

## Elk Springs Homeowners Association, Inc.

### Policy and Procedure for Board, Committee Members and Managing Agent Conflicts of Interest

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Pursuant to the authority granted by Article 4.14 (A) of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Elk Springs, Garfield County, Colorado (the “Declaration”) and as further authorized and required by the Colorado Common Interest Ownership Act, C. R. S. 38-33.3-209.5 (1)(b)(ii), et seq. (the “Act”), the Board of Directors of Elk Springs Homeowners Association, Inc. (the “Association”) adopts the following policy and procedures governing board, committee members and managing agent conflicts of interest. Unless otherwise defined in this Policy and Procedure, initially capitalized or terms defined in the Declaration shall have the same meaning herein. This Policy and Procedure may be amended at any time by the Board of Directors of the Association.

The Board of Directors shall use its best efforts at all times to make decisions that are consistent with high principles and to protect and enhance the value of the properties in Elk Springs. All members of the Board of Directors (the “Board”), its committees and the managing agent shall exercise their powers and duties in good faith and in the best interest of, and with utmost loyalty to, the Association. All members of the Board, its committees and the managing agent shall avoid direct or indirect conflicts of interest and conflicting financial interest transactions in their dealings with and representation of the Association, and shall avoid the appearance of impropriety in those dealings.

#### Definitions.

A “compensation arrangement” shall include direct and indirect remuneration as well as gifts or favors, even if insubstantial.

“Conflict of interest” means circumstances under which an Interested Person may be unduly influenced in his or her decision-making process in favor of or against any particular action.

A “conflicting financial interest transaction” shall arise if the Interested Person or party related to an Interested Person has (i) an ownership or investment interest in any entity with which the Association has, or contemplates a transaction or agreement; (ii) a compensation arrangement with the Association or with any entity or individual with which the Association has a transaction or arrangement; or (iii) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Association is negotiating a transaction or agreement.

“Interested Person” means any member of the Board, its committees or the Association’s managing agent and its employees.

“Immediate family member” includes a spouse, partner, child (natural, adopted or related by marriage), parent, grandparent, grandchild, sibling (natural, adopted or

related by marriage), spouse, partner or descendent of a sibling, and any other family member who resides in the same household as, or is financially dependent upon, such Interested Person.

A “party related to an Interested Person” includes (i) all immediate family members and (ii) any entity in which an Interested Person or an immediate family member has a material (fair market value exceeding \$500) economic interest, or serves as a director, officer, trustee, partner or employee.

Other.

Only one member, shareholder, trustee, partner or officer of any business may be a member of the Board at any given time. Only one member of any family may be a member of the Board at any given time.

No loans shall be made by the Association to any Interested Person or party related to an Interested Person.

No conflicting financial interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a Member or by, or in the right of, the Association solely because (a) the conflicting financial interest transaction involves an Interested Person or party related to an Interested Person, (b) the Interested Person is present at, or participates in, the meeting of the Association’s Board or of a committee of the Board that authorizes, approves, or ratifies the conflicting financial interest transaction, or (c) the Interested Person’s vote is counted for such purpose if:

- (i) the material facts as to the Interested Person’s relationship or interest as to the conflicting financial interest transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes, approves or ratifies the conflicting financial interest transaction by the affirmative vote of a majority of the disinterested directors or committee members, even though the disinterested directors or committee members are less than a quorum; or
- (ii) the material facts as to the Interested Person’s relationship or interest as to the conflicting financial interest transaction are disclosed or are known to the Board members entitled to vote thereon, and the conflicting financial interest transaction is specifically authorized, approved or ratified in good faith by a vote of the Board members entitled to vote thereon, or
- (iii) the conflicting financial interest transaction is fair as to the Association.

If an Interested Person fails to disclose the conflicting financial interest transaction in violation of this Policy and Colorado law, any contract entered into by the Association will be void and unenforceable.

A contract entered into, or action taken, in violation of this Policy and Colorado law, may be declared void by a majority of eligible Directors. Further, the Association may seek restitution for damages resulting from the Interested Person who knowingly or willfully failed to comply with this Policy or Colorado Revised Statute 7-128-501, including all costs and attorney fees incurred in obtaining said restitution.

Procedure:

1. When a conflict of interest arises and/or in advance of entering into a conflicting financial interest transaction, the Interested Person shall declare at an open meeting of the Board, committee or other meeting, as applicable, that a contract, transaction or other financial relationship being contemplated or discussed by the Board, committee or managing agent may constitute a conflicting financial interest transaction with such Interested Person. The Interested Person shall describe in detail all of the facts of the conflicting financial interest transaction or conflict of interest giving rise thereto.
2. If a Board member, other than the Interested Person, or a Member of the Association, in good faith, believes that the Interested Person has a conflict of interest, or that the contract, transaction or other financial relationship being contemplated or discussed might constitute a conflicting financial interest transaction, then such other Board member or Member of the Association may disclose the facts upon which such belief is formed. If the Interested Person does not believe a conflict exists, the remainder of the Board, not including the Interested Person, shall conduct a vote on the determination as to whether a conflict of interest or conflicting financial interest transaction exists. A simple majority vote of the remaining Board members will carry the decision.
3. After the Interested Person makes a declaration or the remainder of the Board determines that a conflict of interest or conflicting financial interest transaction exists, the Interested Person may be counted as present for purposes of establishing a quorum of the Board but shall not participate in a discussion of the matter giving rise to the conflict of interest or conflicting financial interest transaction, nor shall the Interested Person vote on the issue giving rise to the conflict of interest or the conflicting financial interest transaction.
4. The minutes of any meeting of the Board at which the disclosure of any conflict of interest or conflicting financial interest transaction is made by a Director as to any matter under consideration shall note such disclosure and note whether such Director was present for the vote on such matter, and if present, abstained or voted aye or nay on such matter.
5. Each Interested Person shall be required to sign and acknowledge this Policy within 30 days of becoming an Interested Person. A form of such acknowledgement shall be maintained with this Policy.

**PRESIDENTS CERTIFICATION:**

The undersigned, being the President of the Elk Springs Homeowners Association, Inc. Board of Directors certifies that the foregoing Policy and Procedures for Board, Committee Members and Managing Agent conflicts of interest was adopted by the Board of Directors at a duly called and noticed meeting of the Board of Directors held on June 12, 2017 and in witness thereof, the undersigned has subscribed her name.

**/s/ Evelyn L. Cole**

**June 12, 2017**

President, Elk Springs Homeowners  
Association, Inc. Board of Directors

Date Adopted

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**ELK SPRINGS HOMEOWNERS ASSOCIATION, INC.**

**ACKNOWLEDGEMENT OF CONFLICT OF INTEREST POLICY**

I, \_\_\_\_\_, hereby acknowledge and confirm that I have received, read and understand the Conflict of Interest Policy of the Elk Springs Homeowners Association, Inc. (the "Policy") and I agree to disclose any conflict of interest and conflicting financial interest transaction which may arise during my term as a director, committee member or managing agent in compliance with the Policy. I further acknowledge and agree that I will be responsible for any damage to the Association from my knowing or willful failure to disclose a conflict as required by the Policy.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_