

**AGREEMENT REGARDING WELL LOCATED ON LOT 8  
ELK SPRINGS RANCH SUBDIVISION**

**THIS AGREEMENT** ("Agreement") is entered into on July 22, 2009, between the Elk Springs Ranch Homeowners Association, Inc. ("Elk Springs"), a Colorado nonprofit corporation, whose address is c/o Board of Directors, PO Box 641, Mancos, CO 81328, and the Lion's Head Water User's Association ("Lion's Head"), a Colorado nonprofit corporation, whose address is c/o Alan Scott, 1615 Brown Dr., Belen, NM 87002.

WHEREAS, Elk Springs is the association named and referred to in the Declaration of Covenants, Conditions and Restrictions for Elk Springs Ranch, recorded on September 2, 1993, at Reception No. 434589, in Book 0677, Page 804, of the real property records of Montezuma County, Colorado, as may be amended ("Declaration").

WHEREAS, Lot 8, ELK SPRINGS RANCH ("Lot 8"), according to the plat thereof filed for record on September 2, 1993, at Reception No. 434591, in Book 12, Page 50, of the real property records of the Montezuma County, Colorado, is located in the Elk Springs Ranch subdivision.

WHEREAS, pursuant to the Declaration, Elk Springs is responsible for the management and control of property within the Elk Springs Ranch subdivision.

WHEREAS, Lion's Head is the association named and referred to in the By Laws of Lion's Head Water User's Association, recorded on March 26, 2002, at Reception No. 502953 of the real property records of Montezuma County, Colorado, whose purpose is to furnish water to Lots 10 through 16 inclusive in Elk Stream Ranch Phase 3 and Lot 8 in Elk Springs Ranch in Montezuma County and La Plata County, Colorado;

WHEREAS, Lion's Head currently extracts water from a well located on Lot 15, in the Elk Stream Ranch Phase 3 subdivision ("Well #1"), which is the primary well used for providing water as described in the Lion's Head Bylaws; however, Lion's Head desires to extract water from a well located in Lot 8 ("Well #2") consistent with Well Permit No. 056288-F;

WHEREAS, Elk Springs is concerned about extraction of water from Well #2 for multiple parcel use and the strain on water resources caused by the same; however, Elk Springs has agreed to allow water extraction from Well #2 contingent upon execution of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Limitation on Well Draw: Lion's Head may extract water from Well #2 for the purposes described, and subject to the limitations stated, in Well Permit Number 056288-F, dated August 14, 2001, which includes the following:
  - a. The maximum pumping rate shall not exceed 15 Gallons Per Minute (GPM);
  - b. The annual withdrawal of ground water from Well #2 in combination with the well permitted under Well Permit Number 056287-F ("Well #1"), shall not exceed 22.24 acre-feet.
  - c. The ground water from Well #2 in combination with the well permitted under Well Permit Number 056287-F is to be used on Lots 10 through 16 in Elk Stream Ranch and Lot 8 in Elk Springs Ranch, for the following purposes on each parcel: ordinary household purposes inside one single family dwelling and inside one guest house, irrigation of one acre of gardens and lawn, watering of domestic animals, filling a stock tank and for fire protection purposes.
  - d. In addition to the well permit limitations set forth in a-c above, Well #2 shall be a secondary well, to be used by Lion's Head when the production from Well #1 is insufficient, or when Well #1 needs to recharge, rest, or requires maintenance. If Well #1 becomes permanently insufficient, Lion's Head may utilize Well #2 as its primary well for up to 9 months, while Lion's Head develops other sources of supply, such as drilling another well to replace Well #1.
  
2. Maximum Membership: Lion's Head agrees that its membership is limited to Lots 10 through 16 of Elk Stream Ranch and Lot 8 in Elk Springs Ranch. Any increase in the number of members in Lion's Head will not result in an equivalent increase in water extraction/use as permitted in this Agreement; provided, however, that any proposed change to the Bylaws with regard to an increase in Lion's Head membership would require prior approval by Elk Springs.
  
3. Monitoring Devices: In order to provide adequate verification that the conditions in Paragraph 1 are met, Lion's Head agrees to install and maintain flow meters on Well #1 and Well #2 acceptable to Colorado Division of Water Resources, which measure all diversions from the Wells. Lion's Head will also meter each lot connected to Well #2.
  - a. In May and November, and only with at least 30 days prior written notice from Elk Springs, Lion's Head shall provide Elk Springs with the following:
    - I. Lion's Head aggregate water usage numbers for the previous 6 months, as defined as the cumulative readings of all Lion's Head individual lot water meters. Individual lot readings will not be supplied to Elk Springs.
    - II. A meter reading from Well #1.
    - III. A notarized document stating whether Well #2 has been turned on within the last 6 months, and if it has, approximately how many days it was turned on.

- b. Elk Springs may include in their May and November written request to have the standard flow meter on Well #2 read and reported to Elk Springs. These readings shall be made by Lion's Head's water master, and Lion's Head shall have the sole right to designate this water master. Elk Springs shall pay any and all associated costs, including reasonable travel expenses, and water removal from around the Well #2 meter for these readings.
- c. Elk Springs may request in writing that Lion's Head provide a written cost estimate and install a remote meter on Well #2, and this meter shall be installed within 90 days. This installation shall be made by Lion's Head's water master, and Lion's Head shall have the sole right to designate this water master. Elk Springs shall pay all reasonable costs associated with this remote meter, including materials, installation and maintenance costs.
- d. If a remote meter exists on Well #2, Elk Springs may include in their May and November written request to have this remote meter read and reported without cost to Elk Springs, except maintenance costs as set forth above.
- e. Lion's Head shall supply Elk Springs baseline readings from Well #1 and Well #2 within 60 days of the signing of this document. These meters will be read at Lion's Head's expense.
- f. Elk Springs acknowledges that access to Well #2 is required for reading the meter of Well #2 for the baseline readings, for installing a remote meter, and if and when Elk Springs requests Well #2 meter readings. Elk Springs will provide Lion's Head written permission for all access to Well #2 required to fulfill meter reading obligations or requests under this Agreement.
- g. If Well #2 goes into service for over 10 contiguous days, Lion's Head shall provide Elk Springs written notice of this event, without Elk Springs having to request this information.
- h. If any meter readings or remote meter installations are delayed due to weather, lack of access or other factors beyond Lion's Head's control, Lion's Head shall provide the information or install the meter as soon as reasonably possible.

4. Lion's Head Easements. Elk Springs hereby approves easements numbers 1 and 3 conveyed to Lion's Head by Tru-Worth, Ltd., under that Grant of Easement document; and Lion's Head agrees to vacate easement number 2 under this same Grant of Easement document; this document is dated August 12, 2004 and recorded in Montezuma County under Reception No. 525087 ("the Easements").

5. Breach by Lion's Head: Should Lion's Head breach any provision of this Agreement, including exceeding the limitations set forth in Paragraphs 1 or 2, or failing to adhere to the conditions set forth in Paragraph 3, Elk Springs shall have the following remedies:
  - a. The right to seek injunctive relief to prevent Lion's Head from using more water from its wells than is allowed under this Agreement;
  - b. Any other remedy available at law or equity.
6. Breach by Elk Springs: Should Elk Springs breach any provision of this Agreement, Lion's Head may pursue any remedy available at law or equity, including but not limited to obtaining injunctive relief and/or damages.
7. Binding Effect: This Agreement shall extend to and be binding upon the successor and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Agreement shall be construed as covenants running with the land.
8. Enforceability: The invalidity or unenforceability of any particular provision of this Agreement shall not in any way affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
9. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue shall be proper only in Montezuma County, Colorado.
10. Modification: This Agreement shall not be changed, amended or supplemented except by an agreement in writing signed by both parties.
11. Assignment: Neither party to this Agreement may assign its rights and obligations under this Agreement without obtaining the prior written consent thereto of the other.
12. Indemnification: Lion's Head hereby indemnifies and saves harmless Elk Springs against any and all loss, damage, liability, claims, demands, cost or expense, including reasonable attorney fees and costs of litigation, resulting from the actions of Lion's Head, its members, agents, employees, guests, invitees, successors and assigns.

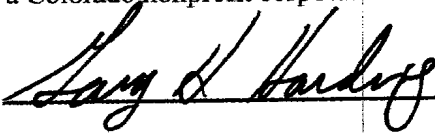
Elk Springs hereby indemnifies and saves harmless Lion's Head against any and all loss, damage, liability, claims, demands, cost or expense, including reasonable attorney fees and costs of litigation, resulting from the actions of Elk Springs, its members, agents, employees, guests, invitees, successors and assigns.

13. Attorney Fees: In the event any action, suit, or other proceeding is instituted to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall recover all of such party's reasonable attorney fees incurred in each and every such action, suit, or other proceeding, including any and all appeals or petitions.

14. Termination: This Agreement shall continue in full force and effect, unless and until terminated upon the execution of an instrument signed by both Parties, which shall be recorded in the real estate records of Montezuma County, Colorado.
15. Recording: This Agreement shall be recorded in the real property records of Montezuma County, Colorado, at the sole expense of Lion's Head.
16. Authority: The parties certify that the individuals signing this Agreement have been duly authorized to sign this Agreement on behalf of the Lion's Head and Elk Springs.
17. Counterparts and Signatures: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed and emailed signatures shall have the same force and effect as original signatures.

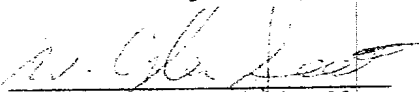
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

**ELK SPRINGS RANCH HOMEOWNERS ASSOCIATION, INC.**,  
a Colorado nonprofit corporation:



By: Gary Harding, its President

**LION'S HEAD WATER USER'S ASSOCIATION**,  
a Colorado nonprofit corporation:



By: W. Alan Scott, its President.

**APPROVED:** To the extent required under the Declaration of Elk Springs Ranch, the Elk Springs Ranch Design Review Committee approves the terms of this Agreement, along with the easements described in Section 4.

**ELK SPRINGS RANCH DESIGN REVIEW COMMITTEE**

By: 

Name:

Jeff Schaffner

Title:

Chairman, Design Review Committee

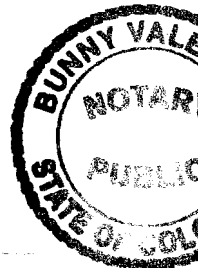
STATE OF COLORADO )  
 )ss.  
COUNTY OF Montezuma )

The foregoing instrument was acknowledged before me this 22 day of July, 2009, by Gary Harding, as President of Elk Springs Ranch Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 10-20-2010

Bunny Valencia  
Notary Public

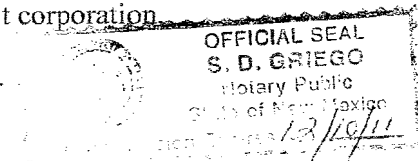


STATE OF COLORADO New Mexico  
 )ss.  
COUNTY OF Valencia )

The foregoing instrument was acknowledged before me this / day of July, 2009, by W. Alan Scott, as President of Lion's Head Water User's Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires:

  
S. D. Griego  
Notary Public

STATE OF COLORADO )  
 )ss.  
COUNTY OF Montezuma )

The foregoing instrument was acknowledged before me this 3 day of August, 2009, by Jeff Schaffer, authorized officer of the Elk Springs Ranch Design Review Committee.

Witness my hand and official seal.

My commission expires: August 31, 2010

Lyn M. Rowley  
Notary Public

