

## Third Restated Declaration of Covenants, Conditions and Restrictions

THIS THIRD RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is prepared and filed for the purpose of replacing the Restated Declaration of Covenants, Conditions and Restrictions (hereinafter the "Restated Declaration") recorded under recording number 9623611550 in the office of the Clerk and Recorder of Flathead County, Montana, and the Second Restated Declaration of Covenants, Conditions and Restrictions (hereinafter the "Second Restated Declaration") recorded under recording number 200334614150 in the office of the Clerk and Recorder of Flathead County, Montana. From the date of the recording of this document this Third Restated Declaration of Covenants, Conditions and Restrictions shall completely replace and cancel the previous Restated Declaration and the previous Second Restated Declaration.

WITNESSETH

WHEREAS the owners of at least two-thirds of the Lots subject to the Second Restated Declaration desire to amend that Second Restated Declaration pursuant to Article IX therein. The real property subject to this Third Restated Declaration is described as follows, to wit:

*W1/2NW1/4, NE1/4NW1/4, NE1/4, N1/2SE1/4 and SE1/4SE1/4, Section 32, Township 31 North, Range 22 West and S1/2SE1/4 of Section 29, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, Tracts 1 and 2 of COS 12131 in Section 33, Township 31 North, Range 22 West, Elkhorn Subdivision Phase 1. and Antler Ridge Subdivision, according to the map or plat thereof on file and of record with the Clerk and Recorder of Flathead County, Montana.*

The owners of the real property described above desire to subject the said real property to the covenants, conditions and restrictions set forth herein by amending the Second Restated Declaration pursuant to the procedure set forth at Article IX therein. The covenants, conditions and restrictions set forth herein are for the benefit of said property and for each owner thereof, and shall inure to the benefit of and pass with said property and each and every parcel thereof, and shall apply to and bind the successors in interest and any owner thereof:

Now, therefore, it is hereby declared that all of the properties described above shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These covenants, conditions and restrictions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

### **Article I: Definitions**

**Section 1.** "Association" shall mean and refer to Elkhorn Homeowners Association, which was previously created to administer the properties subject to this Third Restated Declaration, and shall continue to administer said properties.

**Section 2.** "Properties" shall mean and refer to that certain property described above.

**Section 3.** "Lot" shall mean and refer to any Lots or tracts within the above-described property.

**Section 4.** "Dwelling Unit" shall mean and refer to any building or portion thereof providing complete independent and permanent living facilities for one family.

**Section 5.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot or tract which is a part of the properties, including buyers under a contract for deed, but excluding those having such interest merely as security for the performance of an obligation. In the event an Owner is a corporation or other entity other than a natural person, the Owner shall designate one (1) natural person in each calendar year, who, together with his or her family, shall be the sole occupant of the Lot and any Dwelling Unit constructed on the Lot during that calendar year.

**Section 6.** "Family" shall mean and refer to a natural person and his or her spouse, children, grandchildren, brothers, sisters, parents, or significant other.

## **Article II: Purpose of Covenants**

The Elkhorn property is being subjected to these Covenants to ensure the appropriate development and improvement of each Lot, to preserve and protect the natural beauty and rural setting throughout the subdivision, and to guard against building with inappropriate or unsuitable materials. The Covenants strive to maintain Elkhorn's native timbered woodland character of northwestern Montana including its wildlife habitat, and to enhance and protect the value, desirability and attractiveness of the real property.

## **Article III: Membership**

Every person or entity who is a record owner of any Lot, including buyers under a contract for deed shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lot. Ownership of such Lot shall be the sole qualification for membership.

## **Article IV: Voting**

All members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, the vote for such Lot shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

## **Article V: Assessments**

### **Section 1. Creation of Personal and Lien Obligations.**

The owner of any Lot or tract by acceptance of a deed or contract for purchase of any Lot within the properties, whether or not it shall be so expressed in said deed or contract, is deemed to covenant and agree to be a member of and subject to the assessments and duly enacted By-Laws and other rules of the Association. All assessments, together with interest (at a rate not to exceed the highest rate allowed by Montana law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made, and the Association may file and/or record a lien against any Lot(s) for which there is a delinquency for amounts owed for assessment(s) against any Lot(s) or owed by the owner(s) of any Lot(s). Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and his or her successors in interest shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance.

## **Section 2. Purpose of Assessments.**

The assessments levied by the association shall be used exclusively for the benefit of the Association, purposes including but not limited to the following:

- a.** Road maintenance and improvement, including snowplowing, erosion control, grading, graveling, maintenance of storm drainage and culverts, and general repair and upkeep.
- b.** Underground utilities maintenance as required; except that individual Lot owners shall be responsible for maintenance of underground utilities installed by them.
- c.** Filling and maintenance of tanker recharge facilities,
- d.** Incidental expenses incurred by the Association such as: water samples, electrical bills, legal fees, stationary, stamps, mailing costs, etc.
- e.** Community water system maintenance and assessments, should one be installed at a later date.

## **Section 3. Uniform Rate of Assessments.**

Both annual and special assessments for all Lots may be collected on an annual basis. Both annual and special assessments must be a fixed uniform rate for each Lot regardless of size. Each Lot shall be assessed an equal, pro-rata share of any assessment. However, disproportionate use of a utility may result in raising the assessment for an individual Lot owner.

## **Section 4. Assessments.**

Assessments shall be annual or special. Both the annual and the special (if any) assessments shall be fixed periodically by the Board of Directors of the Association. Payment of all assessments shall be in periodic installments at such intervals as established by the Directors of the Association in keeping with the By-Laws thereof.

## **Section 5. Commencement of Assessments.**

The Board of Directors shall fix the amount of each "annual" or "special" assessment against each Lot at least thirty (30) days in advance of each "annual" or "special" assessment period. Written notice of the assessments shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association may issue certificates setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

## **Section 6. Nonpayment of Assessment.**

Any assessments or installment payments on assessments, which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall bear interest from the date of delinquency at the rate of TWELVE (12%) percent per annum. The Association may bring an action at law to recover delinquent assessments, accrued interest, costs and expenses in connection with bringing a legal suit including reasonable attorney fees, and may bring equitable actions to foreclose assessment liens against Lots.

## **Article VI: Protective Covenants**

The following Protective Covenants are designed to provide a uniform plan for the development of the herein above described property and to insure the best use and the most appropriate development and improvement of said property; to protect the owners of the property against such improper use of the property as will depreciate its value; to preserve, so far as is practical, the natural beauty of said property; to guard against the erection thereon of structures built of improper or unsuitable material; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon; to secure and maintain property setbacks from roads and adequate free space between structures, and, in general to encourage the development of said property for country residential living and thereby to enhance the value of parcels of land and improvements made thereon by purchasers of said land.

### **Section 1. Architectural Control Committee.**

The "Architectural Control Committee" shall consist of the Board of Directors of the Association, or a special "Architectural Control Committee" of at least three (3) or more persons appointed by the Board, all of who must be members of the Association.

### **Section 2. Architectural Control.**

All owners intending to construct a dwelling or build any type structure whatever upon any Lot shall first submit their plans and specifications, in writing, to the Architectural Control Committee. No dwelling house or other structure, including but not limited to a fence or gate, shall be erected, placed, or altered on any Lot until the construction plans and specifications along with the proposed site thereof have been approved in writing by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and location of the structure with respect to topography and finish grade elevation. Any clearing, excavation or building shall not commence until Architectural Control Committee approval has been granted and impact fees have been paid.

### **Section 3. Approval by Committee.**

Approval or disapproval by the Architectural Control Committee must be in writing and may be communicated by electronic means. In the event the Committee fails to act within thirty (30) days after the proposed plans and specifications of any structure have been submitted, in writing, or in any event, if no suit to enjoin the construction has been commenced prior to the completion of an entire dwelling, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with. Upon approval by the Architectural Control Committee, construction of the approved plans shall be initiated within 1 year from the date of approval. In the case in which construction is delayed past the one-year approval window, resubmittal of plans to the Architectural Review Committee is required.

### **Section 4. Impact Fees.**

Impact Fees are charged to landowners building structures with permanent foundations to mitigate damage to the common property from construction. These fees shall be set by the BOD on an annual basis.

### **Section 5. Land Use.**

A Lot shall only be used for a single family dwelling, and no business, trade, or manufacture shall be conducted thereon, except for occupations of a professional nature that do not increase traffic, noise or create a public nuisance.

## **Section 6. Subdivision of Property**

No Lot may be further divided or subdivided after August 1, 2003 or any fractional portion thereof sold or conveyed so as to be held in divided ownership. However, this shall not prohibit property line adjustments between adjacent Lots.

## **Section 7. Leasing of Dwelling Units and Lots.**

(a) Definition. "Leasing" or "Renting" for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit or Lot by any person or persons other than the Owner for which the Owner receives any value, consideration or benefit, including but not limited to a fee, service, gratuity, emolument, Of consideration of any kind.

(b) Dwelling Units and Lots may be rented only in their entirety and to one family only; no fraction or portion thereof may be rented. There shall be no subleasing of Dwelling Units or Lots or assignment of leases unless prior written approval is obtained from the Board of Directors of the Association. No transient tenants may be accommodated in a Dwelling Unit. All leases shall be in writing. No Dwelling Unit or Lot may be subject to more than two (2) leases in any consecutive twelve (12) month period, regardless of the lease term.

## **Section 8. Building Type.**

(a) No residential building shall be erected, altered, placed or permitted to remain on any single family Lot other than one (1) detached single family dwelling, one (1) guest house, and a private garage. Additional buildings on any Lot, such as a horse barn, studio, etc., may be permitted as proper and necessary for the care and maintenance of livestock, pets and vehicles. A guest house or garage may be constructed in conjunction with a primary residence, but under no circumstances can any livable secondary structure be occupied prior to completion of the primary residence.

(b) All structures shall be constructed on site of new materials in place on the Lot. However, suitable used materials such as used brick or beams may be utilized provided that advance approval has been obtained from the Architectural Control Committee as herein provided. No structures may be moved onto or relocated on property.

(c) All primary structures shall have permanent foundations.

(d) All primary residences, garages and guest houses shall utilize Class A or B roofing materials, as rated by the National Fire Protection Association.

(e) No house trailer, modular home, mobile home or tent, or any other prefabricated structure designed to be hauled or moved on wheels, shall be used for residential purposes.

(f) No structure shall have an exterior surface of tarpaper, vinyl siding, metal or cinder block, except that asbestos shingles and colored metal may be used as roofing materials. The color of all structures must blend with the natural environment. Fire resistant materials that are designed and constructed to appear the same as natural materials are permitted, subject to approval by the Architectural Control Committee.

(g) Chimney design and construction for each dwelling shall be such that it provides for and contains a spark arresting device.

(h) The exterior of a construction must be completed within eighteen (18) months after commencement of excavation for foundation site preparation. The exterior of a dwelling, approved electrical and septic systems must be completed before occupancy will be permitted. Additional impact fees may be applied if construction is not completed within 18 months.

(i) Underground utilities shall be utilized exclusively within a residential lot.

(j) All house numbers will be visible from the road either at the driveway entrance or on the house. Owners are encouraged to use reflective house numbers.

(k) No renovations, remodeling, or alterations to the exterior, roofing, or configuration of an existing structure shall be commenced until plans for such changes have been approved in writing by the Architectural Control Committee.

(l) Each structure, once constructed on a Lot, shall be kept in the same condition as at the time of its initial construction, excepting normal wear and tear. If any structure is damaged in any way (including fences) owner shall exercise due diligence to rebuild, repair and restore the structure to its appearance and condition prior to the casualty. Such repair or reconstruction shall be completed within (12) months of the casualty, or such longer time as may be approved by the Architectural Control Committee for good cause shown.

### **Section 9. Building Size of Single Family Dwellings.**

Each home shall contain not less than 1800 square feet of finished living space in total, a minimum of 1200 square feet on the first floor and be not more than 35 feet in height above grade. For the purpose of this paragraph, porches, balconies and garages shall not be considered part of the living space. Single-Family dwellings, which were built in conformance with the Declaration of Covenants, Conditions and Restrictions recorded in Book 716, page 305, in the office of the Clerk and Recorder of Flathead County, Montana, will not be in violation of Section 8 of these Third Restated Covenants, Conditions and Restrictions.

### **Section 10. Setback Lines.**

No building shall be located on any Lot closer than 75 feet to the front street easement line, closer than 25 feet to the side Lot lines, or closer than 25 feet to the rear Lot line. Where other than a Lot as dedicated is utilized as a single building site, the side Lot lines shall refer only to Lot lines bordering the adjoining property owners. Notwithstanding anything to the contrary, the Architectural Control Committee shall have the right to permit reasonable modifications of the setback requirements when a buildable site does not fit within the parameters of these setback requirements due to lot geometry, or in its discretion such action is considered in the interests of the owners of the properties.

### **Section 11. Fences.**

Fences (including gates) will be permitted to provide privacy or safety for a play area, patio, or pool. No fence shall exceed 6 feet in height. No fence or gate of any kind, whether for privacy, safety or boundary purposes, shall be constructed on a Lot until after the height, type, design and approximate location thereof shall first have been approved by the Architectural Control Committee in writing. All fences and gates are to be of natural material and no chain link, metal or barbwire materials will be permitted, except for ornamental metal gates that have been approved by the Architectural Control Committee in writing. However, security gates can be utilized only during a period of construction of a residence and may be excepted during the period of construction for a period not to exceed 1 year, if first approved by the Architectural Control Committee. Vinyl-coated wire fences may be permitted, if first approved by the Architectural Control Committee in writing, for child protection or dog run areas, so long as said fences are not visible from roadways or neighboring residences. Gates that are not visible from the road or other Lots may be permitted to be constructed of any materials except barbwire.

## **Section 12. Trees.**

The Architectural Control Committee must approve the cutting down of trees greater than four (4) inches in diameter, with the exception of clearing for a building site or driveway, improving timber growth, enhancing building site views, and to control fire danger. Owners are encouraged to mitigate fire hazards that trees pose by engaging in "firewise" practices designed to reduce and manage wildfire risks.

## **Section 13. Sewage.**

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 of the Montana State Department of Health and Environmental Services and the Flathead County Sanitarians Office.

## **Section 14. Garbage.**

All garbage cans used in connection with any dwelling erected upon the above-described premises shall either be sunk in the ground to ground line, placed in an enclosure completely screened from view, or if the dwelling has a garage rather than a carport, the garbage may be kept in the garage. No garbage cans shall be maintained which are not of a suitable type and which do not have a cover sufficient to prevent tile escape of any noxious odors from such cans. Proper prevention must be taken to keep bears and other wild animals from feeding from garbage cans. Each Lot owner shall be responsible for trash and garbage removal from the owned Lot.

## **Section 15. Refuse.**

No part of the property shall be used or maintained as dumping ground for rubbish, trash, garbage, unused automobiles or other wastes of an unsightly nature. No hazardous waste of any kind shall be dumped or stored on any Lot.

## **Section 16. Vehicles.**

No mobile homes, trucks exceeding 2 1/2 tons in capacity, trailers, or unsightly vehicles shall at any time be parked or allowed to remain on any of said Lots or along roadways. Camper trailers, RV's, pickup trucks carrying campers, campers for pickup trucks not in use, boats and boat trailers and motor homes will be permitted only if stored in a garage or stored so as not to be visible from the roads or from a neighbor's property.

## **Section 17. Wildlife.**

It is the intention of the Association to protect and encourage the abundant wildlife that exist in the area and to encourage co-existence of man and animals, to that end no hunting will be allowed on any of the property.

## **Section 18. Nuisances.**

No noxious or offensive activity shall be carried on or permitted upon any of the properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood; nor shall the premises be used in any way or for any purpose which may endanger the health or safety of or unreasonably disturb the residents of any Lot. Outdoor barbecues are not considered nuisances under this section.

### **Section 19. Pets, Animals, and Livestock.**

Dogs, cats or other household pets are permitted, provided that they are not kept, bred or maintained for any commercial purpose. All dogs must be leashed or fenced in or under voice control and not allowed to create a disturbance or threat to livestock and wildlife in the area. All grazing animals will be permitted, provided that the land is grazed upon the accepted range management standards for control of erosion and protection of vegetation. All livestock shall be kept in fenced areas upon each owner's property. The construction and maintenance of such fences shall be each owner's responsibility and must comply with the covenants set out in section 9 of this document. No poultry shall be raised for commercial purposes. Feed Lots and swine farms are expressly prohibited.

### **Section 20. Utilities.**

Easements will be granted to all tract owners for utilities along roadway easements. The owner of each Lot shall pay all utility connecting costs from his/her individual Lot line.

### **Section 21. Water System.**

Each Lot owner shall provide his own water source in compliance with DNRC regulations or shall privately arrange for joint use of another Lot owner's water source; however, such joint use shall require approval from the Montana Department of Health and Environmental Sciences prior to construction. In the event the Association decides to provide a community water system in accordance with the rules and regulations of Montana Department of Health and Environmental Sciences, a separate well agreement will be drawn up for those individuals who are on the community water system.

### **Section 22. Roads.**

Lot owners are collectively responsible for maintenance of roads and individually for the access roads on their own Lots. Such access roads shall be maintained in a graded and drivable condition with surfaces graveled as a minimum. Proper storm drainage along side such private access roads is required, and installation and maintenance of proper culverts at the entrances to private access roads is required.

### **Section 23. Homeowners Association.**

The Elkhorn Homeowners Association Inc. has been formed to provide for the maintenance, repair and construction of facilities common to all Lot owners including, but not limited to roads, electrical and telephone service, tanker recharge facilities and storm drainage facilities. It is required that all Lot owners be members of the Elkhorn Homeowners Association Inc.

### **Section 24. Single Family Nature of Community.**

Elkhorn is designed and intended to be a community of single-family residences and, to that end, no Dwelling Unit or Lot shall be occupied by anyone other than the Owner and the Owner's family and guests, the designated Occupant pursuant to the provisions of Article I, Section 5 above and his or her family and guests, or a lessee and his or her family pursuant to the provisions of Article VI, Section 7 above.



## **Article VII: Enforcement**

### **Section 1. Interested Parties.**

The Association or any owner shall have the option and right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations and charges now or hereafter imposed by the provisions of the Declaration. The method of enforcement may include proceedings to foreclose assessment liens, proceedings to enjoin violations, proceedings to recover damages, or any combination of proceedings. Failure by the Association or by any owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys fees.

### **Section 2. Severability.**

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

## **Article VIII: Term**

The provisions of this Declaration shall be binding for a term of twenty (20) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless amended pursuant to Article IX herein.

## **Article IX: Amendment**

This Declaration may be amended by a two-thirds (2/3) vote of the membership and by recording an instrument signed by the President of the Association certifying that the owners of two-thirds (2/3) of the Lots have voted in favor of such amendment, and with the approval of the Board of County Commissioners.

I, Art Stewart, President of the Elkhorn Homeowners Association, hereby certify that two-thirds (2/3) of the lot owners have signed this document to approve the amendment of the Restated Declaration and the Second Restated Declaration, which are to be replaced by this Third Restated Declaration of Covenants, Conditions and Restrictions.

Dated this 5<sup>th</sup> day of June 2018