



**FIRST AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS  
THREE ELK RUN SUBDIVISION LOCATED IN GARFIELD COUNTY, COLORADO**

This First Amendment to the Declaration of Protective Covenants for Three Elk Run Subdivision ("Amendment") is made this 17<sup>th</sup> day of April, 2015 by the Three Elk Run Homeowners Association, Inc. ("Association"), a Colorado nonprofit corporation, pursuant to the approval of the members.

**I. RECITALS**

A. On January 31, 1995, Edward A. McCune and Dirk Larsen ("Declarant") recorded a Declaration of Protective Covenants, Three Elk Run Subdivision, located in Garfield County, Colorado at Reception No. 473967 in the records of the Garfield County, Colorado Clerk and Recorder (the "Declaration").

B. Subsequently, Declarant transferred control of the Association to the Owners of the Units.

C. Article 25 of the Declaration provides that the Declaration may be changed or modified by an instrument in writing setting forth such changes or modifications, approved by a vote of sixty-seven percent (67%) of the votes entitled to be cast by the members of the Association at a meeting of the members duly held, and recorded in Garfield County, Colorado within six (6) months after said meeting.

D. The Association, as authorized by a majority of the members constituting sixty-seven percent (67%) or more of votes entitled to be cast by the members at its meeting on October 29, 2014, desires to amend the Declaration.

E. In all other respects, all of the terms and conditions of the Declaration shall remain in full force and effect.

**II. AMENDMENT OF ARTICLE 3.8  
Limitations on Structures: Single Family Residential Use Only**

Article 3, Section 3.8 of the Declaration is hereby amended to read in its entirety as follows:

3.8 All structures shall be constructed so as the exterior is of either brick, stone, lumber, stucco, or a combination thereof. Interior materials may be at the discretion of the Owner provided that the exterior appearance is of the materials stated above and approved by the ACC. Preference shall be given to stone and stucco by the ACC. The use of cinderblock shall not be allowed unless it is faced with another material herein approved. All roofs shall be finished with approved, non-combustible roofing materials, wherein wood shake shingles are specifically prohibited. Any additional exterior and/or roofing materials other than those listed which become available due to new technological advances may be used by the Owner upon approval by the

ACC. United States Forest Service and Colorado State Forester Wildfire Prevention guidelines should be incorporated into residential site planning and design.

### **III. AMENDMENT OF ARTICLE 5 Existing Foliage: Wildfire Prevention**

Article 5 of the Declaration is hereby amended to read in its entirety as follows:

5. Existing Foliage: Wildfire Prevention. The existing foliage and vegetation on each lot shall be preserved in as near a natural state as possible. However, consideration must be given to the United States Forest Service and Colorado State Forester Wildfire Prevention guidelines. In particular, except for low ground cover, such as mowed grass, all vegetation within ten (10) feet of the structure shall be removed. Brush or trees within thirty (30) feet of residences shall be thinned, if practicable without adversely diminishing the natural esthetics of the lot, so that remaining clumps are no more than ten (10) feet wide. It is each lot Owner's responsibility to remove dead wood from their property to mitigate fire hazards.

### **IV. AMENDMENT OF ARTICLE 9 No Commercial Use**

Article 9 of the Declaration is hereby amended to read in its entirety as follows:

9. No Commercial Use. There shall not be permitted or maintained upon any lot or any part thereof any trade, business, or industry, except "in-house or cottage business" whose employees are limited to the immediate family of the owner, which cottage business shall be permitted. Owners may rent or lease their dwelling for residential purposes when not required for the Owner's use. Owners may rent space within their residences, allowing for one family, a couple, or a single renter with up to two additional renters in the home, space permitting. No apartments shall be utilized by anyone other than Owner and Owner's guests, and any such use shall be deemed a commercial use and subject to immediate injunction by the Association or other Owners.

### **V. AMENDMENT OF ARTICLE 11 Animals**

Article 11 of the Declaration is hereby amended to read in its entirety as follows:

#### **11. Animals.**

11.1 Domestic Animals. Domestic livestock shall not be permitted in the Subdivision except as follows:

11.1.1 Chickens and ducks shall be permitted, provided that the combined number of chickens and ducks per lot is no more than ten (10). All chickens and ducks must be kept in an enclosed area approved by the ACC. Said enclosed area must be built no closer than ten (10) feet to any adjoining property line and not be in view of any street or by adjacent

neighbors. Such enclosed area must be kept clear of manure and must be kept at all times in a sanitary manner. Only female chickens shall be permitted.

11.2 Lot Owners shall be entitled to keep dogs on their property pursuant to the following restrictions and limitations:

11.2.1 Dogs shall be kept under the control of the Owner at all times and shall not be permitted to run free or to cause a nuisance in the Subdivision. No dogs shall be allowed beyond the boundaries of the lot owned by the persons where the dog is housed unless accompanied by a person in full control of such dog(s).

11.2.2 Not more than two (2) dogs shall be kept per lot.

11.2.3 Dogs shall not be allowed to bark continuously, which shall be defined as barking for a continuous 10-minute period or continual intermittently for over one (1) hour.

11.2.4 Dogs shall be leashed, chained, fenced, "electric fenced", kennelled, or under control of the owner, which shall mean that the dog does not leave the boundaries of the lot or house at all times. Metal fencing will be allowed for the purposes of kenneling a dog. Location of kennels shall be subject to review of the ACC.

11.2.5 The Association shall assess and enforce civil penalties against Owners violating the restrictions applying to dogs as follows: A written warning shall be given by the Association for a first violation committed by an Owner's dog; Forty Dollars (\$40.00) for the second violation; Seventy-Five Dollars (\$75.00) for the third violation; and One Hundred Dollars (\$100.00) for the fourth and any subsequent violation. Should any dog chase or molest deer, elk, or other pets or persons, or destroy or disturb property of another, the Association shall be authorized to prohibit the property Owner or resident from continuing to maintain the offending animal on his property.

11.3 Notwithstanding the foregoing, no animal may be kept within a lot or residence which, in the good-faith judgment of the Association Board of Directors, results in any annoyance or are obnoxious to residents in the vicinity or to lot Owners within the Subdivision. Except as expressly limited herein, domestic animals may be further restricted pursuant to any rules and regulations which may be promulgated by the Association Board of Directors.

11.4 The ACC may require any Owner to remove any animal if, in the opinion of the ACC, lands, including lands within the Owner's lot, are deemed an erosion problem due to excessive abuse or any animal constitutes an annoyance to the Owners of Neighboring lots.

## **VI. AMENDMENT OF ARTICLE 12 Maintenance of Property, Section 12.4**

Article 12, Section 12.4 of the Declaration is hereby amended to read in its entirety as follows:

12.4 The outside burning of any trash, rubbish, or other materials shall not be permitted. Standard and approved outdoor barbecues and fireplaces shall be allowed. All outdoor fireplaces burning wood must be screened.

**VII. AMENDMENT OF ARTICLE 15.2  
Lien for Nonpayment of Assessments**

Article 15, Section 15.2 of the Declaration is hereby amended to read in its entirety as follows:

15.2 Lien for Nonpayment of Assessments. All sums assessed by the Association, including without limitation the share of common expense assessments chargeable to any lot Owner, any fines, charges, late charges, penalties, attorney fees, and interest which may be levied on a lot Owner, and unpaid utility fees and assessments charged to a lot Owner, shall be the personal obligation of the lot Owner at the time such assessment or charge becomes due. Such obligation may not be passed to a successor in title, unless expressly assumed by the successor, and such assumption is approved by the Association. All sums shall also constitute a continuing lien against such lot superior (prior) to all other liens and encumbrances, excepting only:

15.2.1 Liens for real estate taxes and other assessments against the lots in favor of any governmental assessing unit.

15.2.2 All sums unpaid on a first mortgage, deed of trust or other encumbrance of record, including any unpaid obligatory sums as may be provided by encumbrance, except the lien shall have limited priority over such first mortgage, deed of trust, or other encumbrance as provided by the Act.

15.2.3 Liens and encumbrances recorded before the recordation of the Declaration, except as otherwise provided herein or by the Act.

15.2.4 In the event of nonpayment the Association may elect to foreclose per Colorado law.

If an assessment is payable in installments, each installment shall also constitute a continuing lien from the date it becomes due, including any valid acceleration date.

**VIII. AMENDMENT OF ARTICLE 15.4  
Penalties: Notice of Lien**

Article 15, Section 15.4 of the Declaration is hereby amended to read in its entirety as follows:

15.4 Penalties: Notice of Lien. A statement will be mailed for Association dues and assessments, with a due date for payment of all amounts owed within thirty (30) days of the statement date. If any assessment shall remain unpaid after thirty (30) days after the due date thereof, such unpaid sums shall bear interest from and after the due date thereof at a rate on and  
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one half percent (1.5 %) per month. The Board of Directors may impose a late charge and/or penalties on such defaulting Owner as may be established by the Board. In addition, for any dues and assessments which are one (1) year or more past due, the Board of Directors shall be entitled to record a Statement of Lien for such unpaid amounts and collect reasonable attorney's fees incurred in connection with any demands for payment and/or collection of delinquent dues and assessments. To evidence such lien, the Board of Directors shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the lot, and its legal description. Such a notice shall be signed by one (1) member of the Board of Directors and may be recorded in the office of the Clerk and Recorder of the County of Garfield, Colorado.

#### **IX. AMENDMENT OF ARTICLE 21.1 ACC**

Article 21, Section 21.1 of the Declaration is hereby amended to read in its entirety as follows:

21.1 No improvements of any kind, including, but not limited to, dwelling houses, garages, fences, swimming pools, tennis courts, parking areas, drives, antennas, flagpoles, walks, and every other type of improvement, shall ever be constructed or altered on any lands within the Subdivision, nor may any vegetation be altered or destroyed, nor any landscaping performed on any tract unless three (3) complete sets of architectural plans and specifications for such construction, alteration, or landscaping are submitted to the ACC and approved in writing prior to the commencement of such work. All decisions of the ACC shall be in writing. One (1) set of plans and specifications shall remain on file and become a permanent record of the ACC. If the ACC fails to take any action within thirty (30) days after complete architectural plans and specifications for such work have been submitted to it, then all such architectural plans shall be deemed to be approved; provided, however, that no uses may be authorized or deemed approved unless adequate water resources are available to sustain such use. This provision is not to be construed to require plans for the planting of gardens and the planting of flowers and decorative plants immediately adjoining the main dwelling or on decks and patios. Additionally, this provision is not to be construed to require plans for any activity required for the purposes of fire mitigation and/or noxious weed control or removal.

#### **X. AMENDMENT OF ARTICLE 23 Covenants Run With Land**

Article 23 of the Declaration is hereby amended to read in its entirety as follows:

23. Covenants Run With Land. These Covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until the year 2030, at which time said Covenants shall be automatically extended for successive periods of ten (10) years unless by vote reflected by signed documents duly recorded by the majority of the then Owners it is agreed to change said Covenants in whole or in part.

