue of activities in or construction of the Lot shall be assessed against that Lot.
- B. If a Common Expense is caused by the misconduct of an Owner or Guest, the Association may assess that expense exclusively against that Owner's Lot.
- C. Fees, including attorney fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against an Owner pursuant to the Documents may be assessed against that Lot as Common Expense assessments.
- D. Silvicultural maintenance of Open Space areas that is not performed by the individual Owner, whether through their own choice or through Association decisions, shall be assessed against the specific Lot on which the work is performed.
- E. Any common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited.

Section 7.3. Lien :

- A. The Association has a lien on a Lot for a Common Expense Assessment levied against the Lot under Section 7.1 and all fees established or fines imposed against its Owner, from the time the Common Expense Assessment or fine becomes due. If a Common Expense Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations.



B. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a Security Interest on the Lot which has priority over all other Security Interests on the Lot and recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. A lien under this Section is also prior to all Security Interests described in (2) above of this Subsection B to the extent of an amount equal to the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to Section 7.4 which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution by either the Association or the holder of a First Security Interest of an action or a non-judicial foreclosure either to enforce or extinguish either the Association's lien or a Security Interest described in (2) of this Subsection B. This Subsection B does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision of Section 38-41-201 or 15-11-201, C.R.S. The Association's lien on a Lot for any assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Notwithstanding any provision of this Section 7.3.B: to the contrary, the lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a recorded first mortgage or recorded first deed of trust, and to any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether recorded or not. However, the lien of such assessments shall be superior to any homestead exemption of a deed to land subject to this Declaration of Covenants, Conditions and Restrictions shall constitute a waiver of the homestead exemption as against the said assessment lien. Sale or transfer of any lot shall not affect the assessment lien. However the sale or transfer of any lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, or the cancellation or foreclosure of any executory land sales contract wherein the Administrator of Veteran's Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether recorded or not, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

C. Recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment is not required. However, the Board of Directors or Manager of the Association may prepare and record in Lake County a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a notice of lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof.

D. A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of the Common Expense Assessment becomes due.

E. This Section does not prohibit an action to recover sums for which Subsection (A) of this Section creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

F. A judgment or decree in any action brought under this Section shall entitle the Association to costs and reasonable attorney fees, which shall be additional Common Expense Assessments; and is enforceable by execution.

G. The Association's lien may be foreclosed by the same procedure by which a mortgage or deed of trust on real estate is foreclosed. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same.

H. In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments.

I. If a holder of a first or second Security Interest in a Lot forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against that Lot which became due before the sale, other than the assessments which are prior to that Security Interest



under Subsection B of this Section of the Declaration. Any unpaid Common Expense Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

J. Any payments received by the Association in the discharge of an Owner's obligation may be applied to attorney fees and costs first, then late fees, penalties and interest, and then the oldest balance due.

K. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any First 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 Colorado 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 Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 7.4. Budget Adoption and Ratification : Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Board of Directors shall mail first class or deliver a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least sixty-seven percent (67%) of the votes entitled to be cast by all Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners continues until the Owners ratify a new budget proposed by the Board of Directors.

Section 7.5. Certificate of Payment of Common Expense Assessments : The Association, upon written request, shall furnish an Owner or their designee, or a holder of a Security Interest or its designee, a written Statement setting out the amount of unpaid Common Expense Assessments against the Lot. Said request shall be delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent. The Statement shall be furnished within fourteen (14) calendar days after receipt of the request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, and is binding on the Association, the Board of Directors and each Owner, or the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request.

Section 7.6. Effect of Nonpayment of Assessments; Remedies of the Association : Any assessment not paid within ten (10) days after the due date thereof shall be delinquent, and shall be subject to fees authorized by Section 7.2, including interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors. Fees, including attorney fees, charges, late charges, fines and interest may be charged due to late payment of assessments under this Section. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Lot. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include interest on the assessment and attorney's fees, together with the costs of the action, and other fees.

Section 7.7. Acceleration of Common Expense Assessments : If any Owner does not make the payment of any Common Expense Assessment levied against their Lot within ten (10) days of the date due, the Board of Directors shall have the right to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable for that Lot.

Section 7.8. No Waiver of Liability for Common Expenses : No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements, by abandonment of the Lot against which the Common Expense Assessments are made, or because of dissatisfaction with the Association's performance.

Section 7.9. Personal Liability of Owners : Each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is personally liable for Common Expense Assessments made against such Owner's Lot during the period of ownership of such Lot, at the time a Common Expense Assessment or portion of the assessment is due and payable. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, including fees described in Section 7.2. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without setoff or deduction.

Section 7.10. Surplus Funds : Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as



unallocated reserves and need not be paid to the Owners in proportion to their Common Expense Liability but may be credited to them to reduce their future Common Expense Assessments.

Section 7.11. Working Capital Fund : The Association shall be empowered to establish and maintain a working capital fund as deemed necessary by the Board, and detailed in Policies and Procedures.

ARTICLE VIII

ARCHITECTURAL REVIEW COMMITTEE

Section 8.1. Written Approval of Plans Required : No Improvements of any kind shall be constructed, erected, placed, applied or installed upon any Lot unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Review Committee.

Section 8.2. Additional Guidelines, Standards, Rules, Regulations and Procedures : The Board of Directors may, from time to time, adopt, promulgate, amend or otherwise revise additional guidelines, standards, rules and regulations and procedures governing Architectural Review for the purposes of:

- A. Further enhancing, defining, or interpreting what items or improvements are covered by this Article VIII; and
- B. Providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the Board of Directors deems to be proper, necessary or in the best interests of the community.

Section 8.3. Membership of Committee : The Architectural Review Committee shall consist of three (3) or more persons appointed by the Board of Directors; provided, however, that until all of the Lots have been conveyed to the first Owner thereof (other than Declarant), Declarant may at its option appoint the Architectural Review Committee. The power to appoint shall include the power to fill any vacancy and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Board.

Section 8.4. Procedures : The Architectural Review Committee shall operate under the procedures and guidelines detailed in the Architectural Design Guidelines, including procedures for review, voting, record-keeping, and variances, among others.

Section 8.5. Liability : The Architectural Review Committee and the members thereof, as well as the Declarant, the Association, the Board of Directors, or any representative of the Architectural Review Committee appointed to act on its behalf, shall not be liable for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Review Committee for any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder, if such action was in good faith or without malice. In reviewing any matter, the Architectural Review Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

Section 8.6. Waivers : The approval or consent of the Architectural Review Committee, any representative thereof, or the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Architectural Review Committee, any representative thereof, or the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

ARTICLE IX

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 9.1. Restrictions Imposed : All of the Lots shall be held, conveyed, used, improved, occupied, owned, resided upon and secured, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration, the Architectural Design Guidelines, the Rules and Regulations, and other related documents. These restrictions are general in nature and the Board shall have the power and duty to adopt, amend, repeal and enforce more specific and restrictive Architectural Design Guidelines and Rules and Regulations as the Board deems to be reasonable and necessary to carry out the intent of this Declaration. Access to Lots for enforcement of Covenants, Rules, and/or Guidelines is hereby granted.

Section 9.2. Business Use Restrictions : Business use of Lots is restricted according to the Architectural Design Guidelines and the Rules and Regulations, subject to Special Declarant Rights reserved under Article V. Business use cannot increase traffic, cannot be distinguishable as a business by passers by, and shall comply with applicable Association and County requirements.



Section 9.3. Occupancy and Use Restrictions : Restrictions regarding occupancy and use of Lots, Dwelling Units, other structures, and Common Elements are briefly noted here and further detailed in the Architectural Design Guidelines and in the Rules and Regulations, and are enforceable under all enforcement provisions of this Declaration, the Policies and Procedures, the Rules and Regulations, and associated Documents. Provisions that are further detailed in the Guidelines, Rules and Documents include, but are not limited to, the following broad topics:

- A. All structures shall be constructed in accordance with Architectural Design Guidelines and used in accordance with the Rules and Regulations.
- B. Garages shall be provided for at least two vehicles.
- C. Recreational, business, or off-road vehicles shall be stored within a garage.
- D. No maintenance or repair of any kind of vehicle may be performed outside of a garage.
- E. No abandoned or inoperable vehicle of any kind shall be visible on any Lot.
- F. Utility or storage sheds are subject to the provisions of the Design Guidelines and Rules.
- G. External storage of equipment, tools, or other items is prohibited.
- H. Fences are discouraged and architecturally regulated.
- I. Lots and Dwelling Units shall not be permitted to fall into disrepair.
- J. No signs, window display or advertising shall be permitted unless in conformance with the Rules.
- K. Parking of emergency vehicles is regulated according to Policies and Procedures and the Rules.
- L. Traffic and parking are regulated on and along subdivision roads, circles, and emergency egress.
- M. Pets shall not be kept for any commercial purposes and the keeping of domestic pets is strictly regulated so they will not be a nuisance or inconvenience to other Owners.
- N. Noxious, offensive, nuisance, dangerous or unsafe activities are prohibited.
- O. Resident activities shall not cause an increase in the rates of Association insurance or result in the cancellation of any insurance maintained by the Association.
- P. Owners are responsible for damage to the Common Elements and costs to the Association.
- Q. The Board may establish and enforce penalties for the infraction of any Covenants, Conditions, Restrictions, Rules, Regulations, or Guidelines, including, without limitation, the levying and collecting of fines for the violation of any of such requirements or restrictions, and the placement of liens against Lots.

Section 9.4. Restrictions on Alienation : A Lot may not be leased or rented except as provided for and regulated in the Rules and Regulations. Current copies of this Declaration, the Architectural Design Guidelines, and the Rules and Regulations shall be provided by Owner to all tenants and occupants, and Owner shall be fully responsible for actions of all tenants, occupants, Guests, and Visitors.

Section 9.5 Compliance Policies: Policies adopted in conformity with certain sections of the Colorado Common Interest Ownership Act that are mandatory for all Common Interest Communities are specified in the Policies and Procedures. This Common Interest Community acknowledges and enforces all mandatory provisions and prohibitions, but is exempt from other requirements of the Act because of its small size, and does not opt to participate in any non-mandatory provisions of the Act except as specifically stated in this Declaration and its associated documents.

**ARTICLE X
INSURANCE**

Commercial General Liability insurance shall be maintained in an amount and form as specified in the Policies and Procedures and treated as a Common Expense. Additional insurance and fidelity bonding as the Board determines to be appropriate is hereby authorized as a Common Expense and if obtained shall be handled as specified in the Policies and Procedures.

**ARTICLE XI
EASEMENTS AND LICENSES**

Section 11.1. Easements and Licenses : Easements or licenses to which the Lots and the Common Interest Community are presently subject are recited in this Declaration, Exhibit "B" to this Declaration, the Plat, and in the Policies and Procedures. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article V of this Declaration.

Section 11.2. Easements for the Board of Directors : Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.



Section 11.3. Declarant's Easements : Anything to the contrary herein notwithstanding, the Declarant hereby reserves for itself, the Association, Utilities, and for agents, employees, business invitees, successors or assigns, reasonable easements and rights-of-ways over all roads, streets, driveways and designated easements for the purpose of constructing improvements to the Common Interest Community and making repairs and extensions of service for Owners of Lots. Such easements and rights-of-way, however, shall not unreasonably inhibit the use of Lots by Owners and Guests. The Declarant, Association or Utility shall be fully responsible for any damage to Lots caused by its use of such easements and rights-of-way.

Section 11.4. Fire Protection Easements : A nonexclusive easement for ingress and egress is hereby granted to all fire protection agencies or persons, now or hereafter servicing the Property, to enter upon any part of the Common Interest Community in the performance of their emergency duties.

Section 11.5. Easements for Signs and Perimeter Control : Easements designated on the Plat for Signs and for Perimeter or Access Control are reserved for use by the Declarant or Association for their respective purposes.

Section 11.6. Easements for Drainage, Fire Fighting Facilities, Recreation and Utilities : Easements for the installation, use, and maintenance of utilities, drainage, fire fighting facilities, recreational facilities, Association, public or private improvements and access thereto are reserved as shown on the recorded plats and other documents affecting the Lots and any amendments to such plats and documents or as established by any other instrument of record. Utility companies are reserved access rights along established driveways to access their utility easements for purposes of maintenance, repair, upgrade, or installation. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water to the detriment of other Owners or the Association. Declarant reserves to itself and to the Association the right to enter in and upon each Lot at any time to inspect and measure drainage, water and septic facilities, to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

Section 11.7. Easements Deemed Created : All conveyances of any Lot hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

ARTICLE XII

DURATION, ANNEXATION, AMENDMENTS AND MERGER

Section 12.1. Duration: This Declaration shall run with and bind the land perpetually, unless terminated as set forth in Article XIII below.

Section 12.2. Declarant Amendments: Declarant declares and reserves the right to amend without the consent of Owners this Declaration, or the Plat, Articles of Incorporation, Bylaws, or Policies and Procedures any time within fifteen (15) years from the date this Declaration is recorded, or before Declarant conveys the last Lot to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows:

- (A) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- (B) To comply with any governmental requirements, or any of the Agencies, or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Security Interests.

Section 12.3. Owner Amendment: The Owners may amend the covenants and restrictions of this Declaration at any time upon a vote of no less than 67% of the allocated votes of the Owners.

Section 12.4. Mergers : The Common Interest Community may be merged or consolidated with another Common Interest Community of the same form of ownership upon a vote of no less than 67% of the allocated votes of the Owners.

Section 12.5. Recordation of Amendments : Each amendment to the Declaration shall be recorded in the offices of the Clerk and Recorder of Lake County, Colorado.

Section 12.6. Special Declarant Rights : Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

**ARTICLE XIII
TERMINATION**

The Common Interest Community may be terminated only upon agreement of the Board of County Commissioners of Lake County, Colorado and Owners to which at least sixty-seven percent (67%) of the votes are allocated. An agreement of Owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed. The termination agreement must specify a date after which the agreement will



be void unless it is recorded before that date. If, pursuant to the agreement, any real estate in the Common Interest Community is to be sold following termination, the termination agreement must set forth the minimum terms of sale. Proceeds of sale must be distributed to Owners and lienholders as their interests may appear, taking into account the value of property owned or distributed that is not sold so as to preserve the proportionate interests of each Owner with respect to all property cumulatively.

**ARTICLE XIV
SECURITY INTEREST PROTECTION**

Protection for Security Interests and Eligible Mortgagees shall be as outlined in the Policies and Procedures of the Association. The Association shall have the authority to commit to appropriate notices, audits, inspection of records, and attendance at meetings by holders of Security Interests on behalf of its Owners and prospective Owners.

**ARTICLE XV
CONDEMNATION**

If part or all of the Common Interest Community is taken by eminent domain or part of a Lot is taken by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for that unit and its allocated interests whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interests are automatically reallocated to the remaining Lots in proportion to the respective allocated interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken is thereafter a common element. If part of the Common Elements is acquired by eminent domain, that portion of any award attributable to the Common Elements taken must be paid to the association.

**ARTICLE XVI
MISCELLANEOUS**

Section 17.1. Captions : The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

Section 17.2. Gender : The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

Section 17.3. Waiver : No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 17.4. Invalidity : The invalidity of any provision, sentence, phrase, or word of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision, sentence, phrase, or word is invalid, all of the other provisions, sentences, phrases, and words of the Documents shall continue in full force and effect.

Section 17.5. Conflict : The Documents are intended to comply with the requirements of the Colorado Nonprofit Corporation Act. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between any section or phrase of this Declaration and any other Document, this Declaration shall control. If there is a conflict between or among any of the Documents of the Association or within any Document of the Association, the stricter provision shall apply, unless decided otherwise by the Board and so recorded in writing.

Section 17.6. Severability : All provisions, sentences, phrases, and words of the Documents of the Association are severable. Invalidation of any of the provisions, sentences, phrases, or words of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions, sentences, phrases, or words, which shall remain in full force and effect.

Section 17.7. Registration of Mailing Address : Each Owner, and each Eligible Mortgagee may register their mailing address with the Association, and except for assessment statements and other routine notices, other notices or demands intended to be served upon an Owner, or upon an Eligible Mortgagee shall be either delivered to them or sent by email or first class mail, postage prepaid, addressed in the name of such person or entity at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board or the Association shall be sent by registered or certified mail, postage prepaid, to the Association's Manager or Registered Agent.

Section 17.8. Enforcement : Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation,



Bylaws, Policies and Procedures, Architectural Design Guidelines, and/or Rules and Regulations of the Association, as amended, may be by any proceeding at law or in equity by any Owner or by the Association against any person or persons (including, without limitation, the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines and enforce other established penalties for the violation of any provision of any of the aforesaid Documents. In any action instituted or maintained for enforcement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter. No person or entity other than an Owner or the Association shall have any rights to enforce any of the provisions of this Declaration or associated documents or collect damages based on those unless specifically named and provided for within this Declaration, except for certain governmental entities for certain specific enforcement rights provided by Statute.

Section 17.9. Indemnification : To the fullest extent permitted by Colorado law, the Association shall indemnify every present and former Director, Officer, committee member, agent or employee against loss, costs, and expense, including attorneys' fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such Director, Officer, committee member, agent or employee of the Association. Any such indemnification may be paid directly or paid out of the insurance proceeds provided by an insurer furnishing Officers and Directors Errors and Omissions insurance coverage or similar protection and any other insurance protecting the Association from liability because of the negligent acts of its servants, including insurance covering motor vehicles or public liability, property damage, medical and other similar coverage. In the event of an insurance settlement, the settlement shall be approved by the Board of Directors and paid for by the insurance carrier out of the insurance proceeds.

The Association has caused this Declaration to be executed this 30th day of June, 2009

ASSOCIATION: ELK TRAIL OWNERS ASSOCIATION, INC.

William P. Klauber *Robert D. Klauber* *Paul R. Klauber*

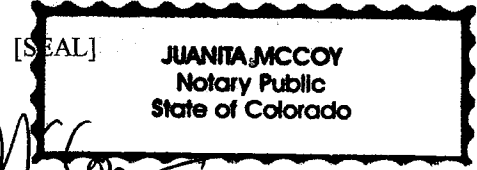
William P. Klauber, President Robert D. Klauber, Secretary Paul R. Klauber, Treasurer

STATE OF COLORADO, COUNTY OF LAKE)

The foregoing instrument was acknowledged before me this 24 day of July, 2009, by William P. Klauber, as President of Elk Trail Owners Association, Inc., a Colorado Corporation.

Witness my hand and official seal.

My commission expires: 9/14/2009



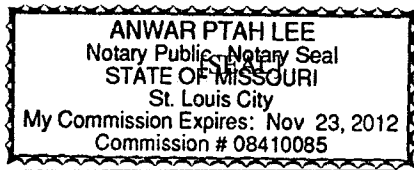
Juanita McCoy
Notary Public

STATE OF MISSOURI, COUNTY OF ST LOUIS)

The foregoing instrument was acknowledged before me this 17th day of July, 2009, by Robert D. Klauber, as Secretary, and by Paul R. Klauber, as Treasurer, of Elk Trail Owners Association, Inc., a Colorado Corporation.

Witness my hand and official seal.

My commission expires: 11-23-12



Notary Public *Anwar PTAH LEE*



EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ELK TRAIL

LEGAL DESCRIPTION
OF THE
COMMON INTEREST COMMUNITY

A tract of land, being a portion of the Laura and Daisy Placer, U.S. Mineral Entry No. 949 and the Albert A. Blow Placer, U.S. Mineral Entry No. 361 lying Northerly of Lake County Road No. 4 (previously known as Lake County Road No. 19) situate in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 9 South, Range 80 West of the 6th P.M., County of Lake and State of Colorado more particularly described as follows:

Beginning at the Center $\frac{1}{4}$ Corner of aforesaid Section 21, a brass cap in place;

thence S. 02° 27' 41" E. along the North-South center line of said Section 21, 970.73 feet to a point of intersection with the Northerly right of way line of aforesaid Lake County Road No. 4, an aluminum cap in place;

thence S. 71° 15' 14" W. along said right of way 630.80 feet to a point of curve, an aluminum cap in place;

thence continuing along said right of way on a curved line to the right, having a delta angle of 12° 54' 07", a radius of 1489.67 feet, an arc length of 335.45 feet, and a long chord of 334.74 feet which bears S. 77° 42' 17.5" W. to a point of tangent, an aluminum cap in place;

thence S. 84° 09' 21" W. continuing along said right of way 461.84 feet to a point of curve, an aluminum cap in place;

thence continuing along said right of way on a curved line to the right, having a delta angle of 31° 02' 49", a radius of 806.86 feet, an arc length of 437.21 feet, and a long chord of 431.89 feet which bears N. 80° 19' 14.6" W. to a point of reverse curve, an aluminum cap in place;

thence continuing along said right of way on a curved line to the left, having a delta angle of 4° 12' 34", a radius of 1809.86 feet, an arc length of 132.97 feet, and a long chord of 132.94 feet which bears N. 66° 54' 06.8" W. to a point of intersection with the West line of aforesaid E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21;

thence N. 00° 34' 17" W. along said West line, 1185.81 feet to the C-W-W $\frac{1}{64}$ Corner of said Section 21, a brass cap in place;

thence S. 89° 24' 28" E. along the East-West center line of said Section 21, 634.03 feet to the C-W $\frac{1}{16}$ Corner of said Section 21, and 1902.086 feet to the point of beginning.

Bearings are referred to Astronomic North.

The above tract of land is subject to all rights of way and easements of record and existing on the ground including, but not limited to railroad rights of way, ditches, canals, rivers and existing county roads.

EXCEPTING THEREFROM: That portion of the above property described as Tracts E and F on the Elk Trail Final Plat recorded June 18, 2007 at Reception No. 346460 of the records of the Lake County Clerk and Recorder. (Tracts E and F are neither governed by nor subject to this Declaration of Covenants, Conditions and Restrictions for Elk Trail.)



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Patricia Berger
Lake County Recorder

EXHIBIT "B"
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ELK TRAIL

EASEMENTS AND LICENSES
BURDENING THE PROPERTY

1. Reservation of right of proprietor of any penetrating vein or lode to extract his ore, as set forth in U.S. Patents for the Albert A. Blow Placer, M.E. No. 361, recorded in Book B of Patents at Page 177 of the records of the Lake County Clerk and Recorder and the Laura and Daisy Placer, M.E. No. 949, recorded in Book B of Patents, at Page 574 of the records of the Lake County Clerk and Recorder.
2. Inclusion within the Lake County Soil Conservation District, as evidenced by that instrument recorded February 25, 1950 at Book 308 at Page 211 of the records of the Lake County Clerk and Recorder.
3. Right of Way for County Road across a portion of Section 21, Township 9 South, Range 80 West of the 6th P.M., as conveyed by Quit Claim Deed recorded April 21, 1958 in Book 331 at Page 311 of the records of the Lake County Clerk and Recorder.
4. Reservation for "all rights of way and easements of record and existing on the ground including, but not limited to railroad rights of way, ditches, canals, rivers and existing county roads" set forth in deed recorded on February 9, 1988 at Book 484, Page 617 of the records of the Lake County Clerk and Recorder.