

BY-LAWS, RULES AND REGULATIONS OF THE  
ELKORN HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

OFFICE

The principal office of the corporation in the State of Montana is at Elkhorn, Whitefish, County of Flathead.

ARTICLE II

MEMBERSHIP

Section 1. Membership Qualifications. Membership Qualifications. One membership in the Elkhorn Homeowners Association, Inc., shall exist for each tract of land located in the real property subject to the Second Restated Declaration of Covenants, Conditions and Restrictions filed under recording number 200334614150, and as further expanded in the Declaration of Annexation , filed under recording number 200421709360 in the records of the Clerk and Recorder of Flathead County, Montana. The record owner of each tract shall be a member as to such tract, provided however, that the purchaser under a recorded contract for deed or notice of purchaser's interest shall be deemed to be the record owner for such purposes and provided further that if more than one person is an owner pursuant to the provisions of a deed or recorded contract for deed or notice of purchaser's interest, the person whose name appears first therein shall be the member, unless all record owners designate one of the other record owners, in writing, and deliver notice to the corporation's officers at least thirty (30) days in advance of the effective date of such a change.

Section 2. Transfer of Membership. Each membership shall automatically transfer with a transfer of ownership of the tract for which it exists. The recording of a deed or contract for deed or notice of purchaser's interest shall be deemed to be a transfer of ownership for this purpose. The corporation shall issue a certificate of membership to each owner upon presentation of proof of ownership satisfactory to the Secretary of the corporation and upon surrender of any prior certificate of membership. In the event of the loss of or the unavailability of a prior certificate, the Secretary may, in his/her discretion, issue a new certificate of membership despite the lack thereof.

ARTICLE III

MEMBERSHIP MEETINGS

Section 1. Annual meetings. The annual meeting of the members of the corporation shall be held at the principal office of the corporation in the State of Montana, or at such other place within the State of Montana as may be determined by the Board of Directors and as may be designated in the notice of such meeting. The meeting shall be held on the third Saturday of July of each year. If said day is a legal holiday, the meeting shall be held on the next succeeding day not a legal holiday. The business to be transacted at such meeting shall be the election of the directors and such other business as shall be properly brought before the meeting.

If the election of directors shall not be held on the day here designated for any annual meeting, or at any adjournment of such meeting, the Board of Directors shall call a special meeting of the members as soon as conveniently possible thereafter. At such meeting the election of directors shall take place, and such election and any other business transaction thereat shall have the same force and effect as at an annual meeting duly called and held.

No change in the time or place for a meeting for the election of directors shall be made within ten (10) days preceding the day on which the election is to be held. Written notice of any such change shall be given each member at least ten (10) days before the election is held, either in person or by letter mailed to him/her at the address last shown on the books of the corporation.

In the event the annual meeting is not held at the time prescribed in Article III, Section 1, above, and if the Board of Directors shall not call a special meeting as prescribed in Article III, Section 1, above within one (1) month after the date prescribed for the annual meeting, then any member may call such meeting, and at such meeting the members may elect the directors and transact other business with the same force and effect as at an annual meeting duly called and held.

Section 2. Special Meetings. Special meetings of the members may be called by the President, Vice President, or Secretary, or by the holders of at least ten percent (10%) of the memberships entitled to vote at such a meeting. At any time, upon written request of any person or persons entitled to call a special meeting, it shall be the duty of the Secretary to send out notices of such meeting, to be held within the State of Montana, and at such time, but not less than ten (10) days nor more than thirty (30) days after the receipt of the request, as may be fixed by the Board of Directors. If the Board of Directors shall fail to fix a time or place, the meeting shall be held at the registered office of the corporation in the State of Montana at such time as shall be fixed by the Secretary within the above limits.

Section 3. Notice and Purpose of Meetings; Waiver. Each member of record entitled to vote at any special meeting shall be given in person, or by mail, or by facsimile or electronic mail transmission, written or printed notice of the purpose or purposes and the time and place within the State of Montana of every meeting of members. Such notice shall be delivered not less than ten (10) days nor more than sixty (60) days before the meeting. If mailed or sent by facsimile or electronic mail, it should be directed to the

member's address as it appears on the books of the corporation unless the member shall have requested the Secretary in writing that notice intended for him/her be mailed to some other address, in which case the notice shall be transmitted to the address so designated. No publication of the notice of meeting shall be required. A member may waive the notice of meeting by attendance, either in person or by proxy at the meeting, or by so stating in writing, either before or after such meeting. Attendance at a meeting for the express purpose of objecting that the meeting was not lawfully called or convened shall not, however, constitute a waiver of notice. Except where otherwise required by law, notice need not be given of any adjourned meeting of the members.

Section 4. Quorum. Except as otherwise provided by law, a quorum at all meetings of members shall consist of fifty percent (50%) of the members entitled to vote thereat, present in person or by proxy.

Section 5. Closing of Transfer Books; Record Date. In order to determine the members of record who are entitled to notice of meetings, to vote at a meeting or adjournment thereof, or to make a determination of the members of record for any other proper purpose, the Board of Directors of the corporation may order that the membership books be closed for a period not to exceed twenty (20) days. If the purpose of such closing is to determine who is entitled to notice of a meeting and to vote at such meeting, the membership books shall be closed for twenty (20) days preceding such a meeting.

In lieu of closing the membership books, the Board of Directors may fix a date as the record date for such determination of members. Such date shall be no more than ninety (90) days prior to the date of the action which requires such determination, nor in the case of a members' meeting shall it be less than ten (10) days in advance of such meeting.

If the membership books are not closed and no record date fixed for such determination of the members of record, the date on which notice of the meeting is mailed, or on which the resolution of the Board of Directors declaring a dividend or assessment is adopted, as the case may be, shall be the record date for such determination of members.

When a determination of members entitled to vote at any meeting has been made as provided in this section, such determination shall apply to any adjournment of such meeting, except when the determination has been made by the closing of the membership books and the stated period of closing has expired.

Section 6. Presiding Officer; Order of Business. Meeting of the members shall be presided over by the President, or if he/she is not present, by a Vice-President, or if neither the President nor a Vice-President is present, by a chairman to be chosen by a majority of the members entitled to vote at a meeting who are present in person or by proxy. The Secretary of the corporation, or in his/her absence, an Assistant Secretary, shall act as Secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the meeting shall choose any person present to act as secretary of the meeting.

The order of business shall be as follows:

1. Call the meeting to order;
2. Reading of the minutes of last previous annual meeting;
3. Reports of officers;
4. Reports of committees;
5. Election of directors;
6. Miscellaneous business.

Section 7. Voting. At every meeting of the members, except in the election of directors or as otherwise provided in the Articles of Incorporation, the By-Laws, or the State of Montana, each member of the corporation entitled to vote at such meeting shall have, for each matter submitted to a vote, one vote in person or by proxy. A member may vote his shares through a proxy appointed by a written instrument signed by the member or by his duly authorized attorney-in-fact and delivered to the secretary of the meeting. No proxy shall be valid after twelve (12) months from the date of its execution unless a longer period is expressly provided therein.

A simple majority (51%) vote of those members entitled to vote and present or represented at the meeting, a quorum being present, shall be the act of the meeting, except in electing directors.

For the election of directors, each member of the corporation entitled to vote at the meeting shall be assigned, directly or through a proxy, a ballot on which the member may vote for a number of nominated directors. The number that may be voted for may not exceed the number of vacant positions, and a nominated director may not be voted for more than once on any one ballot. A plurality of the votes cast shall be determinative.

Section 8. List of Members. A complete list of the members of the corporation entitled to vote at the ensuing meeting arranged in alphabetical order, and showing the address of each member, shall be prepared by the Secretary or other officers of the corporation having charge of the membership books. The list shall be kept on file for a period of at least ten (10) days prior to the meeting at the registered office of the corporation in the State of Montana, and shall be subject to inspection during the usual business hours of such period by any members. This list shall also be produced at the meeting and shall be subject to inspection by any member at any time during the meeting.

The original membership books shall be prima facie evidence as to who are the members entitled to examine such list or to vote at any meeting of the members.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting of the members.

#### ARTICLE IV

## BOARD OF DIRECTORS

Section 1. Number, Qualification, Term, Quorum, and Vacancies. The property, affairs, and business of the corporation shall be managed by a Board of Directors consisting of no fewer than three (3) and no more than five (5) persons. Except as hereinafter provided, directors shall be elected at the annual meeting of the members and each director shall serve for one year and until his/her successor shall be elected and qualified.

The number of directors may be increased or decreased from time to time by an amendment of these Bylaws. Any increased number of directors shall be elected by the members at the next regular meeting or at a special meeting called for that purpose. The number of directors shall never be fewer than three (3).

A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting, without further notice, from time to time, until a quorum shall have been obtained. In case there are vacancies created by the removal of a director or directors by the members or by an increase in the number of directors, the remaining directors although less than a quorum, may by a majority vote elect a successor or successors for the unexpired term or terms.

Section 2. Meetings. Meetings of the Board of Directors may be held either within or without the State of Montana. Regular meetings of the Board of Directors shall be held at such times as are fixed from time to time by resolution of the Board. Special meetings may be held at any time upon call of the President, or a Vice-President, or any two (2) directors, upon written notice deposited in the U.S. Mail or transmitted by facsimile or electronic mail at least ten (10) days prior to the day of the meeting. A meeting of the Board of Directors may be held without notice immediately following the annual meeting of the members. Notice need not be given of regular meetings of the Board of Directors held at times fixed by resolutions of the Board of Directors nor need notice be given of adjourned meetings. Meetings may be held at any time without notice if all the directors are present or if, before the meeting, those not present waive such notice in writing. Notice of a meeting of the Board of Directors need not state the purpose of, nor the business to be transacted at such meeting.

Section 3. Removal. At any meeting of the members, any director or directors may be removed from office without assignment of any reason therefore by a majority vote of the membership. The vote to remove a director requires the presence of a quorum.

When any director or directors are removed, new directors may be elected at the same meeting of the members for the unexpired term of the director or directors removed. If the members fail to elect persons to fill the unexpired term or terms of the director or directors removed, such expired terms shall be considered vacancies on the Board to be filled by the remaining directors.

Section 4. Indemnification. The corporation shall indemnify each of its directors and officers, whether or not then in office (and his executor, administrator, and heirs), against all reasonable expenses actually and necessarily incurred by him/her in connection with the defense of any litigation to which he/she may have been made a party because he/she is or was a director or officer of the corporation. He/she shall have no right to reimbursement, however, in relation to matters as to which he/she has been adjudged liable to the corporation for negligence or misconduct in the performance of his/her duties. The right to indemnity for expenses shall also apply to the expenses of suits which are compromised or settled if the court having jurisdiction of the matter shall approve such settlement.

The foregoing right of indemnification shall be in addition to, and not exclusive of, all other rights to which such director or officer may be entitled.

Section 5. Compensation. Directors shall not be entitled to compensation for their services as directors. However, this shall not preclude directors being paid for professional services or services which they perform for the association by contract in a capacity other than as director or member of the control board.

Section 6. The directors of this association sometimes may be referred to as the control board for the homeowners association, and may act as the architectural committee, control board of the homeowners association and directors of the homeowners corporation. In the event the Board of Directors has appointed an Architectural Control Committee, pursuant to the corporation's Declaration of Covenants, Conditions and Restrictions, as amended, any decision of the Architectural Control Committee may be appealed to the Board of Directors for review, so long as the appeal is filed in writing with the Board of Directors, acting through the Secretary, within thirty (30) days of the date of issuance of the decision of the Architectural Control Committee. The directors of the Association shall be charged with the responsibility of collecting dues and assessments chargeable to the members of the association and shall be responsible for maintenance of the common areas, particularly the roadways and water system. For the purpose of collecting of the dues and assessments, the directors shall have all the specific power and authority provided under the Montana Unit Ownership Act (Chapter 23, Title 70 M.C.A.), and may make capital improvements on the common properties only with the consent and approval of a 51% or greater majority of the members of the association. In this regard, and for these purposes, the directors shall have the right and authority to file liens against the individual properties (upon 10 days previous notice to owners), provided that the provisions of Chapter 23, Title 70, M.C.A. are observed.

## ARTICLE V

### OFFICERS

Section 1. Number. The officers of the corporation shall be a President, a Vice-President, a Treasurer, and a Secretary. In addition, there may be such subordinate

officers as the Board of Directors may deem necessary. Any person may hold two, but no more than two offices, except that no person shall hold the offices of President and Secretary simultaneously.

Section 2. Term of Office. The principal officers shall be chosen annually by the Board of Directors at the first meeting of the Board following the members' annual meeting, or as soon thereafter as is conveniently possible. Subordinate officers may be elected from time to time. Each officer shall serve until his/her successor shall have been chosen and qualified, or until his/her death, resignation or removal.

Section 3. Removal. Any officer may be removed from office, with or without cause, at any time by the affirmative vote of a majority of the Board of Directors then in office. Such removal shall not prejudice the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancies in an office from any cause may be filled for the unexpired portion of the term by the Board of Directors.

Section 5. Duties. The President shall preside at all meeting of the members and the Board of Directors. He/she shall have the general supervision of the affairs of the corporation, shall sign or countersign all certificates, contracts or instruments of the corporation as authorized by the Board of Directors, shall make reports to the Board of Directors and members, and shall perform such other duties as are incident to this office or are properly required of him/her by the Board of Directors.

The Vice-President, in the order designated by the Board of Directors, shall exercise the functions of the President during the absence or disability of the President. Each Vice-President shall have such other duties as are assigned to him/her from time to time by the Board of Directors.

The Secretary and the Treasurer shall perform such duties as are incident to their offices, or are properly required of them by the Board of Directors, or are assigned to them by the Article of Incorporation or these By-Laws.

Other subordinate officers appointed by the Board of Directors shall exercise such powers and perform such duties as may be delegated to them by the resolutions appointing them, or by subsequent resolutions adopted from time to time.

In case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in his/her place during such period of absence or disability, the Board of Directors may from time to time delegate the powers and duties of such officers to any other officer, or any director, or any other person whom it may select.

## ARTICLE VI

### CERTIFICATES OF MEMBERSHIP

Section 1. Membership. Membership in the association shall be evidenced by deeds or other documents of record, including abstracts of contracts for deed. However, the Board of Directors may authorize the issuance of a certificate of membership in its discretion should the board feel that it would serve the best interests of the membership.

## ARTICLE VII

### CORPORATE ACTIONS

Section 1. Deposits. The Board of Directors shall select banks, trust companies, or other depositories in which all funds of the corporation not otherwise employed shall, from time to time, be deposited to the credit of the corporation. For the present time, the Board of Directors shall deposit the funds of the corporation in the Whitefish Credit Union and/or the First Interstate Bank, financial institutions of sound quality.

## ARTICLE VIII

### CORPORATE SEAL

For the present time the corporation will not have nor utilize a corporate seal; however, the Board of Directors in its discretion may adopt a conventional corporate seal should the business of the corporation require the acquisition and use of same.

## ARTICLE IX

### AMENDMENT OF BY-LAWS

The Board of Directors shall have the power to amend, alter or repeal these By-Laws, and to adopt new By-Laws, from time to time, by an affirmative vote of a majority of the whole Board as then constituted, provided that notice of the proposal to make, alter, amend, or repeal the By-Laws was included in the notice of the Director's meeting at which such action takes place. At the next membership meeting following any such action by the Board of Directors, the members, by a majority vote of those present and entitled to vote thereat, shall have the power to alter or repeal By-Laws newly adopted by the Board of Directors, or to restore to their original status By-Laws which the Board may have altered or repealed, and the notice of such membership meetings shall include notice that the members will be called upon to ratify the action taken by the Board of Directors with regard to the By-Laws.

Approved by majority vote of the Board of Directors on \_\_11th, May, 2009.



By: \_\_\_\_\_  
President, Elkhorn Homeowners Association

By: \_\_\_\_\_  
Secretary, Elkhorn  
Homeowners Association

Approved by vote of the membership, Elkhorn Homeowners Association on July \_\_\_\_,  
2009.