

## ARTICLE V

### ARCHITECTURAL COMMITTEE

1. Architectural Committee. The Architectural Committee, the same being hereinafter referred to as "Committee" shall mean a committee of three (3) Persons who are Regular Members appointed by the Board of Directors of ELK RUN HOMEOWNERS ASSOCIATION, as said Board of Directors shall be constituted from time to time in the future. Said Committee shall have and exercise all of the powers, duties, and responsibilities set out in this instrument. Each member of the Committee appointed by the Board of Directors shall serve a term of three (3) years; provided, however, the Board of Directors may appoint Members to the Committee for lesser terms in order to implement staggered terms of the Committee Members. Members of the Committee may serve successive terms. At their annual meeting, the Board of Directors shall appoint one (1) Committee Member to serve as Chairman of the Committee for the ensuing year.

2. Approval by Architectural Committee. No improvements of any kind, including but not limited to dwelling houses, barns, stables, outbuildings, swimming pools, tennis courts, ponds, parking areas, fences, walls, garages, drives, antennae, flag poles, curbs, and side walks shall ever be constructed or altered on any land within Elk Run Subdivision, nor may any vegetation be altered or destroyed or any landscaping performed on any tract, unless the complete architectural plans for

such construction or alteration or landscaping are approved in writing by the Committee prior to the commencement of such work. In the event that the Committee fails to take any action within sixty (60) days after complete architectural plans for such work have been submitted to it, then all of such submitted architectural plans shall be deemed approved. In the event the Committee shall disapprove any architectural plans, the applicant may appeal the matter to the next annual or special meeting of the Members of ELK RUN HOMEOWNERS ASSOCIATION, where a vote of at least two-thirds (2/3) of the votes entitled to be cast at said meeting shall be required to change the decision of the Committee.

3. Variances. Where circumstances, such as topography, location of property lines, location of trees and brush, location of other buildings or other matter require, the Committee may, by a two-thirds (2/3) vote, allow reasonable variances as to any of the covenants contained in this instrument, on such terms and conditions as it shall require, provided that no such variance shall be finally allowed until thirty (30) days after the Committee shall have mailed a notice of such variance to each Member of ELK RUN HOMEOWNERS ASSOCIATION. In the event any three (3) Regular Members shall notify the Committee in writing of their objection to such variance within said thirty (30) day period, the variance shall not be allowed until such time as it shall have been approved by a vote of at least two-thirds (2/3) of the votes entitled to be cast at an annual or special meeting of the Members of ELK RUN HOMEOWNERS ASSOCIATION.

4. General Requirements. The Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the land within Elk Run Subdivision conform and harmonize the natural surroundings and with existing structures as to external designs, materials, color, setting, height, topography, grade and finished ground elevations. The Committee shall protect the seclusion of each homesite from other homes insofar as possible.

5. Design Control.

a. Preliminary Approvals. Persons or associations who anticipate constructing improvements on lands within Elk Run Subdivision, whether they already own lands in Elk Run Subdivision or are contemplating the purchase of such lands, shall submit preliminary sketches of such improvements to the Committee for informal and preliminary approval or disapproval based upon the general criteria set forth herein, but the Committee shall never be finally committed or bound by any preliminary approval or disapproval until such time as complete architectural plans are submitted and approved or disapproved.

b. Final Plans. Subsequent to preliminary approval set forth within Subparagraph 5(a) above, the plans of the proposed building or structure shall be submitted to the Committee for approval. The request for approval by the Committee shall have attached to such request the following documents:

1) A plat plan showing the location of any building, structure, access driveways, and parking areas, and all trees having a diameter at four (4) feet above ground level of three (3) inches or more with the type, location and size of each tree indicated. All other terrain and structure features, such as large rocks, ponds, patios, fences, utility lines, storage areas, ravines, outcroppings, and usual terrain features should be indicated.

2) Complete architectural plans and specifications for such building or structure prepared to a scale of ¼ inch per

one foot. Such plans shall include a sketch plan of the building on the lot and exterior presentations of the building on all sides.

3) Samples of all exterior materials and color schemes to be used in identifying how and where such materials and colors will be used on the building.

4) Landscape plans showing all landscaping of the lots including both the natural landscaping of the lot as it now exists and any proposed changes or additions of such landscaping.

5) The Committee shall consider the suitability of the proposed building, the harmony thereof with the environment, the effect of such building on the utilization and view of the lot upon which the same will be built and the interferences, impairment and/or restriction of view, if any, of adjacent property and the placement of the building with respect to topography, ground elevations and existing natural and terrain features. In this regard, all best efforts will be made to minimize the restriction, impairment and/or interference of view that any one building shall have upon that of all other such existing buildings.

6) Within sixty (60) days after receipt of plans for a proposed building or structure, and upon determination that all accompanying data is sufficient, the Committee shall review the same and render its determination to the applicant, in writing, approving, disapproving, or approving with conditions, the construction of the proposed building or structure or any additions or alterations to an existing structure. In the event that the Committee fails to take such action within sixty (60) days after the submission of a complete request for approval, the application shall be deemed to have been approved, provided, however, in no event shall such failure to act in a timely fashion, constitute direct or indirect approval of any violation of the present covenants, or any governmental (federal, state, county or township) laws, ordinance, enactment, code and/or regulatory requirement.

7) In the event the Committee disapproves any such request, it shall conduct a hearing thereon within thirty (30) days from the date of notice of disapproval, unless waived by the applicant. The Committee shall give the applicant notice in writing of the hearing date and time at least ten (10) days prior to such hearing. Hearings shall be open to all Regular Members.

8) The Committee shall make such rules and regulations and adopt such bylaws and procedures as are appropriate to govern its proceedings and written minutes of all meetings shall be maintained by the Committee.

9) All applications for approval to the Committee shall be accompanied by a minimum application fee of \$50.00. The Committee may further charge a reasonable fee to cover any actual expense incurred in receiving any application submitted to it.

10) No plans shall be finally approved by the Committee until the same have been approved in writing or the required building permit issued therefor by the Town of Mt. Crested Butte, Colorado.

6. Architectural Plans. The Committee shall disapprove any architectural plans submitted to it which are not sufficient for it to exercise the judgment required of it by these Covenants.

7. Architectural Committee Not Liable. The Committee shall not be liable for any damages to any person or association submitting any architectural plans for approval, or to any owner or owners of land within Elk Run Subdivision, by any person or any actions, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such architectural plans. Elk Run Subdivision, or any person or association submitting plans to the Committee for approval, by so doing does agree and covenant that he or it will not bring any action or suit to recover damages against the Committee, its members as individuals, or its advisors, employees, or agents.

8. Written Records. The Committee shall keep and safeguard for at least five (5) years complete permanent written records of all applications for approval submitted to it (including one (1) set of all architectural plans so submitted) and all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument.

## ARTICLE VI

### GENERAL RESTRICTIONS ON ALL LOTS

1. Zoning Regulations. No land within Elk Run shall ever be occupied or used by or used by or for any structure or purpose in any manner which is contrary to the zoning regulations of the Town of Mt. Crested Butte, Colorado nor the building code validly in force from time to time, except as the same may be allowed under said regulations, as a con-conforming structure or use.

2. No Mining, Drilling or Quarrying. No mining, quarrying, tunnelling, excavating, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted within the limits of Elk Run Subdivision.

3. No Business Uses. No lands within Elk Run Subdivision shall ever be occupied or used for any commercial or business purpose nor for any noxious activity and nothing shall be done or permitted to be done on any of said lands which is a nuisance or might become a nuisance to the owner or owners of any of said lands. No store, office or other place of commercial or professional business of any kind; nor any hospital, sanitarium, or other place for the care or treatment of the sick or disabled, physically or mentally; nor any public theatre, bar, restaurant, or other public place of entertainment; nor any church; nor any residential building housing more than one family (i.e. duplex or other multi-family structure), shall ever be constructed, altered or permitted to remain with Elk Run Subdivision; provided, however, that the above and foregoing shall in no way restrict or prohibit the ELK RUN HOMEOWNERS ASSOCIATION from owning, occupying, and/or using any and all land now or hereinafter acquired for the enjoyment of its membership.

4. Signs. With the exception of one "For Sale" sign (which shall not be larger than 20 x 26 inches) and except for one entrance gate sign of a style and design approved by the Committee, no advertising signs, billboards, unsightly objects,

or nuisances shall be erected, altered, or permitted to remain on any tract in Elk Run Subdivision.

5. Animals. No animals or poultry shall be kept on any lands in Elk Run Subdivision except ordinary household pets (not to exceed two (2) in number) belonging to the household.

6. Combining Tracts. If two or more contiguous lots are owned by the same owner or owners, they may be combined into one or more larger lot or lots. Similarly, any lot bounded by two adjoining lots may be divided into two parcels for the purpose of combining each parcel with the separate adjoining lot in order to create two larger lots where three lots existed before. Any proposal for such a lot combination or division and combination shall be submitted to the Architectural Control Committee for its review and approval, and if so approved by the Committee, shall be submitted for the approval of the Town of Mt. Crested Butte, as a partial replat of the recorded plat identified in Article II. Such lot combination, or division and combination, shall become effective only upon recording of the approved replat document in the Gunnison County records. Thereafter, each larger replatted lot shall be considered as one lot for the purposes of these Covenants.

7. No Subdivision. Except as provided in the preceding paragraph, no lot shall be subdivided into smaller tracts or lots or conveyed or encumbered in any less than its full original dimensions as shown on the recorded plat identified in Article II; provided, however, that conveyances or dedications of easements for utilities or private roads may be made with respect to less than an entire lot.

8. Open Air Space. All lots shall have a minimum of fifty percent (50%) of the total lot area devoted to open air space and without a building or structure being constructed thereon.

9. Service Yards and Trash. All trash containers, exercise pens, etc., shall be kept screened by adequate planting or fencing so as to conceal them from the view of neighboring tracts and streets and access roads. All rubbish and trash shall be removed from all tracts in Elk Run Subdivision and shall not be allowed to accumulate and shall not be burned thereon except in burners approved by the Committee as to location, design, materials, and construction, and except at such hours of the day as shall be established by the Committee.

10. Underground Utility Lines. All water, gas, electric, and telephone pipes and lines and all other utility lines within the limits of Elk Run Subdivision must be buried underground and may not be carried on overhead poles nor above the surface of the ground.

11. Maintenance of Property. All property, including common areas, and all improvements on any property shall be kept and maintained by the owner thereof in clean, safe, attractive and sightly condition and in good repair. Common Areas shall be so maintained by the Association notwithstanding the fact that the Common Area may not have been conveyed to the Association.

12. No Hazardous Activities. No activities shall be conducted on any property and no improvements constructed on any property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property, and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfires or picnic fires in portions of Common Areas designated for such use or except for such controlled and attended fires required for clearing or maintenance of land.

13. Fences. No fences, walls or barriers of any nature shall be constructed, erected or maintained on any lot, except in compliance with all applicable regulations enacted by the Town of Mt. Crested Butte, Colorado, and as approved by the Committee.

14. Recreational Equipment. No large recreational equipment, such as boats, campers, travel trailers, or other such devices shall be parked, stored or maintained on any lot.

15. Repairs. All structures shall at all times be kept in good and proper repair and in an attractive appearance by the owner thereof.

## ARTICLE VII

### RESTRICTIONS ON RESIDENTIAL LOTS

1. Number and Location of Building. No buildings or structures shall be placed, erected, altered, or permitted to remain on any residential tract other than:

- a. One detached single-family dwelling house;
- b. One guest or servant house; and
- c. One attached or detached garage.

2. Dwelling House to be Constructed First. No guest house, servant house, or garage, shall be constructed on any residential tract until after commencement of construction of the dwelling house on the same residential lot. All construction and alteration work shall prosecuted diligently, and each building, structure, or improvement which is commenced on any residential tract shall be entirely completed within eighteen (18) months after commencement of construction.

3. Towers and Antennae. No exterior towers, satellite dishes, or radio or television antennae shall be erected on any residential dwelling or Lot. All towers and antennae must be attached to the dwelling house and contained within the interior structure thereof.

4. Trees and Landscaping. No trees or brush growing on any residential lot shall be felled or trimmed nor shall any natural areas be cleared, or formal lawn areas constructed, or landscaping performed on any residential tract without the prior written permission of the Committee. Any and all removal and/or loss of trees or brush on any residential lot caused by construction of any dwelling unit shall if so required by the Committee, be replaced upon the remaining area of the applicable lot subsequent to construction. Said replacement of trees and/or brush shall be landscaped with flowers, plants, grasses, shrubs and trees that are indigenous to the mountain valley in which Elk Run Subdivision is situated. All cuts, fills or surface areas disturbed during construction shall be promptly revegetated to their natural condition and the lot owner shall immediately reestablish and replant appropriate vegetation on such disturbed surface area.

5. Tanks. No elevated tanks of any kind shall be erected, placed, or permitted upon any residential tract. Any tank used in connection with any dwelling house or other structure on any residential lot, including tanks for storage of gas, fuel oil, gasoline, oil, or water, shall be buried.

6. Used or Temporary Structures. No used or previously erected or temporary house, structure, mobile home, house trailer, or nonpermanent outbuilding shall ever be placed, erected, or allowed to remain on any residential tract, except during construction periods, and no dwelling house shall be occupied in any manner prior to its completion.

7. Exterior Lighting. All exterior lights and light standards of residential tracts shall be approved by the Committee for harmonious development and the prevention of lighting nuisances of other lands in Elk Run Subdivision.

8. Off-Street Parking. No dwelling house shall be constructed on any residential lot unless there is concurrently constructed on the same tract adequate off-street parking area for at least one (1) automobile per each bedroom within said dwelling; provided, however, that in no event shall more than four (4) off-street parking areas be required for any dwelling.

9. Garbage Disposal and Sanitary Systems. Each dwelling house or other structure containing a kitchen constructed on any residential tract in Elk Run Subdivision shall be equipped with a garbage grinder or garbage disposal unit of a type approved by the Committee. No sewerage disposal system, sanitary system, cesspool, or septic tank shall be constructed.

## ARTICLE VIII

### BUILDING LOCATION AND CONSTRUCTION

1. Building Code. The construction of any building or structure shall be in accordance with the building code then in effect in the Town of Mt. Crested Butte, Colorado. The quality of workmanship and materials in any building or structure shall be equal to or exceed comparable buildings of the same type in the same general area.

2. Architectural Standards. The following exterior architectural standards shall apply within this Subdivision:

a. Exterior building materials should be predominately natural, such as wood siding, shingles and native stone. No exterior paneling shall be used. No more than fifty percent (50%) of any structure shall be constructed in native stone.

b. Roofs shall have a design and be constructed of materials that are harmonious with the surrounding area and are not of reflective type materials.

c. An accessory building must conform to the architectural style of the principal building on the lot.

d. Earth colors shall predominate.

e. Service or utility areas or yards and garbage cans and trash storage areas shall be screened from view on all sides.

3. Maximum Height. The maximum height of a building or a structure as measured vertically from the average finished grade of a structure to the highest point of the structure shall be:

a. Not greater than the maximum height limitation imposed by the Town of Mt. Crested Butte, Colorado.

b. A height that by the placement of the building or structure upon a lot shall not unduly restrict the view of a building on any surrounding or adjacent lots.

c. The Committee, upon application, hearing and written approval, may grant a variance of the height restrictions above set

forth upon a determination that such restriction would work an undue hardship upon the owner of a lot and that such variance would not impair, hinder or detract from the sightline of any adjoining party.

4. Construction. The construction of any structure shall be in accordance with the applicable regulations enacted by the Town of Mt. Crested Butte, Colorado.

5. Square Footage. Any dwelling constructed of a lot shall comply with the following standards.

a. Each dwelling shall have a minimum of one thousand two hundred (1,200) square feet of usable living area on a single floor elevation.

b. Each dwelling shall contain a total living area of a minimum of two thousand two hundred (2,200) square feet, exclusive of garages, porches, patios and accessory buildings.

#### ARTICLE IX

##### RESTRICTIONS ON COMMON TRACTS

1. Improvements. No improvements of any kind or nature shall be constructed, erected, or allowed to remain on any common tract except meadows, clubhouses (with or without employee housing units), swimming pools, jacuzzi, tennis courts, lakes and ponds, recreational facilities, bridle paths, or similar improvements for the benefit of or use of all of the Members of ELK RUN HOMEOWNERS ASSOCIATION, and private roads giving access to other lots in Elk Run Subdivision. All such improvements shall be approved by the Committee as elsewhere herein provided, and shall conform and harmonize in appearance, setting, and cost with existing structures on the overall development plans for Elk Run Subdivision.

#### ARTICLE X

##### ENFORCEMENT

1. Enforcement and Remedies. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration with respect to the Subdivision property of the Association shall be enforceable by the Association or by any owner of property subject to this Declaration by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction or by an action to recover damages or to recover any amount due or unpaid or, in the discretion of the Association for so long as any person or entity fails to comply with any such obligation, provision, covenant, restriction or condition, by exclusion of any person or entity and such person's or entity's guests or invitees from use of any property or facility owned or held by the Association and from enjoyment of any function undertaken by the Association.

2. Protection of Encumbrancer. No violation or breach of any provision, restriction, covenant or condition contained in this Declaration and no action to enforce the same shall defeat, render invalid or impair the lien of any mortgage of deed of trust taken in good faith and for value and perfected by recording prior to the time of recording of an instrument giving notice of such violation or breach, or the title