

**Declaration of Protective Covenants for Spread  
Eagle Springs and Spread Eagle Pines  
Custer County, Colorado**

Amended May 16, 2023

**ARTICLE ONE**

**Property Subject to this Declaration of Protective Covenants.**

ROBERT C. NELSON, GARY E. CHUBB, JANET CHUBB, DONALD D. CHUBB and KAROLYN CHUBB (“Declarant”) are the owners of all property within the subdivisions “Spread Eagle Springs” and “Spread Eagle Pines” in Custer County, Colorado. The real property which is, and shall be conveyed, developed, occupied, used and sold subject to the conditions, covenants, restrictions, reservations and easements as set forth within the various clauses and covenants of this declaration is the real property located within the plat of Spread Eagle Springs and Spread Eagle Pines.

**ARTICLE TWO**

**General Purpose and Definition**

A. The real property described in Article One hereof is subject to the conditions, covenants, restrictions, reservations, and easements hereby declared to ensure the best use and the most appropriate development and improvement of each building site; to protect the owners of dwelling sites against an improper use which will depreciate the value of property within the aforesaid plat; to preserve, as far as practical, the natural beauty of such property; to prevent the construction of improper and unsuitable improvements; to encourage and secure the erection of attractive, energy efficient and water conserving dwellings thereon; and in general to create and keep the subdivisions insofar as possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance, and to guard against fires and unnecessary interference with the natural beauty of the subdivisions and to provide adequately for the

improvement of said property all for the mutual benefit and protection of the owners of property in the subdivisions.

B. As used herein, the following words and terms shall have the following meanings:

1. "Subdivision" shall mean the land described in Article One. Declarant may amend Article One to include all or any part of the lands located in the area of the subdivision presently owned or subsequently acquired by Declarant.
2. The term "Subdivision Lands" shall include all lands platted in the Spread Eagle Springs, Spread Eagle Pines and all lands contained in future plats of land of the Declarant.
3. "Lot" shall mean any lot in any plat of the subdivided lands.
4. "Single Family Residence" shall mean a single-family residential Building together without buildings. "Out building" shall mean an enclosed, covered building to be used as a caretaker's house, guest house, ranch hand or farm hand's house, garage or such other buildings for storage purposes not directly attached to the main structure which it serves. The use and total number of the approval of such "out buildings" shall be subject to the Architectural Control Committee.
5. "Architectural Control Committee" shall mean the committee established by the Declarant in these Covenants.

## **ARTICLE THREE**

### **Covenants and Conditions**

#### **A. Land Use and Building Type**

All dwellings erected on any lot covered by these covenants, must be of the type

that is constructed "on-site". Travel homes, mobile homes or homes that are pre-fabricated off site and moved in for erection will not be allowed in this subdivision. No building site shall be used except for the purposes indicated on the plat of the subdivisions and on all plats of subdivision lands. No trailer, motor or mobile home, tent shack, garage, or other out buildings erected on a building site covered by these covenants shall at any time be used for private habitation, temporarily or permanently, except for a period not to exceed 2 months, unless approved in writing by the Architectural Control Committee. This covenant shall not apply to Declarant, its agents, servants and employees during the period of the development of the subdivisions and the sale of the lots therein.

## **B. Approval of Construction Plans**

1. No building or other structure shall be constructed, erected or maintained on any lot, nor shall any addition thereto or change or alteration therein be made, nor shall any site preparation (tree cutting, excavation, road construction etc.) be done, unless it complies with the Custer County, Colorado zoning resolutions in existence with respect to the property and until the complete plans and specifications (including, but not limited to, the floor plan, elevations, plot plan, grading and landscape plans, provisions for off-street parking, the specification of principal exterior materials, color schemes and the locations, character and method or utilization of all utilities) have been submitted to the Architectural Control Committee. A Certificate of Approval has been issued to the lot owner by said committee. A Certificate of Approval signed by the Chairman or Vice-Chairman of the Architectural Control Committee shall be sufficient to show compliance with this Article. Each building or other structure shall be constructed, reconstructed, erected repaired and maintained in strict accordance with the approved plans and specifications.

2. In passing upon all such plans and specification, the Architectural Control Committee shall take into consideration (a) the suitability of the proposed building or other structure and the materials of which it is to be erected, (b) the harmony thereof with the surroundings and (c) the effect of the building or other structure, as planned, on the view from adjacent or neighboring lots. The Architectural Control Committee shall

use reasonable judgment in passing upon all such plans and specifications, but shall not be liable to any persons for its actions in connection with submitted plans and specifications unless it is shown that it acted with malice or wrongful intent.

3. Each property owner, his heirs, assigns and legal representatives hereby releases and agrees not to sue the Architectural Control Committee or any member thereof for any negligence in either the denial or the granting of its approval for any plans submitted for its review. Further, the approval of such plans by the Architectural Control Committee is not, and shall not, be construed as an assertion that such plans reflect designs that are safe or in any way free from design defects or that construction in accordance with such plans will necessarily result in compliance with any applicable codes.

4. The Architectural Control Committee shall act upon the plans and specifications submitted to it within 30 days after such submittal. Such action may be approval, denial or the request for additional information. If, within such 30-day period, the Architectural Control Committee rejects such plans or requests changes therein and the plans are resubmitted, the Architectural Control Committee shall again have 30 days upon which to act upon such plans and specifications.

### **C. Minimum Floor Area and Building Heights**

1. No single-family residential structure shall be permitted on any building site covered by these covenants, the habitable floor area of which, exclusive of basement, porches and garages is less than 1000 feet on the first level, nor less than 1,600 square feet total habitable floor area, provided however, dwellings whose masses are generally parallel to the natural terrain of the land are encouraged and the Architectural Control Committee shall have the authority to waive the minimum limitation of 1000 square feet on the first level, providing always that the maximum height of any building shall not be in excess of that allowed by the Custer County Zoning Resolution.

2. No single-family dwelling shall be permitted on a single family lot at an appraised value of less than \$165,000.00, exclusive of the cost of the lot, based upon cost levels prevailing on the date the Certificate of Approval is granted.

#### **D. Building Location and Sitting**

There shall be no general rule for the location of improvements with relation to property lines, but the location of such improvements shall receive the advance approval of the Architectural Control Committee.

#### **E. Fences**

No fence, wall or similar type barrier of any kind shall be constructed, erected, or maintained on any lot for any purpose whatsoever, except such fences, walls or barriers as may be approved by the Architectural Control Committee.

#### **F. Signs**

No signs of any kind shall be displayed to the public view on any part of the property, except one sign of not more than 2 square feet designating the owner of any building site, one sign of not more than 5 square feet advertising the property for sale or rent, and except temporary signs used by Declarant, or its agent to advertise property in Spread Eagle Springs or Spread Eagle Pines. No commercial signs (type or size) shall be erected or constructed until approved by the Architectural Control Committee.

#### **G. Easements**

Easements and rights-of-way as described on the recorded plats of Spread Eagle Springs and Spread Eagle Pines have been dedicated for poles, wires, pipes, and conduits for electricity, gas, telephones, sewer, drainage water, snow removal and other utility and public road purposes. No dwelling, improvement, material, equipment or refuse shall be placed on any part of said easements and right-of-way shown on the plat so as to interfere with the use thereof as dedicated.

## **H. Garbage and Refuse Disposal and Inoperative Vehicles**

No part of the property above or below ground shall be used or maintained as a dumping ground for refuse, trash, garbage, debris or other waste; at all times the property shall be maintained in a sanitary condition. A garbage disposal shall be installed at the time of construction in every dwelling unit. It shall be the responsibility of the owner to maintain a garbage disposal in operating condition at all times. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse and all such receptacles shall be screened from public view and protected from disturbance. These restrictions also apply to contractors during periods of construction. No motor vehicle of any type shall be permitted to remain on the property in a non-operating condition for more than 30 days in any calendar year, unless stored in a garage. Any such vehicle, which does not display a current and valid license plates, shall be deemed to be in "non-operating condition".

## **I. Trees**

Spread Eagle Springs and Spread Eagle Pines residents are encouraged to maintain natural plants and growth on their property. Approval must be obtained from the Architectural Control Committee to cut down or clear trees or shrubs on homesite.

## **J. Re-subdividing**

Further subdividing of any lot in Spread Eagle Springs or Spread Eagle Pines is not allowed during the period covered by the covenants.

## **K. Domestic Animals and Pets**

Domestic animals generally recognized as house or yard pets can be maintained on any lot. If an owner chooses to keep house or yard pets, said owner shall at all times have them under his or her control whether or not within the owner's lot or unit. Animals shall not be permitted to run at will, and at the option of the Architectural Control Committee, steps may be taken to control of any animals not under the immediate control of their owners, including the right to impound

animals not under such control and charge reasonable fees to their owners for their return. The Declarant shall have the right to adopt further rules and regulations to enforce this provision.

## **L. Home Occupation**

Certain home occupations shall be allowed provided that all home occupations are subject to the prior review and approval of the Architectural Control Committee.

1. Owners who choose to rent their property have responsibility to insure tenant compliance with all Covenants of the Declaration of Protective Covenants. A \$500.00 deposit shall be made to the Association for rental periods. Such deposit would be refundable at the end of the rental period provided no violations have occurred as determined by the Architectural Control Committee, at its sole discretion. The owner shall provide names and contact information for tenant, start and end dates of rental and a signed affidavit by the tenant of their knowledge of and intent to comply with the Covenants.

2. All short-term rental(s) of property of 30 days or less is/are prohibited for all properties within the Association. An annual variance to allow short term rental of a property may be granted by the Architectural Control Committee upon timely and complete application by a property owner, but such variance shall be available for a property purchased prior to the adoption of this Amendment, and only available to a property owner who actually owned property within the Association prior to the adoption of this Amendment, and who is also able to satisfactorily demonstrate that they have fully and timely complied with any and all state, federal and local laws and ordinances as may be required for short-term rentals, including, but not limited to, any licensure and permit requirements.

Application for a variance to the Architectural Control Committee shall be made using such written application and procedures as shall be adopted and provided for from time to time by the Architectural Control Committee, including such annual deadline for application as may be required, but in no event later than October 1 for the following calendar year. In the event

that the property owner fails at any time to timely apply for such annual variance for a property pursuant to the application and procedures set forth by the Architectural Control Committee, then any and all further right of the property owner to seek a variance for the property shall be deemed abandoned and waived. Such property owner shall have no further right within the Association to engage in short-term rentals of the property.

The Architectural Control Committee may adopt such rules and policies as will help ensure that property owners granted an annual short term rental variance takes responsibility and reasonable precautions to ensure guests and tenant compliance with all Covenants of the Declaration of Protective Covenants, including but not limited to, by way of example, informing short-term rental guest or tenants of watering use restrictions, control of pets, use of trails, public nuisance, absence of certain emergency services, restriction on the discharge of firearms, proper use and restriction of the gate codes, and so forth. The Architectural Control Committee may periodically require or request submission by property owners who have been granted a variance to engage in short-term rentals evidence of their compliance with any laws, regulations and ordinances of government entities, along with their reasonable and good faith efforts to ensure short-term guest and tenants are informed of, and comply with, Covenants.

Any owner of property within the Association who purchased property after the adoption of this Amendment shall not have the right to engage in any short-term rental of property within the Association of 30 days or less.

Nothing herein is meant to change any existing right of any property owner to have a family member, friend or guest stay short-term or otherwise on a non-remuneration basis so long as all other Covenants are abided by.

### **M. Noxious or Offensive Activity**

No noxious or offensive activity shall be carried on within any lot or any of the Units nor shall anything be done or permitted which will constitute a public nuisance therein, nor shall any firearms be discharged within the subdivision.



Firearms as used herein shall be construed to mean not only rifles and pistols and cannons, but firework, explosives, air rifles, BB guns or similar devices.

## **N. Horses**

These Protective Covenants strictly prohibit the maintenance of horses on any lot in this subdivision.

## **O. Continuity of Construction**

All structures commenced in these subdivisions shall be completed with reasonable diligence but in any event must be completed within 9 months of issuance of a building permit unless an extension of time is approved in writing by the Architectural Control Committee.

## **P. Trailbikes, Motorbikes, Motorcycles, Snowmobiles and Other Off Road Vehicles**

The use of trailbikes, motorbikes, motorcycles, snowmobiles or other similar off-road type vehicles are specifically prohibited from equestrian and pedestrian easements as designated on any plat. The use of these vehicles on individual lots is allowed provided that the use of such vehicles does not create a noxious, offensive or environmentally degrading activity or a public nuisance. The Architectural Control Committee shall have the right to adopt further rules and regulations to enforce this provision.

## **Q. Landscaping**

1. Landscaping must follow the existing natural appearance of the property.
2. Enhancement of natural landscape, where desirable, is encouraged but the landscape materials should generally be limited to indigenous species.
3. Natural landscaping, using native grasses and wild flowers is encouraged. Trees and shrubs may not be trimmed or pruned to an unnatural shape. Mounding of earth for environmental effect may be done. The use of

manufactured materials, such as artificial turf, is prohibited. All natural surface areas disturbed by construction shall be returned promptly to their natural condition and replanted for environmental effect (i.e., summer cooling, winter wind shielding) is encouraged. All landscape plans are subject to the approval of the Architectural Control Committee.

## **R. Water**

The water available within the subdivision shall under no circumstances be used for irrigation, yard watering or livestock. The owners of any lot or unit in any plat of the subdivided lands, their agents, servants, employees, guests and invitees shall comply with all of the provisions of any water decree affecting the subdivided lands.

## **S. Maintenance**

All improvements constructed within the subdivision shall be maintained by the property owner in an attractive condition.

## **T. Oil and Mining Operations**

No oil drilling, oil development operations, oil refining, quarry 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 any lot. No derricks or other structures designated for the use in boring for oil or natural gas shall be erected, maintained or permitted upon a lot.

## **U. Obstructions to Vision at Intersections**

No fence, wall, hedge, tree or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner tract within the triangular area formed by the street property lines and a line connecting them at a point 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property line extended. The same site-line limitation

shall apply on any tract within 10 feet from the intersection of a street property line with the edge of a driveway or access road on any tract.

## **V. Water and Sewage**

1. All water wells and sewage disposal systems placed upon any tract shall comply with the zoning requirements of Custer County and the State of Colorado Health Department. No sewage tank or field system shall be nearer than 50 feet to any tract line except with the consent of the Architectural Control Committee and no sewage, wastewater, trash, garbage or debris shall be emptied, discharged or permitted to drain into any body of water in or adjacent to the subdivisions. No outside toilets or privies shall be permitted on any tract. All toilet facilities must be a part of the residence or garage and shall be of a modern flush type and connected with a proper sewage tank system.
2. Any water well shall be used for domestic purposes only, in accordance with the laws of the State of Colorado, and no irrigation will be allowed.
3. A permit for the construction and installation of an on-site sewage system on any lot in Spread Eagle Springs or Spread Eagle Pines, such as a conventional septic tank and leach field, must be obtained through the Custer County Zoning/Health Office. Soils and percolation factors must meet the standards for such systems as prescribed by the State of Colorado Department of Health. In the event that soil conditions preclude the use of a conventional leach field at the desired location, then approval through the Custer County Zoning/Health Office must be obtained for the installation of an alternate type of individual sewage system such as an Aerobic type system, which is approved by the State of Colorado Department of Health.

## **W. Fire Prevention**

The following prevention measures shall be adhered to and complied with throughout Spread Eagle Springs and Spread Eagle Pines:

1. All chimneys and fireplaces shall have a protective wire screen

inside the chimney near the top to prevent any burning/ignited particles from escaping said chimney.

2. All structures shall be the structure designed and constructed to prevent the accumulation of trash and debris underneath.
3. Reasonable prevention shall be taken against all fire hazard and no outside burning of any kind shall be permitted upon the premises (except for cooking) unless in an approved incinerator with ash control.
4. At least a  $\frac{3}{4}$  inch outside hydrant connected to the main service line, with appropriate length hose and nozzle connected and stored.

## **X. Driveways**

Culverts in size as prescribed by the Custer County Department of Roads, but in no event less than 1 foot in diameter, must be installed at road entrance drive ways in all instances in which proper drainage would otherwise be obstructed.

## **Y. Drainage**

Nothing shall be done on any lot which will obstruct or prevent the natural and/or proper flow of drainage. Also, no earth work shall be done within the subdivisions which would destroy or damage the function of existing soil erosion earth construction. Further, no dwelling or residence shall be sited on a natural drainage area or an area subject to inundation as determined by the Architectural Control Committee.

## **Z. Open Space Tracts**

Four tracts are identified on the Spread Eagle Springs plat as "Open Space". These tracts are owned by the Association for the common use by lot owners and guest. Camping or parking of any vehicle, trailer or camper on Open Space tracts is prohibited. The removal, modifying, destroying or defacing of any natural or man-made object is prohibited. Dumping of rubbish, trash, lot debris or waste is prohibited.

Maintenance shall be the responsibility of the Association. The Association shall have the exclusive right to make, supplement, amend or revoke the rules pertaining to the use of Open Space tracts.

## **ARTICLE FOUR**

### **Spread Eagle Home Owners Association**

#### **A. Membership**

For the purpose of promoting the health, safety and welfare of the owners of the lots within the subdivision and all lots in plats which have protective covenants similar to these protective covenants and in which the owners of the lots are made members of the Spread Eagle Home Owners Association each and every person, upon becoming an owner, in any of the said subdivided lands agrees to and shall be a member of and be subject to the obligations and receive the benefits of the Articles of Incorporation of the "Spread Eagle Home Owners Association, Inc." and the by-laws of said Association.

#### **B. Assessments**

Payment of dues and assessments to the Association shall be in such amounts and at such times as may be determined by the Association.

#### **C. Lien for Assessments**

1. If any owner shall fail or refuse to make any payment of dues or assessment when due, the amount thereof shall constitute a lien upon the defaulting owner's property. Upon the recording of notice thereof by the Association in the office of the County Clerk and Recorder of Custer County, Colorado, such lien shall be perfected upon such owner's property. Such a lien shall be a first and prior lien over all other liens and encumbrances except general ad valorem taxes and special assessments of any taxing authority in the State of Colorado.

2. The association shall send a notice, postage prepaid, to any mortgagee or beneficiary of any deed of trust unreleased at the time the lien of the Association was recorded advising such mortgagee or beneficiary that the Association has perfected a lien on the property upon which he has a mortgage or deed of trust and the amount of such lien and further advising the mortgagee or beneficiary that the Association will not foreclose its lien until at least 30 days after the date of depositing such notice in the United States mail.

3. Any mortgagee or beneficiary may pay any delinquent dues or assessments with respect to such property.

4. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other property owners, and may be foreclosed by an action brought in the name of the Association in a like manner as a mortgage of real property. In any such foreclosure, the owner shall be required to pay the cost and expenses of such proceedings, the cost and expenses for filing the notice or claim of lien and all reasonable attorney fees. The owners shall also be required to pay the Association all assessments for the property during the period of foreclosure, and the Association shall be entitled to a Receiver to collect the same. The Association acting on behalf of the property owners shall have the power to bid in the interest so foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

5. The Association and its officers and directors shall not be liable or accountable in damages for any action taken pursuant to the provisions of this Declaration.

#### **D. Certificate of Assessments**

Upon payment of a reasonable fee not to exceed \$25.00 and upon the written request of any owner, mortgagee, prospective owner or prospective mortgagee of a Lot, the Association, by its financial officer, shall issue a written Certificate setting forth the amount of unpaid dues and assessments, if any, with respect to the subject Lot; the amount of the current assessment and the date upon which such assessment becomes due; and credit for advanced payments or prepaid

items if any. Such Certificate shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a Certificate of Assessments be complied with within 10 days of the receipt of the request, then (a) in case of a request by a mortgagee or prospective mortgagee, all unpaid dues and assessments which become due prior to the date of making such request shall be subordinate to the lien of said mortgagee or prospective mortgagee, or (b) in case of a request by a prospective grantee, he shall not be liable for, nor shall the Lot conveyed be subject to a lien for unpaid dues and assessments or expenses which became due prior to the date of making such request. No failure to comply with such request, if made by the owner, shall relieve him from personal liability for, or the subject's property from the lien for, any unpaid dues and assessments or expenses which became due prior to the date of making such request. The provisions contained in this paragraph shall not apply upon the initial transfer of any Lot by Declarant.

## **ARTICLE FIVE**

### **Architectural Control Committee**

The Architectural Control Committee shall consist of Robert C. Nelson, Donald D. Chubb, Karolyn Chubb, Ronald L. Albritton and Glenda B. Albritton. A majority of the Committee may delegate a representative to act for it. In the event of the death or resignation any member of the Committee, the Board of Directors of the Spread Eagle Home Owners Association, Inc. shall appoint a replacement. The members of the Committee shall not be entitled to any compensation for services performed pursuant to these covenants, nor shall any member of said Committee, its representative or their successors be liable in damages for any error in judgement.

## **ARTICLE SIX**

### **Violation, Enforcement, Term and Severability of Covenants**

#### **A. A Violation of Covenants**

Whenever there shall have been built on any lot a structure which is in violation of these covenants or restrictions herein contained, such persons as are authorized by the Board of Directors of Spread Eagle Home Owners Association, Inc., the Declarant, and the Architectural Control Committee, or any one of them, shall have the right to enter upon the property as to which such violation exist and to summarily abate and remove at the expense of the owners thereof any erection, thing or condition that may exist thereon contrary to the intent and meaning of the provision thereof; and the Association, its agents and assigns shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. The cost and expenses of such entry, abatement and removal shall become a lien upon the lot upon the recording by the Association of a sworn statement with respect thereto in the Custer County real property records. In addition, if any person shall violate or threaten to violate any provisions of this instrument, it shall be lawful for any person or persons owning real property in any subdivision whose lot owners are members of the said Home Owners Association, the Board of Directors of said Home Owners Association, the Declarant, and the Architectural Control Committee, or any one of them, to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorney's fees, for such violations.

## **B. Term of Covenants**

Each of the covenants, restrictions and reservations set forth herein shall be for the benefit of and be binding upon each lot in the subdivision and each owner of property therein, his successors, representatives and assigns, and shall be deemed covenants running with the land. These covenants shall be null and void 25 years after the date of their recordation in the office of the Clerk and Recorder of Custer County, Colorado, unless specifically reaffirmed by a majority of the owners of property in the subdivision and a majority of the owners of property in other subdivisions who are members of the said Home Owners Association prior to such expiration.

## **C. Amendment**



The conditions, restriction, stipulations and agreements and covenants contained herein shall not be waived, abandoned, terminated nor amended except by written consent of two-thirds of the owners of property within Spread Eagle Springs and Spread Eagle Pines and two-thirds of the owners of lots in other subdivisions who are members of said Home Owners Association subject to these Covenants, provided however, that Declarant may amend Article One to include additional land within the property covered by these covenants. The amendment to include such land shall be affected by Declarant having recorded a declaration describing the land to be included, setting for such additional limitations, restrictions, covenants and conditions as are applicable to such land; and declaring the land is to be held, used, sold, conveyed, encumbered, leased, occupied and improved subject to the covenants.

#### **D. Severability**

Invalidation of any of these covenants or any part thereof by judgements or court orders shall in no way affect any of the other provisions here of which shall remain in full force and effect.



