

THIRD AMENDED AND RESTATED
BYLAWS
OF
ELK SPRINGS HOMEOWNERS' ASSOCIATION, INC.
(a Colorado nonprofit corporation)

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**THIRD AMENDED AND RESTATED BYLAWS
OF
ELK SPRINGS HOMEOWNERS' ASSOCIATION, INC.**

Elk Springs Homeowners Association, Inc., a Colorado nonprofit corporation (the "Association"), certifies that:

- (1) The Association desires to amend and restate the Bylaws currently in effect as set forth below.
- (2) The provisions set forth in these Third Amended and Restated Bylaws supersede and replace the existing Bylaws and all amendments.

The Bylaws of the Association are hereby amended by striking in their entirety Articles 1 through 13, inclusive, and by substituting the following:

ARTICLE 1. INTRODUCTION AND PURPOSES

Section 1.1 Introduction. These Third Amended and Restated Bylaws are adopted for the regulation, management and governance of the affairs of the Association. The Association was organized as a Colorado nonprofit corporation under Colorado law to act as the association under the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Springs, Garfield County, Colorado, as may be amended (the "Declaration").

Section 1.2 Purposes. The purposes for which the Association is formed are:

- a) to protect the value and desirability of the Properties;
- b) to govern the common interest community known as Elk Springs, as more fully described in the Declaration;
- c) to provide an entity to further the interests of the residents of Elk Springs and Members of the Association;
- d) to provide for the architectural review of the Units;
- e) to manage, control, operate, maintain, repair and improve the Common Elements within the Elk Springs Community; and
- f) to promote the health, safety and welfare of the Owners within the Elk Springs Community.

ARTICLE 2. DEFINITIONS AND ASSENT

Section 2.1 Definitions. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Springs, Garfield County, Colorado, recorded April 19, 2017 at Reception Number 891466 in the Office of the Clerk and Recorder of Garfield County, Colorado, and any supplement or amendment thereto (hereinafter referred to as the “Declaration”), pursuant to Colorado Revised Statutes, Title 38, Article 33.3 (as amended from time to time, hereinafter referred to as the “Act”) and the Colorado Revised Nonprofit Corporation Act.

Section 2.2 Assent. All present or future Owners and Occupants and any other Person(s) using the facilities of Elk Springs in any manner are subject to the Association’s Declaration, Articles, these Bylaws, Rules and Regulations and Policies. The acquisition or rental of any of the Units in Elk Springs or the occupancy of any Person located thereon shall constitute ratification and acceptance of these Bylaws.

ARTICLE 3. MEMBERSHIP AND VOTING

Section 3.1 Membership. Every Person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Membership shall terminate automatically without any Association action whenever an Owner ceases to own a Unit.

Section 3.2 Member Voting.

- a) Each Unit shall be entitled to one (1) vote in the Association. Fractional and cumulative voting is not permitted.
- b) When only one of several Owners of a Unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to such Unit.
- c) When more than one of the Owners is present, the vote allocated to the Unit may be cast only in accordance with the agreement of a majority of those Owners. Majority agreement exists if any one of the Owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Unit. In the event of disagreement between or among co-Owners and an attempt is made by two or more co-Owners to cast such vote or votes, such vote or votes shall not be counted.
- d) Any Owner may assign his or her voting right to a tenant or duly appointed attorney-in-fact (“agent”), provided that a copy of an executed, written proxy appointing the tenant or agent is furnished to the secretary or designee of the Association prior to any meeting in which the tenant or agent exercises the voting right.

- e) The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the governing body or bylaws of the owning corporation or business trust.
- f) The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership.
- g) The chair of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Owner is qualified to vote.

Section 3.3 Suspension of Voting Rights and Use Rights. During any period in which an Owner shall be in default in the payment of any assessment or fine levied by the Association, including interest, late fees, attorney fees and costs, the voting rights of and use of Association facilities, if any, by the Owner shall be deemed suspended by the Board, without notice or hearing, until the assessment or fine has been paid. Voting and use rights of an Owner may also be suspended during any period of violation of any other provision of the Association's Rules and Regulations.

Section 3.4 Transfer of Membership. Transfers of membership shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Unit to which the membership is appurtenant.

ARTICLE 4. MEETINGS OF MEMBERS

Section 4.1 Member Meetings. A meeting of the Members shall be held at least once a year during each of the Association's fiscal years, at such time and date as determined, through resolution, by the Board. The members of the Board (hereinafter referred to as the "Directors") shall be elected by the Owners at the Member meeting, in accordance with the provisions of these Bylaws. In addition, education of the Owners as to the general operations of the Association and rights and responsibilities of Owners, the Association, and its Board under Colorado law will be provided at the Member meeting. The Members may transact other business as may properly come before them at the meeting. Failure to hold a Member meeting shall not be considered a forfeiture or dissolution of the Association.

Section 4.2 Budget Meetings. Meetings to consider proposed budgets shall be called by the Board as follows:

- a) Effective the first full fiscal year after these Bylaws are adopted and become effective, and for each year thereafter, the Board shall prepare and approve a proposed budget at least annually.
- b) Within ninety (90) days after the Board's adoption of the proposed budget, or such longer time as allowed by the Act, the Board shall mail, by first-class mail or post on

an internet web page with accompanying notice of the web address via first-class mail or electronic mail (“e-mail”), a summary of the proposed budget to all Owners and set a date for a meeting to consider the proposed budget.

- c) Notice for the meeting at which the budget will be considered shall be mailed not less than ten (10) days nor more than fifty (50) days before the meeting.
- d) If the meeting is held solely for the consideration of the budget, a quorum is not required. At the meeting, unless Owners holding a majority of the votes in the Association vote to reject the proposed budget, the proposed budget becomes the approved budget of the Association.
- e) In the event the proposed budget is rejected, the budget last ratified is continued until such time as a subsequent budget proposed by the Board is ratified.

Section 4.3 Special Meetings. Special meetings of the Association may be called by the president, by a majority of the Directors or by the secretary upon receipt of a petition signed by Owners holding at least twenty percent (20%) of the votes in the Association. The form of notice, date, time and place of the meeting shall be determined by the Board. If a notice for a special meeting demanded pursuant to petition is not given by the secretary or designee of the Association within thirty (30) days after the date the written demand or demands are delivered to the secretary, the person(s) signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the terms of these Bylaws. Any meeting called under this Section shall be conducted by the president of the Board, or in his or her absence, a person chosen by a majority of the Board.

Section 4.4 Notice of Meetings. Notice of each meeting of the Members shall be physically posted in a conspicuous place, if feasible and practicable, at least 24 hours prior to any meeting of the Members. Written notice of each meeting shall be given to each Member by, or at the direction of, the secretary or person authorized to call the meeting, at least ten (10), but not more than fifty (50), days before the meeting by mailing a copy of the notice, postage prepaid, to the Member's address last appearing in the records of the Association, or supplied by a Member to the Association for the purpose of notice. In addition, notice of each meeting of the Members and agendas may be provided by electronic form, by posting on a website or otherwise and by e-mail to Members who so request and furnish the Association with their e-mail address. The notice shall specify the date, place and time of the meeting and a copy of the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove an officer or Director or elect Directors. No matters shall be heard nor action adopted at a member meeting except as stated or allowed in the notice.

Section 4.5 Quorum of Members. The presence of twenty percent (20%) of the Members eligible to vote at any Association meeting, in person or by proxy, shall constitute a quorum for any action except as otherwise provided in the Act, the Declaration or these Bylaws. If the required quorum is not present, the Members who are present shall have power to adjourn the meeting from time to time to a later date, until such time as a quorum shall be present. If adjourned, notice of the new date, time or place

need not be given if the new date, time or place is announced at the meeting before adjournment.

Section 4.6 Order of Business. The Board may establish the order of business for all meetings of the Board or Members. Failure to strictly follow Robert's Rules of Order shall not invalidate any action taken at a meeting of the Board or Members.

Section 4.7 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing, and the waiver shall be deemed equivalent to the receipt of notice. Attendance at the meeting shall constitute a waiver of notice unless attendance is for the express purpose of objecting to the sufficiency of the notice, in which case, such objection must be raised before the business of which proper notice was not given is put to a vote.

Section 4.8 Voting Procedures and Secret Balloting

Voting may be by voice, by show of hands, by consent, by mail, by electronic means, by proxy, by written ballot, or as otherwise determined by the Board prior to the meeting or by a majority of the Members present at a meeting.

Secret ballots must be used in contested Board member elections and in any other matter as required or allowed by law. In addition, at the discretion of the Board or upon the request of twenty percent (20%) of the Owners who are present at the meeting or represented by proxy, if a quorum has been achieved, a vote on any matter on which all Owners are entitled to vote can be by secret ballot. The Board shall establish a policy to ensure the integrity of the secret ballot process including distribution and counting of ballots.

Section 4.9 Proxies for Members Meetings. A Member entitled to vote may vote in person or by general or directed proxy duly executed in writing by the Member or his duly authorized attorney-in-fact and filed with the secretary or designee of the Association prior to the time the proxy is exercised. A general proxy allows the proxy-holder to vote on the Member's behalf as the proxy-holder deems appropriate; in a directed proxy, the Member tells the proxy-holder how to vote on the Member's behalf. Any proxy may be revocable by attendance of an Owner in person at a meeting or by revocation in writing filed with the secretary or designee of the Association prior to the time the proxy is exercised. A proxy shall automatically cease upon the conveyance by an Owner of the Owner's Unit and the transfer of the Membership on the books of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after the date of its execution, unless a different termination date is otherwise set forth on its face. No proxy shall be valid unless the proxy contains the signature of at least one of the Owner(s) entitled to vote such interest.

Section 4.10 Voting by Mail or Electronic Means

Any action that may be taken at an annual, regular or special meeting of the Members may be taken without a meeting if the Association delivers a written ballot to every

member entitled to vote on the matter. Approval by written ballot pursuant to this Section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Voting by mail or electronic means shall be acceptable in all instances in the Declaration, Articles of Incorporation and these Bylaws requiring the vote of Members. Action taken under this Section has the same effect as an action taken at a meeting of Members and may be described as such in any document.

In case of a vote in lieu of a meeting, the secretary or designee of the Association shall mail or deliver written notice to all Members at each Member's address (either first-class mail or electronic mail) as it appears in the records of the Association given for notice purposes. The notice shall include: (i) a proposed resolution setting forth a description of the proposed action sufficient to permit each person casting a ballot to reach an informed decision on the matter, (ii) a statement that Members are entitled to vote by mail or electronic means for or against such proposal, (iii) a date at least 10 days after the date such notice shall have been given on or before which all votes must be received at the office of the Association at the address designated in the notice, and (iv) the number of responses which must be received to meet the quorum requirement and the percentage of approvals necessary to carry the vote.

The Association may conduct elections of Directors through written ballot sent by mail or electronic means, in its sole discretion, and pursuant to procedures adopted regarding the nomination of Directors.

Section 4.11 Voting in Elections of Directors/Other Voting. In an election of Directors, the Members receiving the largest number of votes shall be elected. On all other items, the affirmative vote of more than fifty percent (50%) of Owners represented at a meeting at which at least a quorum is present shall constitute a majority and shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Declaration, Articles of Incorporation or these Bylaws, as amended, or by law.

Section 4.12 Acceptance or Rejection of Individual Votes. The Association has the right to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation when it has a reasonable, good faith basis to doubt the validity of the signature or the signatory's authority to sign for the Owner. The Association and its officer or agent who accepts or rejects any of the above in good faith is not liable for any damages that may result from the acceptance or rejection. Unless a court decides otherwise, any action taken on the acceptance or rejection of any of the above will be deemed valid.

Section 4.13 Counting of Ballots. All ballots shall be counted by a neutral third party, or a committee of volunteers who are not Board members and not candidates in a contested election, selected or appointed at an open meeting in a fair manner by the chair of the Board or person presiding at such meeting or as otherwise required by law and as may be further defined by policy or procedures of the Association.

ARTICLE 5. EXECUTIVE BOARD

Section 5.1 Association Responsibilities. The Members will constitute the Association, who will have the responsibility of managing the Properties through an Executive Board (the "Board"). In the event of any dispute or disagreement between any Members relating to the Properties, or any questions of interpretation or application of the Declaration, Articles, these Bylaws, Rules and Regulations or Policies, the disagreement shall be submitted to the Board. The determination of such dispute or disagreement by the Board shall be binding on all such Members, subject to the right of Members to seek other remedies provided by law after such determination by the Board.

Section 5.2 Number and Qualifications of Directors. The affairs of the Association shall be governed by the Board which shall consist of three (3) to seven (7) Members, elected or appointed as provided below (the "Directors"). The initial number of Directors shall be five (5). In the case where the total number of Directors is less than five (5), the Board will be considered properly constituted until such vacancies are filled. The number of Directors shall be established from time to time by amendment to these Bylaws. A Director shall be a natural person and an Owner of a Unit.

Section 5.3 Term of Office of Directors. The Directors on the Board shall serve two (2) year terms. The term of office for the Directors shall be fixed at the time of their appointment as they themselves shall determine in order to establish a system of two (2) year terms in which at least one-third (1/3) of the Board is elected each year, and the Board shall identify in which year the directorships are subject to election. Directors shall hold office until their successors have been elected and qualified. A Director may serve for no more than two (2) consecutive terms.

Section 5.4 Resignation of Directors. Any Director may resign at any time by giving written notice to the president, to the secretary or to the Board stating the effective date of the resignation. Acceptance of a resignation shall not be necessary to make the resignation effective. If a Director has three (3) consecutive unexcused absences from the Board meetings and such failure to attend or meet obligations is confirmed by an affirmative majority vote of the Directors present at a regular or special meeting at which a quorum is present, then such failure to attend or meet obligations shall be effective as a resignation at the time of such vote of the Board. In the event of a resignation, a vacancy shall be declared by the Board and the Board may appoint a successor who shall serve for the remainder of the term of the Director replaced.

Section 5.5 Removal of Directors. Any Director may be removed, with or without cause, by a vote of sixty-seven percent (67%) of Owners represented at a meeting at which a quorum is present. The notice of the meeting must indicate that the proposed removal of a Director or Directors will be considered at the meeting. A Director whose removal is proposed by the Members shall be given notice of the proposed removal at least ten (10) days prior to the date of such meeting and shall be given an opportunity to be heard at such meeting. A successor to any Director removed may be elected at such meeting to fill the vacancy created by the removal of the Director. If no successor Director is elected at

such meeting, the position is considered a resignation and the Board may appoint a successor.

Section 5.6 Vacancies in Directors. Any vacancy occurring on the Board, unless filled by election at a special meeting of the Members as provided at Section 5.5, shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. A Directorship to be filled by reason of any increase in the number of Directors shall be filled only by vote of the Owners.

Section 5.7 Compensation. No Director shall receive compensation for any service the Director may render as a Director to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of Association duties and/or provided a stipend, if allowed by state law.

ARTICLE 6. MEETINGS OF DIRECTORS

Section 6.1 Regular Meetings. Regular meetings of the Board shall be held at such time and place as determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held each year. Notice of regular meetings of the Board shall be given by the secretary or designee of the Association to each Director, personally or by mail, e-mail or telephone at least five (5) days prior to the day named for such meeting. The Board may set a schedule of regular meetings by resolution, and no further notice is necessary to constitute such scheduled regular meetings.

Section 6.2 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two Directors, on three (3) days' notice to each Director. Notice of special meetings of the Board shall be given pursuant to Section 6.4 below or by the president or any two Directors calling the special meeting to each Director, personally or by mail, e-mail or telephone and shall specify the place, day, hour and purpose of the meeting.

Section 6.3 Executive or Closed Door Meetings. The members of the Board or any committee thereof may hold an executive or closed door session and may restrict attendance to Directors and such other persons requested by the Board during a regular or specially announced meeting or a part thereof. Prior to the time the members of the Board or any committee thereof convenes in executive session, the chair of the Board or committee thereof shall announce the general matter of discussion. The matters to be discussed at such an executive session shall include only the following:

- a) Matters pertaining to employees of the Association or the managing agent's contract or involving the employment, promotion, discipline or dismissal of an officer, agent, committee member or employee of the Association;
- b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

- c) Investigative proceedings concerning possible or actual criminal misconduct;
- d) Matters subject to specific constitutional, statutory or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- e) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
- f) Review of or discussion relating to any written or oral communication from legal counsel.

Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

The minutes of all meetings at which an executive session was held shall indicate that an executive session was held and the general subject matter of the executive session. Rules and Regulations, Policies and amendments to the Bylaws may only be adopted in open meetings of the Board, and may not be adopted in closed or executive sessions of the Board.

Section 6.4 Notice of Board Meetings. Except as provided in Section 6.1 above, written notice of each meeting of the Board shall be given by, or at the direction of, the secretary, by any means permitted by the Colorado Revised Nonprofit Corporation Act, including, but not limited to, mail or e-mail delivery, to each Board member entitled to vote, addressed to the Board member's address last appearing on the books of the Association, or supplied by a Board member to the Association for the purpose of notice.

Section 6.5 Location of Board Meetings. All meetings of the Board shall be held in Elk Springs, the Garfield County area, by conference call or other electronic means, unless all Directors consent in writing to another location.

Section 6.6 Waiver of Notice. Any Director may waive notice of any meeting in writing before or after the time and date of the meeting stated in the notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at the meeting.

Section 6.7 Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business. The vote of a majority of the Directors present at a meeting at which a quorum is present shall constitute an act of the Board. For purposes of determining a quorum with respect to a particular proposal, a Director may be deemed to be present at a meeting for purposes of casting a vote for or against a particular proposal if a Director has granted a signed written directed proxy as further described in Section 6.8 below to another Director who is present at the meeting. If at any meeting of

the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting for a period no longer than ten (10) days until a quorum is obtained. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 6.8 Proxies for Board Meetings. For purposes of casting a vote for or against a particular proposal, a Director shall be entitled to vote by proxy only if the Director has granted a signed written proxy to another Director who is present at any meeting of the Executive Board authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy.

Section 6.9 Consent to Corporate Action. The Directors shall have the right to take any action, except the adoption of a Rule or Regulation, Policy or amendment to the Bylaws, in the absence of a meeting, which they could otherwise have taken at a meeting, by:

- a) Obtaining the unanimous written vote of all Directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at that time;
- b) Obtaining the written vote of all of the Directors, with at least a majority of the Directors approving the action, provided that those Directors who vote “no” or abstain from voting have waived notice of a meeting in writing. The secretary or designee of the Association shall file the written votes with the minutes of the meetings of the Board;
- c) Any action taken under subsections (a) and (b) shall have the same effect as though taken at a meeting of the Directors.

Section 6.10 Telephone or Electronic Communication in Lieu of Attendance. A Director may attend a meeting of the Board by using an electronic or telephonic communication method whereby the Director may be heard by the other Directors and may hear the deliberations of the other Directors on any matter properly brought before the Board. The Director's vote shall be counted and the presence noted as if that Director were present in person.

Section 6.11 Member Participation in Executive Board Meetings.

- a) All regular and special meetings of the Board, or committees thereof, shall be open to attendance by all Owners and their representatives, as provided by applicable Colorado law. Agendas for Board and committee meetings shall be made available for examination by all Members of the Association.
- b) Owners and their representatives are allowed to speak before the Board votes on any issue under discussion. The Board shall establish rules regarding the conduct of meetings and allow a reasonable number of persons to speak on each side of the issue, but the Board may place reasonable restrictions on the time allowed for each Owner or their representative to speak. Owners and their representatives may also

be allowed to speak at such other times as the Board, in its sole discretion, deems appropriate.

- c) Notice to the Members of each regular and special meeting of the Board shall be physically posted in a conspicuous place, if feasible and practicable, at least 24 hours prior to any meeting of the Board. Written notice of each regular meeting of the Board shall be given to each Member by, or at the direction of, the secretary or person authorized to call the meeting, at least five (5), but not more than fifty (50), days before the meeting. Written notice of each special meeting of the Board shall be given to each Member by, or at the direction of, the secretary or person authorized to call the meeting, as soon as possible but at least 24 hours before the meeting. Written notice of each regular or special meeting of the Board shall be by one of the following means:

(i) by posting on a web site with notice provided by e-mail to all Members who so request and furnish the Association with their e-mail address; or

(ii) by posting on a web site with notice provided by first-class mail to all Members who so request and furnish the Association with their mailing address; or

(iii) mailing a copy of the notice, first-class postage prepaid, to the Member's address last appearing in the records of the Association, or supplied by a Member to the Association for the purpose of notice.

The notice shall specify the date, place and time of the meeting and a copy of the agenda.

ARTICLE 7. POWERS AND DUTIES OF THE EXECUTIVE BOARD

Section 7.1 Powers and Duties. The affairs of the Association shall be managed by its Board. The Board shall have the duty to manage and supervise the affairs of the Association and shall have the powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board shall have the power and authority to exercise or cause to be exercised for the Association, all of the powers, rights and authority provided in the Declaration, any Supplemental Declaration, the Articles of Incorporation, these Bylaws, the Colorado Revised Nonprofit Corporation Act, and the Act. The Board may not, however, act on behalf of the Association to amend the Declaration, to terminate the Common Interest Community, or to elect members of the Board or determine the qualifications, powers and duties of Board members, but the Board may fill vacancies in its membership for the unexpired portion of the term.

Section 7.2 Special Powers and Duties. Without limiting the foregoing general powers and duties of the Board, the Board shall be vested with and responsible for the following specific powers and duties:

- a) to adopt and amend the Bylaws of the Association;

- b) to administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration, the Articles of Incorporation and these Bylaws;
- c) to adopt, amend, repeal and enforce Design Review Guidelines, Rules and Regulations and Policies as may be deemed necessary or desirable with respect to the interpretation and implementation of the Declaration, the operation of the Association, the use and enjoyment of the Common Area and the use of any other property within Elk Springs, including Units and the Common Elements;
- d) to contract for and pay bills for maintenance, legal service, accounting and bookkeeping service, landscaping, common utilities and other materials, supplies and services relating to the Common Elements and personal property owned by the Association, and to employ personnel necessary for the care and operation of the Common Elements and to contract and pay for Improvements on the Common Elements, all in accordance with the provisions of the Declaration;
- e) to provide for potable water to the Units and third party water users in the Los Amigos Ranch Planned Unit Development, Garfield County, Colorado in return for the payment by the Owners and third party water users of usage or standby fees;
- f) to provide for the care, operation, management, maintenance, repair and replacement of the Common Elements owned by the Association, including the removal of snow and other debris;
- g) to maintain all easements and rights-of-way situate upon the Properties, including vehicular, pedestrian and utility easements and rights-of-way;
- h) to grant easements in accordance with the Declaration;
- i) subject to restrictions set forth in the Act and the Declaration, to borrow funds and give security therefor in order to pay for any expenditures or outlay required pursuant to the authority granted by the provisions of the Declaration, or these Bylaws and to execute all such instruments evidencing such indebtedness as the Board may deem necessary or desirable;
- j) to adopt and amend budgets for revenues, expenditures and reserves and to fix and levy from time to time as it deems necessary Regular Assessments, Special Assessments, and Reimbursement Assessments (the "Assessments") upon the Owners of the Association as provided in the Declaration; to determine and fix the due date for the payment of such Assessments and the date upon which the same shall become delinquent; to impose penalties and enforce the payment of such delinquent Assessments as provided in the Declaration; and to credit any excess of Assessments over expenses to designated replacement reserves;
- k) to protect and defend the Common Elements from loss and damage by suit or otherwise;

- l) to enter into contracts within the scope of their duties and powers, provided, however, that any agreement for professional management of the Properties be entered into in accordance with the Declaration;
- m) to obtain and maintain in effect at all times casualty and liability and other insurance in accordance with the provisions of the Declaration;
- n) to select, appoint and remove all officers, agents, employees and independent contractors of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Articles, the Declaration and these Bylaws; and to fix their compensation and to require from them security for faithful service as deemed advisable by the Board;
- o) to establish bank accounts and keep and maintain detailed, complete and accurate books and records of all receipts, expenses and disbursements pursuant to appropriate specificity and itemization and to permit, within the Board's discretion and as provided in these Bylaws and the Act, an audit and/or review of the books and records; and
- p) to suspend the voting rights of a Member for failure to comply with these Bylaws, Policies or Rules and Regulations of the Association or with any other obligations of Owners/Members pursuant to the Declaration during and for up to ten (10) days following any breach by such Member or Occupant unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues.

Section 7.3 Managing Agent. The Board may employ a managing agent for the community, at a compensation established by the Board, to perform duties and services authorized by the Board. The Board shall have the authority to delegate any of the powers and duties, but not the responsibility, set forth in this Article to a managing agent. Any contract or agreement with any managing agent shall be immediately terminable by the Association for cause and shall be terminable by the Association without cause on no more than ninety (90) days prior written notice, in both cases without a termination fee. Any such contract or agreement shall be for a term of no more than one (1) year and may be subject to renewal for succeeding terms of no more than one (1) year each. The contract shall state that (a) the managing agent maintain fidelity insurance coverage or a bond in an amount as the Declaration may require, (b) all funds and accounts of the Association be maintained separate from the funds and accounts of other associations managed by the managing agent (c) all reserve accounts of the Association be maintained separate from the operating accounts of the Association and (d) an annual accounting of the Association funds and financial statements be prepared.

Section 7.4 No Waiver. The omission or failure of the Association to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, or other provisions of the Declaration, Articles, the Bylaws, Policies or Rules and Regulations as amended from time to time, shall not constitute or be deemed a waiver, modification, or

release thereof, and the Board or the managing agent shall have the right to enforce the same at any time.

ARTICLE 8. OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Offices. The officers of this Association shall be a president, one or more vice-presidents, a secretary, and a treasurer, who shall at all times be members of the Board, and such other officers as the Board may from time to time create by resolution.

Section 8.2 Election of Officers. The officers shall be elected by an affirmative vote of a majority of the members of the Board for one year terms at the first meeting of the Board following the election of the Board members.

Section 8.3 Special Appointments. The Board may elect other officers, assistant officers, committees and agents, as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board, such officer, agent or employee shall follow the orders and instructions of the president.

Section 8.4 Resignation and Removal. Any officer may be removed from office, with or without cause, by an affirmative vote of a majority of the members of the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. A resignation shall take effect on the date of receipt of a notice or at any later time specified therein. Acceptance of a resignation shall not be necessary to make it effective.

Section 8.5 Vacancies. A vacancy in any office may be filled by an affirmative vote of a majority of the members of the Board at any regular meeting of the Board, or any special meeting of the Board called for such purpose. The officer appointed to the vacancy shall serve for the remainder of the term of the officer replaced.

Section 8.6 Duties. The duties of the officers are as follows:

President. The president shall be the chief executive officer of the Association and, subject to the Board, have all of the general powers and duties which are incident to the office of president of a Colorado nonprofit corporation. Specifically, the president shall preside at all meetings of the Board and of the Members; see that orders and resolutions of the Board are carried out; sign contracts, leases and other written instruments; prepare, execute, certify and record amendments to the Declaration on behalf of the Association and supervise, coordinate and have general control over the day-to-day affairs of the Association, including its officers, agents and employees.

Vice President. The vice president shall take the place of the president and perform the president's duties whenever the president is absent or unable to act. The vice

president shall assist the president and perform such duties assigned by the president or by the Board.

Secretary. The secretary shall keep the minutes of the proceedings of the Members and the Board. He or she shall ensure that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration and as required by law. The secretary shall be the custodian of the corporate records; ensure that the books, reports, documents and records of the Association are properly kept and filed; keep, at the Association's registered office or principal place of business, a record of the names and addresses of all Owners, the designation of the Unit owned by each Owner and, if the Unit is mortgaged, the name and address of each Mortgagee. The secretary shall, in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board.

Treasurer. The treasurer shall be the chief financial officer of the Association and shall have the charge and custody and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board; shall pay out of the funds on hand all invoices, payrolls and other just debts of the Association; shall keep correct and complete records of accounts and records of financial transactions and condition of the Association; shall prepare an annual budget; and prepare monthly reports of income and expenses, cash flows, financial condition and a variance report reflecting the status of all accounts in an "actual" versus "approved budget" format to be presented to the Board and provided to the Members. The treasurer shall, in general, perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or the Board.

Section 8.7 Delegation. The duties of any officer may be delegated to the managing agent, accounting or bookkeeping professional, or another Board member; provided, however, the officer shall not be relieved of any responsibility under this Section or under Colorado law.

ARTICLE 9. BOARD COMMITTEES

Section 9.1 Designated Committees. The Board of the Association may appoint such committees and committee members as deemed appropriate in carrying out its purposes, including, but not limited to, an Executive Committee, Architectural Review Committee, and Water Facilities Management Committee, Fire Mitigation Committee, Trails Committee and Roads Committee. Committees may make recommendations to the Board and shall have authority to act only to the extent designated in the Declaration, Articles, these Bylaws, Policies, the Rules and Regulations or as delegated by the Board. The Board shall also have the power to remove any and all committee members with or without cause and to terminate any such committee unless stipulated by the Declaration. Vacancies in such committees shall be filled by the Board.

Section 9.2 Open Committee Meetings. All committee meetings shall be open to attendance by Members, as provided by applicable law.

Section 9.3 Conduct of Committees. All of the requirements set forth in Article 6 which govern meetings, action without a meeting, maintenance of minutes of meetings, special meeting notice (i.e., 3 days), waiver of notice, quorum and voting requirements of the Board apply to committees of the Board and their members as well. Notwithstanding the foregoing, the notice requirement for the Architectural Review Committee shall be five (5) days.

ARTICLE 10. ASSOCIATION RECORDS AND STANDARDS

Section 10.1 Association Records. The Association, or its managing agent, if any, shall keep the following records at its principal office, as required by the Act:

- a) Detailed records of receipts and expenditures affecting the operation and administration of the Association;
- b) Minutes of all meetings of the Members and Board, a record of all actions taken by the Members and Board without a meeting, a record of all actions taken by any committee of the Board and a record of all waivers of notice of meetings of Members, the Board and any committee of the Board;
- c) Written communications among, and the votes cast by, Board members that are directly related to an action taken by the Board without a meeting;
- d) Names of Owners, number of votes each Owner is entitled to vote, and physical mailing addresses and e-mail addresses, if available, at which the Association communicates;
- e) The current Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, responsible governance policies and other policies adopted by the Board, along with schedules and exhibits;
- f) Financial statements of the financial condition, cash flows and results of operations of the Association as of and for the past three (3) years and copies of any audits or reviews of such financial statements;
- g) Federal and state tax returns of the Association for the past seven (7) years;
- h) Names, e-mail addresses, physical mailing addresses and telephone numbers of its current Board, officers, and the designated agent or management company, if any;
- i) Most recent annual report delivered to the Secretary of State;
- j) Schedule, by Owner, of the amount of each Assessment, the dates on which the Assessment comes due, any additional fees payable by the Owner, the amount and

date paid on the account and the balance due;

- k) Most recent reserve studies, if any;
- l) Current written contracts to which the Association is a party and contracts for work performed for the Association within the immediately preceding two years;
- m) Board or committee actions to approve or deny any requests for design, architectural or modification approval from Owners;
- n) Ballots, proxies and other records related to voting by Owners for one (1) year after the election, action, or vote to which they relate;
- o) All written communications within the past three years to all Owners;
- p) Current operation budget;
- q) Records of claims of construction defects and amounts received pursuant to settlement of those claims;
- r) If applicable, the managing agent's or management company's license number if the agent or management company is subject to licensure under Colorado law; and
- s) A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies; such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.

The books, records and papers of the Association shall at all times, during normal business hours and after at least five (5) days' written notice, or at the next scheduled Board meeting if within thirty (30) days of demand, be subject to inspection and copying by any Member, at his or her expense, except documents determined by the Board to be confidential pursuant to a written Board policy or applicable law. Any Owner's request to inspect and copy Association records must be made in good faith, for a proper purpose, and describe with reasonable detail what records are requested. Requested documents must be relevant to the stated purpose for the request. The Association may charge the actual costs for copying of the records.

Section 10.2 Association Standards. The following standards of performance will be followed unless the Board, by resolution, specifically determines otherwise:

- a) Accrual accounting, as defined by generally accepted accounting principles, shall be followed;
- b) Accounting and controls should conform to generally accepted accounting principles;

- c) Any time the Association Board or an officer delegates powers relating to collection, deposit, transfer or disbursement of Association funds to the managing agent, or an accounting or bookkeeping professional, such agent shall maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by such agent and maintain all reserve accounts of each association so managed separate from operational accounts of the Association;
- d) No remuneration shall be accepted by the managing agent, Directors, Officers or Committee members from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; anything of value received shall benefit the Association;
- e) Any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- f) Quarterly financial reports containing an income statement reflecting all income and expense activity for the preceding period and year to date, variance report reflecting all income and expense activity to the approved budgeted amounts, balance sheet as of the last day of the preceding period, and delinquency report listing all Owners who are delinquent in paying any assessments with status of any action to collect such assessment which remain delinquent thirty (30) days following the due date.
- g) An annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: balance sheet, income statement and statement of cash flows. The annual report shall be audited or reviewed, as determined by the Board and as provided in the Act.

ARTICLE 11. AMENDMENT OF BYLAWS

Section 11.1 Scope of Amendments. Amendments to the Bylaws may be proposed by the Board or by petition signed by the Owners holding at least a majority of the votes in the Association. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment will be voted upon. These Bylaws may not be amended in a manner inconsistent with the Articles, the Declaration, the Act or any applicable provision of Colorado law.

Section 11.2 Amendment by the Members. Any amendment to fix a lesser or greater quorum requirement or a greater voting requirement for Members or a greater quorum or voting requirement for the Board may only be adopted upon an affirmative vote of a majority of the Members votes in the Association present or represented by proxy at any regular or special meeting, provided that a quorum is present at any such meeting.

Section 11.3 Amendment by the Board. These Bylaws may be amended by the unanimous vote of the Board at any regular or special meeting, provided that a quorum is present at such meeting. A statement of any proposed amendment shall accompany the notice of any regular or special Board meeting at which such proposed amendment will be voted upon.

ARTICLE 12. INDEMNIFICATION

Section 12.1 Definitions. For purposes of this Article 12, the following terms shall have the meanings set forth below:

- a) Proceedings. Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.
- b) Indemnified Party. Any person who is or was a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a Director, officer or Committee member of the Association or, while a Director or officer of the Association, is or was serving at the request of the Association as a Director, officer, member, partner, manager, trustee, employee or agent of another corporation, partnership, joint venture, trust, committee or other enterprise including, without limitation, any employee benefit plan of the Association for which any such person is or was serving as a trustee, plan administrator or other fiduciary.

Section 12.2 Obligation to Indemnify. Except as provided in paragraph (d) of this Section 12.2, the Association shall indemnify against liability incurred in any Proceeding an Indemnified Party if:

- a) He or she conducted himself or herself in good faith;
- b) He or she reasonably believed:
 - (1) In the case of conduct in his or her official capacity with the Association that his or her conduct was in the Association's best interests; or
 - (ii) In all other cases, that his or her conduct was at least not opposed to the Association's best interests, and
- c) In the case of any criminal Proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

The termination of any Proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent is not, of itself, determinative that the person did not meet the standard of conduct described in this Section.

- d) The Association may not indemnify an Indemnified Party under this Section either:
 - (i) In connection with a Proceeding by or in the right of the Association in which the Indemnified Party was adjudged liable to the Association; or

(ii) In connection with any Proceeding charging improper personal benefit to the Indemnified Party, whether or not involving action in his or her official capacity, which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her.

- e) Indemnification permitted under this Section in connection with a Proceeding by or in the right of the Association is limited to reasonable expenses (including, but not limited to, expert witness fees, attorney fees, and costs) incurred in connection with the Proceeding.

Section 12.3 Determination Required.

- a) The Board shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. The determination shall be made by a majority vote of those Board members who were not parties to the Proceeding at a meeting at which a quorum is present.
- b) If a quorum cannot be obtained as contemplated above or if a quorum has been obtained and the Board so directs, a determination may be made, at the discretion of the Board, by:
- (i) independent legal counsel selected by a majority vote of the full Board; or
 - (ii) by a majority vote of a quorum of the voting members, but voting members who are also at the same time seeking indemnification may not vote on the determination.

Section 12.4 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the Proceeding if the Indemnified Party requesting indemnification provides the Board with:

- a) A written affirmation of the Indemnified Party's good faith belief that he or she has met the standard of conduct described in Section 12.2 above;
- b) A written statement that the Indemnified Party shall repay the advance if it is ultimately determined that he or she did not meet the standard of conduct described in Section 12.2 above. The advance will be considered an unlimited general obligation of the Indemnified Party; and
- c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Article 12.

Section 12.5 No Limitation of Rights. The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or

disinterested members of the Board, or otherwise, nor by any rights which are granted pursuant to C.R.S. § 38-33.3-101, et seq., and the Colorado Revised Nonprofit Corporation Act, as those statutes may be amended from time to time.

Section 12.6 Notice to Members. The Association shall give written notice to the Members of the indemnification or expense advance to an Indemnified Party with or before the notice of the next Members' meeting.

Section 12.7 Right to Impose Conditions to Indemnification. The Association shall have the right to impose, as conditions to any indemnification provided or permitted in this Article 12, such reasonable requirements and conditions as to the Board may appear appropriate in each specific case and circumstances including, without limitation, any one or more of the following: (a) that any counsel representing the Indemnified Party in connection with the defense or settlement of any Proceeding shall be counsel mutually agreeable to the Indemnified Party and to the Association; (b) that the Association shall have the right, at its option, to assume and control the defense or settlement of any claim or Proceeding made, initiated or threatened against the Indemnified Party; and (c) that the Association shall be subrogated, to the extent of any payments made by way of indemnification, to all of the Indemnified Party's right of recovery, and that the Indemnified Party shall execute all writings and do everything necessary to assure such rights or subrogation to the Association.

ARTICLE 13. MISCELLANEOUS

Section 13.1 Fiscal Year. The Board has the right to establish and, from time to time, change the fiscal year of the Association. The fiscal year of the Association is the calendar year.

Section 13.2 Registration of Mailing Address. If a Unit is owned by two (2) or more Owners, such co-owners shall designate one (1) address as the registered address required by the Declaration and shall designate the "voting member." An Owner or Owners shall notify the secretary or designee of the Association of his or her (1) registered address within five (5) days after any transfer of title or change of address, and (b) "voting member" within five (5) days after any transfer of title or designation thereof. Such notice shall be written and signed by all of the Owners to which it relates or by such persons authorized to sign on behalf of such Owners.

Section 13.3 Notice to Association. Every Owner shall timely notify the Association of the name and address of any purchaser, transferee or Tenant of his or her Unit. The Association shall maintain such information at the office of the Association.

Section 13.4 Proof of Ownership. Every person becoming an Owner shall immediately furnish to the Board a photocopy or a certified copy of the recorded instrument vesting in that person such ownership, which instrument shall remain in the files of the Association. A Member shall not be deemed to be in good standing nor shall he be entitled to vote at any annual or special meeting of Members unless this requirement is first met.

Section 13.5 Notices. All notices to the Association or the Board shall be delivered to the office of the managing agent or, if there is no managing agent, to the office of the Association, or to such other address as the Board may designate by written notice to all Members. Except as otherwise provided, all notices to any Member shall be mailed to the Member's address as it appears in the records of the Association. All notices shall be deemed to have been given when mailed or transmitted, except notices of changes of address, which shall be deemed to have been given when received.

Section 13.6 Conflicts. In the case of any conflicts between the Declaration and these Bylaws or the Articles of Incorporation, the terms of the Declaration shall control. In the case of any conflicts between the Articles of Incorporation and these Bylaws, the terms of the Articles of Incorporation shall control.

Section 13.7 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 13.8. Severability. Invalidation of any one of these provisions contained in these Bylaws, by judgment or court action, shall not affect any other provisions which shall remain in full force and effect.

Section 13.9 Captions. The captions and headings in these Bylaws are for convenience only and shall not be considered in construing any provision of these Bylaws.

Section 13.10 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of the Elk Springs Homeowners Association, Inc., a Colorado nonprofit corporation.

That the foregoing Bylaws constitute the Bylaws of said Association, as duly adopted at a meeting of the Board thereof held on the 16th day of March, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary of said Association this 21st day of March, 2022.

ELK SPRINGS HOMEOWNERS' ASSOCIATION, INC.
(a Colorado nonprofit corporation)


By: Greg Boecker, Secretary