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Lori A Mitchell
Chaffee County Clerk

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THREE ELK CREEK ESTATES, INC.

**P.O. Box 110
BUENA VISTA, COLORADO 81211**

<https://www.3elkcreekhoa.com>

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

TABLE OF CONTENTS

TABLE OF CONTENTS		PAGE 1.
ARTICLE 1	INTRODUCTION	PAGE 2.
ARTICLE 2	DEFINITIONS	PAGE 3.
ARTICLE 3	APPLICABILITY	PAGE 4.
ARTICLE 4	TERMS	PAGE 4.
ARTICLE 5	MUTUALITY OF BENEFIT AND OBLIGATION	PAGE 5.
ARTICLE 6	ARCHITECTURAL COMMITTEE	PAGE 5/6.
ARTICLE 7	EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENT	PAGE 7.
ARTICLE 8	THREE ELK CREEK ESTATES, INC. HOMEOWNERS ASSOCIATION Section 1—Membership Section 2—Purpose Section 3—Assessments Section 4—Voting	PAGE 7. PAGE 8. PAGE 8. PAGE 9.
ARTICLE 9	GENERAL COVENANTS	PAGE 9/ 10/ 11.
ARTICLE 10	ENFORCEMENT Section 1—Arbitration Section 2—Beyond Arbitration	PAGE 12. PAGE 13.
ARTICLE 11	OWNERSHIP, USE AND ENJOYMENT OF ROADS AND RECREATIONAL AMENITIES	PAGE 13.
ARTICLE 12	PARTIAL INVALIDITY	PAGE 14.
ARTICLE 13	CAPTIONS	PAGE 14.
ARTICLE 14	APPROVAL	PAGE 14.

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

**ARTICLE 1
INTRODUCTION**

THIS DECLARATION, made as of the 29th day of August, 2022, by the undersigned comprising at least sixty-six and two-thirds percent (66 2/3%) of the Owners of all Lots situated in Three Elk Creek Estates, Inc., a nonprofit subdivision, in Chaffee County, Colorado.

WITNESSETH:

WHEREAS Three Elk Creek is an existing platted subdivision in Chaffee County, Colorado, according to that certain Plat filed in the office of the County Clerk and Recorder of Chaffee County, Colorado, on March 7, 1972, at Reception No. 144267.

WHEREAS, previous amended Declarations of Covenants, Conditions and Restrictions were placed on Mt. Columbia Elk Estate Association, Inc., on April 20, 1983, having been recorded in Book 456, beginning page 375, Reception No. 220917 of the official records of Chaffee County, Colorado.

WHEREAS, previous amended Declarations of Covenants, Conditions and Restrictions were placed on Three Elk Creek Estates, Inc., on May 19, 1989, having been recorded in Book 504, beginning page 36, Reception No. 251902 of the official records of Chaffee County, Colorado.

WHEREAS, previous amended Declarations of Covenants, Conditions and Restrictions were placed on Three Elk Creek Estates, Inc., on February 8, 1999, having been recorded at Reception No. 301994 of the official records of Chaffee County, Colorado.

WHEREAS, Three Elk Creek Estates, Inc., is the legal successor of Mt. Columbia Elk Estates Association, Inc. and represents all those Lots which have not withdrawn from Mt. Columbia Elk Estates, Inc. and

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

WHEREAS, in said recorded Covenants, Conditions and Restrictions there was reserved to the Owners of sixty-six and two-thirds percent (66 2/3%) of said Lots the power to change or amend the Covenants, Conditions and Restrictions: and

WHEREAS the Owners of at least sixty-six and two-thirds percent (66 2/3%) of said Lots Of desire to change and amend the existing Covenants, Conditions and Restrictions as above referenced.

NOW, THEREFORE, the undersigned Lot Owners adopt the following Covenants, Conditions and Restrictions upon which and subject to which all Lots in Three Elk Creek Estates, Inc., subdivision shall be improved, held, sold, and conveyed and hereby terminate all prior Covenants, Conditions and Restrictions now of record and as above referenced.

**ARTICLE 2
DEFINITIONS**

“Annual Fiscal Assessment” shall mean the fee charged by the Association to cover general operating expenses for the upcoming Fiscal Year.

“Association” shall mean, and refer to Three Elk Creek Estates, Inc., its successors, and assigns.

“Common Areas” shall mean and refer to all real property including roads owned by the Association for the common use and enjoyment of the Owners.

“Declaration” shall mean and refer to the amended Declaration of Covenants, Conditions and Restrictions in force and effect applicable to the Subdivision as recorded in the office of the Clerk and Recorder, Chaffee County, Colorado.

“Lot” shall mean and refer to any plot of land included in the Three Elk Creek Estates Inc., Properties except for the Common Areas.

“Member” shall mean and refer to those who are Owners of a Lot within the Subdivision.

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

“**Owner**” shall mean and refer to the recorded owner or Owners of legal title to any Lot which is part of the Properties but excluding those having such interest merely as security for the performance of obligation.

“**Properties**” shall mean and refer to those certain real properties which did not withdraw from membership in Mt. Columbia Elk Estates, Inc., including all numbered lots in Three Elk Creek Estates, Inc., subdivision, and such additions as may hereafter be brought within the jurisdiction of the Association.

“**Special Assessment**” shall mean a fee approved by sixty-six and two-thirds percent (66 2/3%) of the Voting Members to cover expenses that are brought about by extraordinary circumstances.

“**Subdivision**” shall mean the Three Elk Creek Estates, Inc., platted subdivision as filed in the office of the County Clerk and Recorder of Chaffee County, Colorado.

“**Voting Member**” shall mean and refer to the Owner of each Lot. Each Lot is entitled to one (1) vote provided the assessments against the Lot are not delinquent.

**ARTICLE 3
APPLICABILITY**

These Covenants shall apply to all Lots in Three Elk Creek subdivision. It is intended that this Amended Declaration shall apply uniformly to said Subdivision.

**ARTICLE 4
TERMS**

These Covenants shall run with the land and shall be binding on all Owners of Three Elk Creek Estates Inc., from the 29th day of August, 2022, at which time said Covenants shall be automatically extended for successive periods of ten (10) years unless Covenants in whole or

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

in part are changed or terminated by written agreement of sixty-six and two-thirds percent (66 2/3%) of the Owners.

ARTICLE 5

MUTUALITY OF BENEFIT AND OBLIGATION

These Covenants are made for the mutual and reciprocal benefit of each and every Lot in the Subdivision and are intended to create mutual, equitable servitudes upon of each of said Lots in favor of each and all of the other Lots therein and to create reciprocal rights between the respective Owners of all Lots and to create a privity of contract and estate between the Owners of said Lots, their heirs, successors and assigns.

ARTICLE 6

ARCHITECTURAL COMMITTEE

The Architectural Committee shall be composed of three (3) non-board, Voting Members of the Association. Committee members shall be appointed for three (3)-year terms by the Board of Directors of Three Elk Creek Estates, Inc., (hereinafter called the "Board"); except, initially, one member shall be appointed to serve one year, and one member shall be appointed to serve two (2) years so that the term of one member only shall expire on July 1st of each year. Vacancies on the Architectural Committee, for any reason, may be filled by appointment by the Board of Directors. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed in accordance with this Covenant.

All plans and specifications for any structure, improvement, fence or whatsoever to be erected on, or moved upon any Lot, and proposed locations thereof on any Lot or Lots, the construction material, the roofs, and any exterior or later changes or additions after the

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

initial approval thereof, and any reconstruction, alterations, or addition thereto on any Lot shall be subject to written approval as hereinafter set forth. Said approval shall constitute a prerequisite to obtaining a construction permit from the Chaffee County Building Inspector, and shall be obtained before construction of any structure, improvement or fence is commenced.

The Architectural Committee shall endeavor to protect the seclusion and natural view of each separate Lot. All construction shall conform to applicable building codes and zoning resolutions. This committee shall use a set of guidelines to ensure the aesthetics of the Subdivision.

There shall be submitted to the Committee or its appointed representative, three (3) sets of plans and specifications for any and all proposed improvements, the construction or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed, or maintained upon any Lots unless and until the final plans, elevations, and specifications therefore have received written approval in the manner herein provided. Such submitted plans shall include plot plans showing any proposed grading, the location on the plot of the building, wall, fence, or other structure proposed to be constructed, altered, placed or maintained, together with the proposed construction material, and roof construction.

The Committee shall examine the plans, specifications and details within twenty-one (21) days from the receipt thereof and shall within said time forward the same to the Board together with the Committee's recommendation for approval, disapproval, or modification.

If the decision of the Committee is appealed, the Board shall review the plans and the recommendations of the Committee and shall approve or disapprove the same within twenty- one (21) days. The Committee shall return two (2) sets of said plans, specifications and details to the person submitting them within the time limit herein set forth with the approval or disapproval endorsed thereon. In the event action is not taken within the time limits herein specified, the plans, specifications and details shall be deemed

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

approved as submitted. One copy of the approved or disapproved plans shall be retained by the Board for its permanent file and all construction shall be in strict accordance with approved plans.

Neither the Board nor the Committee shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the foregoing provision, nor for any structural or other defects in any work performed according to such plans and specifications.

ARTICLE 7

EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENT

No Lot shall be used except for single family residential purposes. Any rentals of less than 30 days are strictly prohibited in Three Elk Creek Estates, Inc. Renters may not sub lease, or assign, any rental properties. No dwelling shall contain less than 1,200 square feet of living space, exclusive of a garage. Any guesthouse or barn for which plans are submitted shall conform in design and material to the single-family residential dwelling. Such a structure shall be constructed only simultaneously with or sub- sequent to the single-family residential dwelling.

ARTICLE 8

THREE ELK CREEK ESTATES, INC. HOMEOWNERS ASSOCIATION

Section 1: MEMBERSHIP. Every person who acquires title, legal or equitable, to any Lot in Three Elk Creek Estates, Inc. subdivision, shall, upon acquisition, become a Member of Three Elk Creek Estates, Inc., a Colorado nonprofit corporation (along with its successors and assigns, herein referred to as "**Association**"); provided, however, that such membership is not intended to apply to those persons who hold an interest in any such Lot merely as security for the performance of a Deed of Trust, contract, or other obligation.

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

Section 2: PURPOSES. The general purpose of the Association shall be to provide for the management, maintenance, protection, preservation and development of roads, recreational pond, picnic areas, designated recreation areas, and Common Areas of the Subdivision for the welfare of the Owners of the Lots herein. The Association shall be obligated:

- a). To maintain, repair, improve and beautify all roads in the Subdivision.
- b). To maintain, care for, repair, improve and beautify recreational facilities such as picnic areas, pathways, and recreational pond.
- c). To promulgate all regulations necessary or convenient to govern the entry of persons or vehicles into the Subdivision and to creeks and to regulate the use and enjoyment of the roads, recreational pond, picnic areas, and other recreational areas of the Subdivision.
- d). To take such other and further actions as may be authorized by its Articles of Incorporation or its By-laws to facilitate the carrying out of the general purpose set forth above.

Section 3: ASSESSMENTS.

- a). Annual Fiscal Assessments. In order to pay expenses incurred by the Association in the performance of the obligations set forth above and in the execution of the powers and purposes set forth in its Articles of Incorporation and Bylaws or attributable to it by operation of law, the Association shall levy against every Lot, and each Lot shall be subject to a uniform annual charge or assessment. Assessments as to each Lot affected hereby shall be the amount authorized by vote at an Annual Meeting or any Special Meeting, or by a mailed ballot, of at least sixty-six and two-thirds percent (66 2/3%) of the Voting Members. All such charges or assessments shall be borne proportionately by all Owners, as herein provided.
- b). Special Assessments. Under extraordinary circumstances, the Association may vote to collect a Special Assessment Assessments as to each Lot affected hereby shall be the amount authorized by vote at an Annual Meeting or any Special Meeting, or by a mailed ballot, of at least sixty-six and two-thirds percent (66 2/3%) of the Voting Members.

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

- c). Contingency Fund. Ten percent (10%) of the Annual Fiscal Assessment shall be set aside in a Contingency Fund until that fund reaches ten thousand dollars (\$10,000). The remainder of the Annual Fiscal Assessments shall be allocated to the General Operating Fund.
- d). Adjacent Lot Road Assessments. Each non-member Lot shall be assessed 2% of the previous Fiscal Year's actual road expenses.
- e). Every assessment shall be paid by the Member of the Association on or before the date established by its Board of Directors pursuant to the resolution adopted by such Board fixing the amount of the annual charge. Written notice of the assessment so fixed and the date of payment due shall be sent to each Member.
- f). Each Owner shall, by acceptance of a Deed thereto or by virtue of ownership alone, binds himself, his or her heirs, personal representatives and assigns to pay all charges determined and levied upon such Lot; the obligation to pay such charges thereby constitutes an obligation running with the land. Sale or transfer of any Lot shall not affect charges provided for herein.

Section 4: VOTING. In all matters affecting the business of the Association upon which the Association shall require a vote by the Members, the Owner or Owners of each Lot shall be entitled to a total of one vote.

**ARTICLE 9
GENERAL COVENANTS**

The following General Covenants and requirements shall prevail as to the construction or activities conducted on any Lot:

- a). Each Owner shall endeavor, as far as possible, to maintain the natural setting and seclusion which said Property now provides.
- b). No Lot or Lots in said Subdivision shall be further subdivided.

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

- c). All utilities on roads and Lots (except for propane tanks and satellite dishes) for said Subdivision such as water, electricity, cable television and telephone lines shall be installed underground. The Architectural Committee shall advise location and screening of above ground propane tanks.
- d). Common Areas have been designated on the Subdivision Plat. These areas are for recreational use by Owners and their guests who shall follow the guidelines established by the Common Area Committee and the Board of Directors.
- e). No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.
- f). No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, appliances, machinery, or other waste shall not be kept on a Lot. All equipment for the storage or disposal of trash and garbage shall be kept in a clean and sanitary condition. Vehicles not used, inoperable, under repair, restoration, or non-licensed, must be kept in a garage, shed, or barn.
- g). No individual sewage disposal system shall be permitted on any Lot unless such system is designed, located, and constructed in accordance with the requirements, standards and recommendations adopted by the Board of County Commissioners of Chaffee County, Colorado, and the Chaffee County Board of Health.
- h). No hunting of any kind shall be allowed on the Properties including Common Areas. Discharge of firearms shall be restricted to indoor target ranges or for the reasonable protection of persons and/or property, and then with the utmost care.
- i). No noxious or offensive trade or activity shall be carried out upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.
- j). All Lots, whether occupied or unoccupied, and any improvements thereon, shall at all

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

times be maintained in such a manner as to prevent their becoming unsightly by reason of the accumulation of rubbish or debris thereon.

- k). No improvement which has been partially or totally, destroyed by fire, earthquake or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of destruction.
- l). All Owners shall provide water wells for personal use.
- m). Animals
 - 1. It shall be the duty of each Owner desiring to maintain animals upon his or her Lot to erect and maintain adequate fencing (approved by Architectural Committee) at his or her expense, to assure confinement of any animal to his or her own Lot. The animal area must be properly maintained, with animal wastes (feces and urine) controlled on the Lot to prevent offensive conditions and odors.
 - 2. The common area shall not be open range and no person shall permit his or her animal to graze or allow any animal, including dogs, to run at large on Three Elk Creek Estates, Inc., common areas or upon any Lot belonging to another Owner.
 - 3. Animal generated noise shall be controlled to avoid annoyance of neighbors.
- n). No trucks and no commercial vehicles shall be parked, kept, or stored on any part of the Subdivision except within an enclosed garage subject to the following exceptions:
 - 1. Non-commercial trucks having a current license in the name of the Owner and/or in the name of a member of the Owner's immediate family, may be kept on the Lot of the Owner.
 - 2. This provision shall not apply to trucks or commercial vehicles when the same are engaged in transporting property to or from any Lot.
- o). No mobile home or transient mobile home shall be parked, kept, stored, maintained, or utilized on any part of the Subdivision, subject to the following exceptions:

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

1. An Owner shall apply to the Chaffee County Building Inspector (subject to the provisions of the Chaffee County Zoning Resolution) for a temporary use permit to allow a self-contained motor home, transient trailer, or camper to be used as a temporary residence for a period not to exceed three (3) weeks. Extensions may be applied for and granted on a case-by-case basis according to one's needs.
 2. A transient motor home or camping trailer having a current state or out of state license registered in the name of an Owner may be parked adjacent to his or her occupied dwelling as long as the same is not at any time used for human occupancy, either temporary or permanent; provided, however, that if the self-contained transient motor home has its own sanitary and sewage facilities it may be utilized as a temporary resident for a period not to exceed three (3) days.
- p). No activity shall be undertaken which may damage or interfere with the installation of maintenance of utilities.
- q). As shown on the Three Elk Creek Estates, Inc., Subdivision Plat, there is reserved for the persons who are Members of the Association, their families and guests, easements for pedestrian and animal passage. Within the areas subject to these easements, no structure, planting, or other material shall be placed or permitted to remain, and no activity shall be undertaken which may interfere with the free and unobstructed passage of persons and horses, and the flow of water, over, along and across such areas. The Association shall have the right to maintain, landscape and beautify such areas.

**ARTICLE 10
ENFORCEMENT**

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

Section 1: ARBITRATION. If any person subject to the provisions of this article fails to comply with any of its provisions or any provision of the Declaration, bylaws, articles, or rules and regulations, any person or class of persons adversely affected by the failure to comply and the person in violation are encouraged to enter into binding arbitration. Arbitration must be commenced within one year of the failure to comply.

Section 2: BEYOND ARBITRATION. If any person subject to the provisions of this article fails to comply with any of its provisions or any provision of the Declaration, bylaws, articles, or rules and regulations, any person or class of persons adversely affected by the failure to comply may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counter-claims, crossclaims, and third-party claims, in any legal proceeding to enforce the provisions of this article or of the Declaration, bylaws, articles, or rules and regulations, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim.

Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the Declaration, bylaws, articles, or rules and regulations or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

**ARTICLE 11
OWNERSHIP, USE AND ENJOYMENT OF ROADS
AND RECREATIONAL AMENITIES**

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

Each of the roads in the Subdivision designated on the plats is a private road, and every recreational facility or amenity is for the private use of Owners, members of their families and their guests. An easement for the use and enjoyment of roads and areas designated on the plats as recreational areas is reserved for the persons who are Members of the Association, their families and their guests, subject to such reasonable rules for the use thereof as may be promulgated by the Board of Directors of the Association.

**ARTICLE 12
PARTIAL INVALIDITY**

In the event, that any of the Covenants set forth shall be held by any Court of competent jurisdiction to be null and void, all remaining Covenants shall continue unimpaired and in full force and effect.

**ARTICLE 13
CAPTIONS**

The captions of the various paragraphs of this Amended Declaration are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms or provisions thereof.

**ARTICLE 14
APPROVAL**

Upon the approval of Three Elk Creek Estates, Inc. Lot Owners, a copy of this Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be placed on record in the office of the Clerk and Recorder of Chaffee County, Colorado. Upon filing with the Clerk

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS—THREE ELK CREEK ESTATES, INC.**

and Recorder of the written consents of the Owners of sixty-six and two-thirds percent (66 2/3%) of the Lots, these Covenants shall be in full force and effect.

IN WITNESS WHEREOF, this Amended and Restated Declaration is approved and executed by the undersigned President and Board Member pursuant to the authority of the Three Elk Creek Estates, Inc. Lot Owners as of the day and year first above written.

THREE ELK CREEK ESTATES, INC.

Name: Maria Martin
Title: President

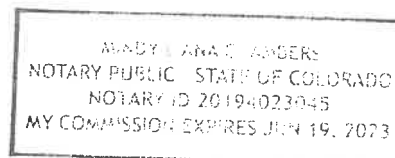


Attested to by:

Name: Judy Green
Title: Board Member

Subscribed and sworn to before me this 30 day of November, 2022 by Maria Martin and Judith Green, the President and a Board Member of Three Elk Creek Estates, Inc.

Mindy L. Chambers
Notary Public



My Commission expires 06/19/2023

