

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

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Know all men by these presents that Edward A McCune and Dirk Larsen, being the owners of Three Elk Run Subdivision located in Garfield County, Colorado, and being desirous of protecting property values and the health, convenience, welfare, and use of the owners of lots therein, does hereby declare and adopt the following Restrictions, Covenants, and Conditions, each and all of which shall be applicable to and run with the lots in Three Elk Run Subdivision as the same appear upon plat thereof filed for record on January 31, 1994, as Document No. 473965 in the office of the Garfield County Clerk and Recorder, said Restrictions, Covenants, and Conditions being as follows:

1. **Definitions.** As used in these Protective Covenants, the following word, terms, and letter designations shall have the following meanings:

- 1.1 "Subdivision" shall mean Three Elk Run Subdivision
- 1.2 "Association" shall mean the Three Elk Run Homeowners Association.
- 1.3 "Lot" shall mean a lot in the Subdivision.
- 1.4 "Owner" shall mean the owner of a lot in the Subdivision.
- 1.5 "ACC" shall mean the Architectural Control Committee for the Subdivision.
- 1.6 "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 et seq.
- 1.7 "Declarant" Edward A McCune and Dirk Larsen as property owners and Developers of Three Elk Run Subdivision.

2. Three Elk Run Homeowners Association.

- 2.1 Each Owner shall automatically become a member of the Association.
- 2.2 The purposes and powers of the association are as set forth in its Articles of Incorporation, Bylaws, and the Act and include, but are not necessarily limited to, the management, control, and maintenance of:

*Three Elk Run LLC
Box 182
Garfield Co*

2.2.1 The water distribution system; Provided, however that at any time should the Town of New Castle elect to assume ownership, operations, control, management, maintenance, replacement of any portion of the water supply system as indicated on the Final Plat and in the Subdivision Improvements agreement of the Subdivision the Association shall upon receiving an agreement approved by the Declarant convey, dedicate, transfer and otherwise relinquish all operations, control, management, maintenance, and replacement of such portion of the water system to the Town of New Castle;

2.2.2 Roadways dedicated to the public;

2.2.3 Easements for utilities, ingress, and egress as plated.

2.3 The Association may assign its future income, including its rights to receive common expense assessments, upon an affirmative vote of the majority of the lot Owners at a meeting called for such purpose.

2.4 During the period of Declarant control, as described in paragraph 28, below, the Declarant shall have the right, pursuant to Section 38-33.3303(5) of the Act to appoint and remove officers of the Board of Directors of the Association. In the event the Declarant surrenders such right, it may require, by separate recorded instrument, that certain Association actions shall nonetheless require Declarant approval to become effective.

2.5 The Association shall have one (1) class of voting membership. Owners of lots shall be entitled to one (1) vote as Association members for each Lot owned. In the event there are multiple owners of a Lot, the Owners shall designate in writing one (1) of them as the voting representative who shall cast the vote on behalf of all said lot Owners at any Association meeting. Such representative shall be the only person entitled to issue proxies on behalf of the lot whose Owners he represents.

2.5.1 The Association shall have the right to enter into agreements with Property Owners outside the boundaries of the Subdivision relating to utility, access, and other easements which it deems necessary.

3. Limitations on Structures: Single Family Residential Use Only. The property in the Subdivision is intended to be developed for single-family residential purposes only with all

structures designed to blend into and complement the natural surroundings.

3.1 No more than one (1) detached single-family dwelling shall be erected upon any lot inclusive of an attached or detached garage for no more than four (4) automobiles, and except for other building(s) for recreational functions, work shop, vehicle storage, guest quarters, or other uses which are approved by the Association and the ACC and are in accordance with Garfield County Regulations.

3.2 No building or structure intended for or adapted to business, commercial, or manufacturing purposes, nor any multi-family dwellings, shall be erected, placed, maintained, or permitted upon any lot.

3.3 All structures shall be situated on each lot in accordance with approval by the ACC. Unless varied by the provisions of Paragraph 21.4 hereafter, no structure on any lot shall be constructed closer to any side or rear lot line or any front lot line than the standard established under applicable Garfield County codes. In siting structure, the ACC shall approve its location with as minimal impact on neighboring lots as possible.

3.4 No structures shall be placed or located on any lot in such a manner that will obstruct, divert, or otherwise alter the natural water drainage courses and patterns. In any event no structure shall be placed in the bottom or mouth of natural drainages and ravines. Likewise, no landscaping, driveways, or changes to the existing terrain shall be made which shall obstruct, divert, or otherwise alter such drainage.

3.5 The minimum size of each primary residential structure erected shall be not less than eighteen hundred (1800) square feet of finished living space exclusive of basements (walkout or not), of open porches, garages, carports, or accessory buildings and structures.

3.6 No structure shall be permitted on any lot which exceeds the standard established under applicable Garfield County codes. The ACC may further restrict the height or elevation of structures as to not obstruct the view plane of the other Owners.

3.7 No building shall be erected by means of other than new construction, it being the purpose of this covenant to ensure that old buildings will not be moved from previous locations and placed upon a lot.

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

3.9 No structure shall be placed or erected upon any lot which is, ever has been, or could be made the subject of a specific ownership tax as now defined in Title 42 of the Colorado Revised Statutes, nor shall structures constructed in a fashion and manner as mobile homes be allowed.

3.10 Each structure shall be completed within one (1) year from date of commencement of construction.

3.11 Except as provided in paragraph 28, no lot or portion thereof may be used for access easement or right of way to real property outside the subdivision.

4. Resubdivision Prohibited. The resubdivision of a lot by an individual lot Owner other than the Declarant is prohibited. Boundary line adjustments which do not result in the creation of additional lots shall not constitute resubdivision.

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.

6. Utility Lines. No gas lines, light and power lines, telephone lines, or television cable shall be permitted unless said lines are buried underground at the Owner's expense and out of sight from their primary source at the lot line to the dwelling.

7. Sewage Disposal. All sewage shall be disposed of by means of an individual sewage treatment facility or septic tank and leachfield approved by the local health agencies having jurisdiction thereof. Owners shall maintain such treatment facilities in good operating condition.

8. No Temporary Structures. No structures of a temporary character, trailer, basement, shack, garage, barn, or any other outbuildings of any description shall be used on any lot, except on a temporary basis not exceeding nine (9) months by the Owner or construction contractor constructing a dwelling on a lot. Provided however, that one (1) tepee shall be allowed per lot. Compliance with the Garfield County Regulations is required with respect to such temporary structure permitted under this paragraph.

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, shall be permitted and that Owners may rent or lease their dwelling for residential purposes when not required for the Owner's use. Renting or leasing of the dwelling may only be done for the entire dwelling. No apartments or other divisible use of the dwelling shall be utilized by anyone other than the 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.

10. Fences and Hedges. The ACC must approve the type and location of all fencing prior to installation. In no event will fencing of property boundaries be permitted. Fencing shall be in architectural harmony with the main dwelling and out-buildings. Fencing shall be limited to gardens, kennels, or other elements within a one hundred (100) foot perimeter of the main dwelling structure.

11. Animals.

11.1 Domestic Animals. Domestic livestock shall not be permitted in the Subdivision.

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 one (1) dog 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 1 hour.

11.2.4 Dogs shall be leashed, chained, fenced, "electric fenced," kenneled, 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: One Hundred Dollars (\$100.00) for the first violation committed by an Owner's dog; Two Hundred Dollars (\$200.00) for the second violation; Three Hundred Dollars (\$300.00) for the third violation; and for each succeeding violation the fine increases in One Hundred Dollar (\$100.00) increments. 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 and may dispose of that animal, if necessary, to protect wildlife or other Owner's pets, persons, or property. The offending dog owner shall be provided written notice of such action at least two (2) days before disposal occurs. Within such two-day period, the offending dog shall be kenneled at a licensed kennel. All charges associated with action taken by the Association may be assessed against either the lot Owner and/or the dog owner, or both, at the Association's sole option.

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.

12. Maintenance of Property.

12.1 The Owner of each lot shall keep the same clear and free of rubbish and trash and shall keep the structures thereon in good repair doing such maintenance as may be required for this purpose.

12.2 No noxious or offensive conduct or activity shall be carried on upon any lot or in any structure thereon which may constitute a health hazard, nuisance, or annoyance to the neighborhood.

12.3 In the event clothes lines, equipment, garbage cans, service yards, woodpiles, or storage areas are not screened from view by natural elements the ACC may require screening by planting or construction to conceal the same from view of neighboring lots and streets.

12.4 The outside burning of any trash, rubbish, or other materials shall not be permitted without obtaining a burn permit from proper governmental authorizing authority. Standard and approved outdoor barbecues and fireplaces shall be allowed for the preparation of foodstuffs only.

12.5 Woodburning Stoves. Each lot within the Subdivision shall be allowed not more than one (1) EPA phase-3 stove. Dwellings shall be entitled an unrestricted number of propane/natural gas burning fireplaces or appliances. Open hearth, solid fueling devices shall be prohibited.

13. Vehicles.

13.1 All motor vehicles must be currently licensed and operational unless fully enclosed within a garage or shop.

13.2 No vehicles, boats, campers, trailers, snowmobiles, or other such recreational vehicles or devices shall be stored or permitted to remain for more than three (3) continuous days on any lot unless the same are stored in a garage or screened from view.

14. Signs. No billboards, signs, or other advertising devices of any nature shall be erected, placed maintained, or permitted, provided that this restriction shall not be construed to prevent appropriate name and address signs and signs that advertise property for sale or rent insofar as it is necessary to promote the sale and development of such properties. Approved numbers, names and addresses shall be placed on all new structures or in such a position as to be plainly visible and legible from the street fronting any lot.

15. Collection of Assessments: Enforcement.

15.1 Assessments. All lot Owners shall be obligated to pay any assessments lawfully imposed by the Board of Directors of the Association. To the extent the Association is responsible therefor, assessments may be lawfully imposed for any items of common expense which may include, among other things: the provision of water to the lots, which shall be metered; expenses and costs of maintaining, repairing, and plowing of roads within and accessing the Subdivision; expenses of the ACC; and insurance, accounting, and legal functions of the Association. The Board of Directors may establish contingency and reserve funds for the maintenance and improvement of the roadways and other anticipated costs and expenses of the Association to be incurred in pursuit of its purposes. Contingency and reserve funds shall be in such an amount as the Board of Directors may deem necessary and appropriate for the aforesaid purposes. Each owner shall be required to pay his prorata portion of these funds. As used herein, an Owner's prorata portion of common expenses shall mean a fraction formed by the number of lots purchased and held by the lot Owner (numerator) and the number of lots in the Subdivision (denominator). The Board of Directors shall have the right during any calendar year to levy and assess against all of the Owner's special assessments for such purpose or purposes, in accordance with this Declaration, or the Articles or Bylaws of the Association, as may be necessary. Any such special assessment shall be paid by the Owner's obligated to pay such assessment and shall be due and payable as determined by the Board of Directors.

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.

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.

15.3 Waiver of Homestead Exemption. Each Owner hereby agrees that the Association's Lien on a lot for assessments as hereinabove described shall be superior to the Homestead Exemption provided by C.R.S. 38-41-201 et seq., and acceptance of conveyance in regard to any lot within the Subdivision shall signify such grantee's waiver of the homestead right granted in said article of the Colorado statutes.

15.4 Penalties: Notice of Lien. 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 the maximum rate of interest permitted by law, or at such a rate as is determined by the Board of Directors. 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, the Board of Directors shall be entitled to collect reasonable attorney's fees incurred in connection with any demands for payment and/or collection of delinquent 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.

15.5 Foreclosure: Release of Lien. Such lien may be enforced by foreclosure of the defaulting Owner's lot by the Association in like manner as a mortgage on real property, upon the recording of a notice of claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Owner shall also be required to pay to the Association any additional assessments against the lot during the period of foreclosure, and the Association shall be

entitled to the appointment of a receiver to collect the same. The Board of Directors, for the Association, shall have the power to bid on the lot at foreclosure sale and acquire and hold, lease, mortgage, and convey the same. The Association, at its election, and in addition to any other remedies it may have at law or in equity, may also sue an Owner personally to collect any monies owed the Association. Any recorded lien for nonpayment of the common expenses may be released by recording a release of lien executed by a member of the Board of Directors.

16. Enforcement of Covenants and Restrictions.

16.1 Right of Action. The Association, acting by and through its board of directors, shall have the right to prosecute any action to enforce the provisions of all of these Covenants by injunctive relief, on behalf of itself and all or part of the Owners of the lands within the Subdivision. In addition, each Owner of the land within the Subdivision, including the Association, shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these Covenants. The prevailing party in any enforcement action shall be entitled to an award of its reasonable costs and attorneys' fees. After thirty (30) days' written notice to any Owner of a violation of these Covenants, and the Owner's failure to eliminate or cure said violation, the Association, in addition to the other remedies set forth herein, may levy a penalty of \$50.00 per day every day the violation exists or continues after the expiration of said thirty-day period.

16.2 Limitation of Actions. In the event any construction or alteration or landscaping work is commenced upon any of the lands in the Subdivision in violation of these Covenants, and no action is commenced within one (1) year thereafter to restrain such violation, then injunctive or equitable relief shall be denied, but an action for damages shall still be available to any party aggrieved. This one-year limitation shall not apply to injunctive or equitable relief against other violations of these Covenants.

17. Easements Shown on Final Plat. The Association is entitled to use such easements as are reflected on the Final Plat for the Subdivision and that are conveyed to it by deed. Except by agreement with an Owner, the Association shall have no obligation to pay any amount for the use and enjoyment of such easements. The Association shall pay for the cost of maintaining and repairing any improvements which it places on any easements.

17.1 Water Tank Site and Water Line Easement. The Association and its members are entitled to New Castle Water for fourteen lots as agreed to in the Water Tap Agreement between the Town of New Castle and the Declarant. The Association is granted easements for the construction, operation, maintenance, repair, and replacement of pump houses, water lines, water storage tanks, and other facilities as shown on the Final Plat and the Subdivision Improvements Agreement and in any deeds for the construction and location of pump houses, water lines, and other equipment and improvements necessary to utilize such water system insofar as such easements are not first dedicated to the Town of New Castle for the Elk Creek area water system. The Association shall dedicate, transfer, or otherwise relinquish all control of the water supply system, its pump housing, pumps and equipment, water lines, water storage tanks, and other facilities as shown on the final Plat and the Subdivision Improvements Agreement to the Town of New Castle should the Town of New Castle Board of Trustees and Mayor elect to assume control, ownership, and operation of the water system and request such dedication.

17.2 Easements for Access. The Association may access all lots within the Subdivision at reasonable times to determine compliance with the conditions of approvals of the Subdivision granted by the Garfield County Commissioners and to determine and enforce compliance with all of the provisions of these Covenants.

17.2.1 Easements and Right-Of-Way for Redrock Ditch and Corryell Ditch. Easements and right-of-ways for Redrock Ditch and Corryell Ditch shall be as shown on the Final Plat and have unrestricted access from all roads as shown on the Final Plat for proper maintenance and repairs of the ditches by authorized personnel of the Ditch companies and/or Owners of water rights which flows through the Ditches. Lot Owners shall not restrict the flow of water, siphon, pump, or in any means transport water from the Ditches without written authorization from the Ditch Owner's and Water Right Holders. Further, Association Members shall assist in keeping ditches free of refuse and debris as is needed and promptly contact the Ditch Owners in the event of any leakage, overflow or other detrimental occurrence relating to the Ditches.

17.2.2 Easements and Right-of-Ways for Ingress, Egress, and Utilities for Properties Outside the Subdivision. Easements and right-of-ways for ingress, egress, and utilities serving properties lying outside the boundaries of the Subdivision shall be as

indicated on the Final Plat. The Association and/or Declarant shall enter into specific agreements/contracts with the Owners of said properties, prior to any construction or use, defining the cost, responsibilities for maintenance, repairs, and replacement relating to easements and right-of-ways.

17.3 Easements for Utilities. Easements and rights-of-way in perpetuity are hereby reserved for the erection, construction, maintenance, and operation of wires, cables, pipes, conduits, apparatus for the transmission of electrical current, telephone, television, and radio lines, and for the furnishing of water, gas, or for the furnishing of other utilities together with the right to enter for the purpose of installing, maintaining, repairing, replacing, and improving the same along, across, upon, and through all roadway easements, right of-ways, and utility easements and right-of ways as shown on the Final Plat of the Subdivision.

18. Roadways. All roadways in the Subdivision shall be dedicated to the public. Such roadways shall be subject to an easement and right-of-way for ingress and egress for the installation and maintenance of utilities as provided in Paragraph 17.3, above. The costs for maintenance, repairs, and snow removal shall be funded by fees collected as assessments by the Association as provided in the Bylaws.

19. Domestic Water. The domestic water supply shall be from a central water system which shall be operated by the Association, except in the event the Town of New Castle should be desirous to accept dedication of the water supply system. Such water shall be for domestic in-house use only excepting the exterior watering of no more than 3,000 square feet of lawn and garden shall be permitted. All water use shall be metered by the water meters approved by the Town of New Castle. Agreements and/or additional Rules and Regulations concerning the use and operation of the water system may be executed, proposed, and adopted by the Association and/or the Town of New Castle to allow for the efficient use and operation of such system.

20. Lighting. The ACC shall consider exterior lighting plans and will recommend that all exterior lighting (with possible exceptions for lighting necessary for safety) be directed towards the applicant's property. It will also recommend that all lot Owners make every effort possible to limit the use of exterior lighting at night. It shall encourage Owners to build in such a fashion that all light sources not be directly visible from outside of the Owner's property. The intent behind these considerations is to preserve the rural character of, and wildlife presence in the Subdivision by limiting exterior lighting as much as possible while maintaining a safe atmosphere.

21. ACC.

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 of 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.

21.2 The ACC shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the land within the Subdivision conform to and harmonize with the natural surroundings and with existing structures as to external design, materials, color, setting, height, topography, grade, and finished ground elevation. The ACC shall protect the seclusion of each homesite from other homesites as much as possible and shall adhere to United States Forest Service and Colorado State Forester Wildfire Prevention Guidelines. Such guidelines discourage and may prohibit the use of shake shingle roofs within the Subdivision, and the ACC shall have the power to prohibit use of the same.

21.3 Architectural plans and specifications submitted under Paragraph 21.1 hereof shall show the nature, kind, shape, height, materials, floor plan, building elevations, location, exterior color scheme, alterations, grading, and all other matters necessary for the ACC to properly consider and make a determination thereon. The applicant shall also submit a plan showing any proposed landscaping or revegetation required to restore disturbed areas, together with a schedule for the completion of such work. The ACC shall disapprove any architectural

plans submitted to it which are not sufficient for it to exercise the judgment required of it by these Covenants.

21.4 The ACC may grant a reasonable variance or adjustment of these conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardship arising by reason of the application of the restrictions contained herein. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to other property or improvements of the neighborhood and shall not defeat the general intent and purpose of these Covenants.

21.5 The ACC shall not be liable in damages to any person or association submitting any architectural plans for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such architectural plans.

21.6 The initial members of the ACC shall be:

Edward A. McCune
Dirk Larsen
Barbara Cebula-McCune

The initial address for the official correspondence with the ACC shall be P.O. Box 182, New Castle, Colorado 81647.

A majority of the ACC may designate a representative to act for it. Should a member resign or become unable to act, the other members shall appoint a successor. Subsequent to the sale of all lots, one or more members may be replaced by written designation recorded in the Garfield County Clerk and Recorder's Office showing approval by the majority of the Owners.

22. Insurance.

22.1 Not later than the time of the first conveyance to an owner other than the Declarant, the Association shall, to the extent reasonably available, obtain and keep in full force and effect the following coverage:

22.1.1 Property insurance on the common elements as provided by the Act.

22.1.2 Commercial general liability insurance as provided by the Act.

22.1.3 Coverage for members of the Board and officers of the Association, including committee members, against libel, slander, false arrest, invasion of privacy, errors and omissions, and other forms of liability generally covered in officers and directors liability policies.

22.1.4 Any additional coverage required by the Act or other laws.

22.2 The Board of Directors, at its discretion or if otherwise required by law, may elect to secure fidelity coverage against the dishonesty of employees, destruction or disappearance of money or securities, and forgery. This policy shall also cover persons who serve the Association without compensation. The Board of Directors may maintain coverage against such other risks of a similar or dissimilar nature as it deems appropriate.

22.3 Owners of Lots 1, 2, 3, 4, 5, 7, 12 and 14 shall be required to obtain hazard and liability insurance against accident relating to irrigation ditches which intersect the lots and shall hold the owners/shareholders of the irrigation ditches and water rights harmless in the event of accident or drowning due to negligence on the part of the lot Owner, and or Owner's Guests. However, this provision shall not diminish responsibility of owners/shareholders of the Redrocks and Corryell Irrigation ditches from proper maintenance and repairs of said ditches. Further this provision in no way relieves liability of the Owners/Shareholders of the Redrocks and Corryell Ditches due to negligence in maintenance and repairs of said ditches resulting in damages to the Association or its members and their property.

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 2015, 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.

24. Termination of Covenants. These Covenants may be lawfully terminated pursuant to any applicable laws of the State of Colorado and Garfield County, Colorado, and the provisions herein contained.

25. Amendment of Declaration. Except for the right of the Declarant to amend this Declaration or sections which give the Declarant rights, as specified herein or by law, this Declaration may be amended by the vote of sixty-seven percent (67%) of the votes entitled to be cast by the members of the Association, said vote to be cast at a meeting of the members duly held. Any

amendment shall become effective upon recordation, provided a properly certified copy of the resolution of amendment is placed on record in Garfield County, Colorado, no more than six (6) months after said meeting.

26. Notice of Lot Owners. Written notice of matters affecting the Subdivision Association shall be sent to all unit owners by delivering such via regular first-class mail to the addresses of such owners. All Owners shall register with the Association an address for delivery of such notice and shall timely notify the Association of any change of address.

27. Limited Liability. The Association and the Board shall not be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith without malice. The Owners severally agree to indemnify the Association and the Board against loss resulting from such action or failure to act if the Association and the Board acted or failed to act in good faith and without malice.

28. Development Rights and Special Declarant Rights. All development rights set forth in this section are applicable between the Declarant and any subsequent owner of lots in the Three Elk Run Subdivision or described as the E1/2 of the NE1/4 of Section 25, T. 5 S., Range 91 W. of the 6th P.M., (herein after in this paragraph 28 referred to as the "Property"). Nothing herein shall discharge the Declarant or others exercising development rights to obtain any required approvals from the appropriate governmental entities and comply with any and all resolutions, ordinances, statutes, and laws relating to the exercise of such development rights. The Declarant hereby reserves the following development rights and other Declarant rights for exercise within ten (15) years of the date of this Declaration.

28.1 Right to Add Property. The right to add real property and water rights to the Subdivision and the Association. Such additional property may include any other unspecified property and water rights, excluding the area of the Subdivision, which may be allowed by law. The Declarant further reserves the right to connect such additional property to utilities and the water system, and to use existing roads and easements, for any and all purposes as established in the Final Plat and these Covenants. Such additional property shall be subject to these Covenants as established by a duly-recorded amendment hereto.

28.2 Right to Create Lots and Common Areas. The right to create, add, resubdivide additional lots, and common and limited common elements within the Subdivision or on other property as allowed by law. Such lots and common and limited common areas may be created and constructed from the real

property in the E1/2 of the NE1/4 of Section 25, T.5 S., R.91 W. of the 6th P.M., or other real property as allowed by law. (The maximum number of lots to be created shall not exceed twenty 20).

28.3 Voting. Each additional lot created and held in separate ownership shall be allocated one (1) vote in the Association. The relative allocations of common expenses, and the number of votes required for approval of the Association action shall be adjusted accordingly based on the new total number of members in the Association.

28.4 Right to Amend/Supplement Declaration, Map. The right to amend or supplement the Declaration or map in connection with the exercise of its development rights. Such amendments shall conform to the requirements of the statutes and this Declaration.

28.5 Right to Withdraw Property. The right to withdraw property from the Subdivision or from any added property. The property subject to this right of withdrawal shall include the Subdivision, any water rights, and any other property allowed by law.

28.6 Right to Convert and Subdivide and Create New Easements and Rights of Way. The right to further subdivide lots or convert lots into common areas, or in whole or in part to public or private easements or rights of way. The property to this right shall include the Subdivision and any other property allowed by law.

28.7 Right to Use Added Property for Commercial or Other Purposes. The right to use any property in the Subdivision for commercial or other purposes other than residential.

28.8 Right to Complete Improvements and Maintain Sales Office. The right to complete those improvements indicated on the Final Plat and the Subdivision Improvements agreement for the Subdivision, which are not complete as of the date of these Covenants and the right to maintain a sales office, model, or management office within the Subdivision, and/or on other property allowed by law.

28.9 Activities of Declarant. The right to conduct certain activities which, notwithstanding any provision contained in these Covenants to the contrary, shall include the right to maintain a sales office, management office, and other such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or necessary for the construction, sale, and management of any lots and improvements thereon. Such facilities may include without limitation a business office, storage area, construction

yards, signs, model home, sales office, construction office, parking area, and lighting and temporary parking structures for all prospective purchasers of lots/homes. Declarant reserves such right unto itself, its agents, employees, and contractees.

28.10 Easements. The right to use all easements shown or described on the Final Plat or conveyed to the Association in the Subdivision or on any other property allowed by law, and to use such easements as in Declarant's discretion may be necessary to the exercise of those rights described in this section. Furthermore, Declarant hereby reserves the right of ingress and egress in and through all lots during the period of construction and sale of any lots for the purpose of any necessary required or requested construction, maintenance, refurbishment, or repair of such lots or any part thereof. Declarant reserves such rights unto itself, its agents, employees, and contractees.

28.11 Rights Concerning Control of Association. The right to make the Association subject to a master association, or merge or consolidate the Association with another association of a similar nature or same form or ownership, whether such merger be into and with an existing Association or a subsequently formed Homeowners Association. The property subject to such rights shall include any additional property, not herein described, as allowed by law.

28.12 Use Agreements. The right to enter into, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of facilities.

28.13 Any other rights as allowed by statute or as may be reserved by documents on record with the Garfield County Clerk and Record r.

29. Declarant Control. The period of Declarant control of the Association shall terminate sixty (60) days after conveyance to the owners other than the Declarant of 75 percent of the lots that may be created as set forth in paragraph 28. Not later than sixty (60) days after conveyance to owners other than the Declarant of 25 percent of the lots that may be created as set forth in paragraph 28 herein, at least one (1) member and not less than 25 percent of the members of the executive board must be elected by the lot owners other than the Declarant. Not later than sixty (60) days after conveyance to owners other than the Declarant of 50 percent of the lots that may be created as set forth in paragraph 28 herein, not less than 33.3 percent of the members of the executive board must be elected by the lot owners other than the Declarant.

30. Future Development. All persons purchasing lots in the Three Elk Run Subdivision shall take ownership subject to the development rights of the Declarant as herein set forth and, as such, agree to not object to development of the property as described in Paragraph 28 herein.

31. Rights Transferable. Any special Declarant right or additional right created or reserved under this Declaration for the benefit of the Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in Garfield County where the project is located. Such instrument shall be executed by the transferor Declarant and the transferee.

32. Severability. The invalidation of any one of these Covenants by judgment or court shall not affect any of the other provisions which shall remain in full force and effect.

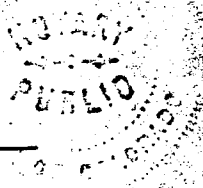
STATE OF COLORADO)
COUNTY OF GARFIELD) ss

SUBSCRIBED AND SWORN to before me this 20th day of January, 1995, by Edward A. McCune as owner of THREE ELK RUN SUBDIVISION.

Witness my hand and official seal.
My commission expires: 11/28/98

Janet L. Wolf
Notary Public

Edward A. McCune 1/20/95
Edward A. McCune, Owner/Declarant Date



STATE OF COLORADO)
COUNTY OF GARFIELD) ss

SUBSCRIBED AND SWORN to before me this 30th day of January, 1995, by Dirk Larsen as owner of THREE ELK RUN SUBDIVISION.

Witness my hand and official seal.
My commission expires: 2-7-96

Jean M. Alberio
Notary Public

Dirk Larsen 1/30/95
Dirk Larsen, Owner/Declarant Date

