

BYLAWS

FOR

THE VILLAGE AT ELK HILLS

A Residential Condominium Project

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BYLAWS OF
THE VILLAGE AT ELK HILLS HOMEOWNERS' ASSOCIATION

ARTICLE 1 - NAME; LOCATION AND APPLICABILITY

1.1 **Name; Nonprofit Mutual Benefit Corporation.** The name of the corporation is The Village at Elk Hills Homeowners' Association ("Association"). The Association has been formed pursuant to the Montana Nonprofit Corporation Act (Montana Code Annotated sections 35-2-113 through 35-2-1402) as a nonprofit mutual benefit corporation.

1.2 **Principal Office.** The principal office of the Association is located in Missoula, Montana. The Board shall have the full power and authority to change the principal office of the Association from one location to another in the County of Missoula, Montana. The Association's most current Annual Report, filed with the Montana Secretary of State, shall identify the location of the principal office. Any change in the location of the principal office or the registered agent shall be adopted by a resolution of the Board, noted in the meeting minutes, and a statement of change shall be filed with the Montana Secretary of State as required by the Montana Nonprofit Corporation Act.

1.3 **Application.** These Bylaws are applicable to the residential condominium Project known as The Village at Elk Hills ("Project"), located at Village View Way in Missoula County, Montana, and more fully described on the attached Exhibit A. These Bylaws are also applicable to all Members of the Association and all tenants, employees, and other persons who use the facilities of the Project in any manner.

1.4 **Definitions.** Unless otherwise specified in these Bylaws, the definitions set forth in Article 1 of the Declaration of Restrictions for The Village at Elk Hills recorded approximately simultaneously with recording of these Bylaws in the official records of the County Recorder of Missoula County, apply to these Bylaws.

1.5 **Membership Rights.** The qualifications for membership are set forth in Article 3 of the Declaration and are hereby incorporated by reference.

ARTICLE 2 - MEETINGS OF MEMBERS

2.1 **Place of Meetings; Conduct.** All meetings of the Members shall be held at a place designated by the Board. This meeting place shall be within the Project or as close to it as reasonably possible. If no meeting place is designated, the meetings shall be held at the principal office of the Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of Missoula County, Montana. Meetings of Members shall be conducted in accordance

with a recognized system of parliamentary procedure or such parliamentary procedures as the Board may adopt by resolution.

2.2 **Annual Meetings.** The annual meeting of the Members shall be held on a date and time established by the Board, so long as the annual meeting is held within the anniversary month of May. At the annual meeting, the members shall elect directors and transact any other business as many come before the meeting.

2.3 **Special Meetings.** Special meetings of the Members may be called for any lawful purpose (as set forth in sections 35-2-223, 35-2-230 and 35-2-231, 35-2-418, 35-2-451, 35-2-610, 35-2-617 and 35-2-721 of the Montana Nonprofit Corporation Act) by a majority of a quorum of the Board, the President of the Association, or by a written request signed by Members representing at least five percent (5%) of the total voting power of the Association. If the special meeting is requested by the Members, it shall be held not less than thirty-five (35) nor more than ninety (90) days after receipt of the request by an officer of the Association. Only that business stated in the notice of meeting given pursuant to section 2.4 of these Bylaws shall be transacted at the special meeting.

2.4 **Notice of Meetings.** The Secretary of the Association shall give written notice of any Members' meeting to each Member of record in accordance with the following:

2.4.1 Except as otherwise provided in this Article, the notice shall be given at least ten (10) days before the meeting date or, if notice is mailed by certified mail, not less than 30 or more than 60 days before the meeting date.

2.4.2 The Board may fix, in advance, a record date or dates for the purpose of determining the Owners who are entitled to receive notice of meetings. The record date for eligibility to receive notice shall not be fixed more than ninety (90) nor less than ten (10) days before the date of the meeting. If no record date is fixed, all Members as of the business day preceding the day on which notice is given are entitled to receive notice of the meeting. When the Board fixes a record date pursuant to this section, the determination shall apply to any adjournment of the meeting, unless the Board fixes a new record date, which it shall do if the meeting is adjourned to a date more than ninety (90) days after the date fixed for the original meeting.

2.4.3 The notice shall be addressed to the Member at the address appearing on the books of the Association, or the address supplied by the Member to the Association for this purpose. If there is no such address, notice shall be given at the principal office of the Association or by publication at least once in a newspaper of general circulation in Missoula County.

2.4.4 The notice shall state the place, date, and time of the meeting. If directors are to be elected at the meeting, the notice shall include the names of all

those who are nominees at the time the notice is given. The notice shall also state those matters that the Board, at the time the notice is given, intends to present for action by the Members. If some or all of the members are to participate in the meeting by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time, the notice shall include instructions for such participation.

- 2.4.5 In the case of a special meeting which is called by Members, pursuant to section 2.3 of these Bylaws, the notice shall be given within thirty (30) days after receipt of the request for the meeting. If that thirty (30) day requirement is not satisfied, the Members who called the meeting may set the time and place of the meeting and give the notice.
- 2.4.6 Any approval of the Members required for those items listed in sections 2.9.1 to 2.9.8, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the matter to be voted upon was stated in the notice of meeting or any written waiver of notice.
- 2.4.7 An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, and if so executed, shall be filed with the corporate records or made a part of the minutes of the meeting. Such affidavit shall constitute prima facie evidence of the giving of notice.
- 2.4.8 Notice delivered personally shall be deemed effective when received, and notice mailed shall be deemed effective at the earlier of:
 - (a) the date five (5) days after the notice was deposited in the United States mail; or
 - (b) the date shown on the return receipt if mailed by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

2.5 Waiver of Notice or Consent of Absentees. The transactions of any meeting of Members, however called and noticed, shall be as valid as though taken at a duly called, noticed, and held meeting, if:

- 2.5.1 A quorum is present either in person or by proxy, and
- 2.5.2 Before or after the meeting, each of the Members not present in person or by proxy signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes of the meeting.

Any such waiver, consent, or approval shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance by a person at a meeting (a) waives objection to lack of notice or defective notice of the meeting unless the member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

2.6 Voting Rights. Members shall have the power to exercise their voting rights as set forth in Article 3 of the Declaration, subject to the following provisions:

- 2.6.1 Fractional votes shall not be allowed. When there is more than one (1) record Owner of a Unit (co-owners), all of the co-owners shall be Members, but only one (1) of them shall be entitled to cast the single vote attributable to the Unit. Co-owners may designate in writing one (1) of the co-owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Unit's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Unit on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.
- 2.6.2 Any provision of the Governing Documents that requires the approval of a specified percentage of the voting power of the Association shall require the approval of the specified percentage of the voting power of the membership. If no percentage of the voting power is specified in the Governing Documents or by Montana law, the approval of a majority of a quorum shall be required.
- 2.6.3 The Board may fix, in advance, a record date or dates for the purpose of determining the Owners who are entitled to exercise voting rights:
 - (a) The record date for eligibility to vote shall not be fixed more than sixty (60) days before the date of the meeting. If no record date is fixed, all Members who are otherwise eligible to vote as of the day of the meeting may vote.
 - (b) The record date for eligibility to vote by written ballots shall not be fixed more than sixty (60) days before the day on which the first written ballot is mailed or solicited. If no record date is fixed, all Members who are otherwise eligible to vote as of the day of mailing or soliciting the written ballot shall be eligible to vote by written ballot.

2.7 **Quorum.** At any meeting, the presence either in person or by proxy of Members entitled to cast votes equal to at least fifty-one percent (51%) of the total voting power of the Association shall constitute a quorum for any action except as otherwise provided in the Articles, these Bylaws, or the Declaration. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of Members required to constitute a quorum. If a quorum is not present at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the meeting date, but no other business may be transacted. Provided that the date, time and place of the adjourned meeting is announced at the original meeting, the adjourned meeting may be held without additional written notice. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in section 2.4 of these Bylaws. The quorum for any adjourned meeting shall be twenty-five percent (25%).

2.8 **Adjustment of Voting Power and Quorum.** For purposes of establishing a quorum and determining the total voting power of the Association, if a Member's voting rights are suspended as provided in the Governing Documents, the total voting power of the Association shall be reduced for the period of time for which the suspension is in effect by an amount equal to the number of Units for which membership voting rights have been suspended.

2.9 **Voting by Proxy.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, filed with the Secretary of the Association and are effective when received by the Secretary. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the Member or the Member's attorney-in-fact. Every proxy shall be revocable and shall automatically cease upon conveyance of its maker's membership, or upon receipt of written notice by the Secretary of the maker's death or judicially declared incapacity. No proxy shall be valid after the expiration of eleven (11) months from its date of execution, unless otherwise provided in the proxy, but in no event may the maximum term of any proxy exceed three (3) years from its date of execution. The maker of a proxy may revoke it by delivering a written revocation to the Association, by executing a subsequent proxy and presenting it to the meeting, or by attending any meeting and voting in person.

Any revocable proxy may not be used to vote on any of the following matters unless it sets forth the general nature of the matter to be voted upon:

- 2.9.1 Removing a director without cause, pursuant to section 3.5.2 of these Bylaws.
- 2.9.2 Filling director vacancies pursuant to section 3.6 of these Bylaws.
- 2.9.3 Entering into or approving a contract or transaction between the Association and one (1) or more of the directors, or between the Association and

any entity in which one (1) or more of the directors has a material financial interest.

- 2.9.4 Amending the Articles after approval by the Board, in accordance with section 35-2-223 of the Montana Code Annotated.
- 2.9.5 Electing to remove the Project from the Unit Ownership Act pursuant to sections 70-23-801 *et seq.* of the Montana Code Annotated.
- 2.9.6 Amending the Articles or these Bylaws to repeal, restrict, create, or expand proxy rights.
- 2.9.7 Dissolution of the Association pursuant to section 35-2-721 of the Montana Code Annotated.
- 2.9.8 Approving a corporate merger agreement, and amendments thereof, in accordance with the provisions of sections 35-2-608 *et seq.* of the Montana Code Annotated.

2.10 ***Form and Content of Proxies.*** A proxy distributed to Members shall set forth all items to be voted upon which are known at the time the proxy is prepared. Any form of proxy distributed by any person or entity to more than one Member shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on. The proxy shall provide that, when the Member specifies a choice, the vote shall be cast in accordance with that choice.

2.11 ***Voting by Written Ballot.*** Any action that may be taken at a meeting of the Members, except for the election of directors, may be taken without a meeting provided the following ballot requirements are satisfied:

- 2.11.1 The Association shall distribute a written ballot to every Member entitled to vote on the matter as provided in section 2.6.3. The ballot shall be solicited in the same manner as provided in section 2.4 of these Bylaws for the giving of notice of meetings of Members.
- 2.11.2 The ballot shall (1) set forth all items to be voted upon which are intended and known at the time the ballot is prepared; (2) provide an opportunity to specify approval or disapproval of any proposal, including confirmation that, if the Member specifies a choice, the vote shall be cast in accordance with that Member's choice; (3) provide a reasonable time within which to return the ballot; (4) indicate the number of responses needed to meet the quorum requirement; and (5) state the percentage of approvals necessary to pass the measure submitted.
- 2.11.3 The proposed action shall be considered approved if:

- (a) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action, and
 - (b) The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots received in response to the ballot solicitation.
- 2.11.4 No written ballot may be revoked.
- 2.11.5 Any deadline stated for return of the ballots may be extended for successive reasonable periods with the approval of a majority of the Board. Notice of any extension must be sent to the Members within thirty (30) days of the previously noticed deadline date.

ARTICLE 3 - BOARD OF DIRECTORS

3.1 **Number; Qualification.** The affairs of this Association shall be managed and its duties and obligations performed by an elected Board of Directors, consisting of initially of three (3) persons, except that after the Declarant's first sale of a Condominium, the number of Directors of the Association may be increased to five (5) if a majority of a quorum of the Board votes in favor of the increase, and these Bylaws are amended accordingly.

- 3.1.1 Members of the Board must be Members of the Association, except for Declarant.
- 3.1.2 The Declarant shall be permitted to designate its representatives(s) on the Board to serve in an advisory manner for a period not to exceed one year following the sale of the last condominium owned by Declarant.

3.2 **Nomination.** Nominations for election to the Board of Directors may be made by any of the following:

- 3.2.1 A nominating committee appointed by the Board at least ninety (90) days prior to an annual meeting of Members, provided the Board receives the committee's nomination or nominations at least sixty (60) days prior to the annual meeting of Members.
- 3.2.2 A written petition signed within eleven (11) months preceding the annual meeting by Members representing fifteen percent (15%) of the voting power of the Association. The petition shall identify the nominee, contain that person's written consent to serve as a director, and be delivered to the Secretary of the Association at least sixty (60) days prior to the annual meeting.

3.2.3 Any Member who is present in person or by proxy, who makes the nomination from the floor at the annual meeting of Members at which the director is to be elected.

3.2.4 The Board, which may make nominations at any time.

3.3 **Election.** At each annual meeting of the Association, the Members shall fill, by election, all positions on the Board held by directors whose terms are then expiring and all vacant positions, if any. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of Members called for that purpose. The persons receiving the highest number of votes shall be elected.

3.4 **Term.** Except as provided in this section each Board member shall serve for a two (2) year term. Directors may be elected to successive terms. The terms of the Directors shall be staggered. At the first organizational meeting of the Association the initial Board of Directors shall determine by lot one of their number who shall have a one-year term and the remaining two shall have a two-year term. The term of at least one-third of the Directors shall expire annually. Annually, the Members shall elect new Directors for two-year terms for the Director(s) whose term is then expiring. If a Director's term expires, such Director shall continue to serve until the Director's successor shall have been elected and qualified. When the number of the Directors increases, the Directors then in office shall determine by lot the new Directors who will have a one-year term and the new Directors who will have two-year terms, if such determination is required in order to stagger the terms of offices of the Directors as required by Montana law.

3.5 **Removal.** Directors may be removed as follows:

3.5.1 The Board may declare vacant the office of a director on the occurrence of any of the following events:

- (a) The director is declared of unsound mind by a final order of Court.
- (b) The director is convicted of a felony.
- (c) The director has failed to attend three (3) consecutive regular meetings of the Board.

3.5.2 One (1) or more directors may be removed prior to the expiration of their terms, without cause, at an annual or special meeting of the Members. Any removal without cause shall be approved by the vote of Members representing a majority of a quorum of the membership.

3.6 **Filling Vacancies.** The remaining directors shall fill any vacancy on the Board caused by the death, removal, resignation or increase in the number of directors unless the vacancy is created by the removal of a director by the Members. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a

majority of all the directors remaining in office. The Members shall vote to fill any vacancy on the Board created by the removal of a director by the Members. A successor director shall serve for the unexpired term of the director he or she replaces.

3.7 **Compensation.** No director shall receive any compensation for any service he or she may render to the Association; provided, however, that a director may be reimbursed for actual out of pocket expenses incurred by the director in the performance of his or her duties. The Association may not lend money to or guarantee the obligation of a director of the Association.

3.8 **Powers and Duties.** The Board shall exercise for the Association all powers and duties vested in or delegated to the Board or the Association by the Governing Documents and the Montana Nonprofit Corporation Act. Said powers and duties shall be subject to the limitations of the Governing Documents, and shall include, but not be limited to, the requirements of section 3.10 and the following:

- 3.8.1 Formulating Rules and Regulations for the use and operation of the Condominiums, the General Common Elements, common facilities and facilities owned or controlled by the Association, pursuant to section 3.6.2 of the Declaration.
- 3.8.2 Enforcing the applicable provisions of the Governing Documents and any other instruments governing the ownership, management, and control of the Project.
- 3.8.3 Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Documents in accordance with procedures set forth in section 3.11 herein.
- 3.8.4 Paying taxes and assessments that are, or could become, a lien on all or a portion of the Common Elements.
- 3.8.5 Fixing and establishing the fiscal year for the Association, including the power to modify the fiscal year.
- 3.8.6 Contracting for casualty, liability, and other insurance on behalf of the Association.
- 3.8.7 Subject to the limitations set forth in section 3.9 herein and in the Articles of Incorporation, contracting for goods and services for the Common Element facilities, and interests of the Association, and borrowing money, incurring indebtedness and executing promissory notes or other evidences of debt for the Association. Payments for goods and services that do not exceed \$500 may be approved by the president; payments in excess of that amount must be approved by the Board.

- 3.8.8 Creating committees pursuant to resolution adopted by a majority of the Board upon which two (2) or more directors, and as many other Members as the Board may designate, to serve at the pleasure of the Board. A committee of the board may not:
- (a) Authorize distributions;
 - (b) Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Association's assets;
 - (c) Elect, appoint, or remove Directors or fill vacancies on the Board or on any of its committees; or
 - (d) Adopt, amend, or repeal the articles or bylaws.
- 3.8.9 Delegating its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent. The term of any agreement with a manager shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods, and shall provide for termination by either party for cause with no more than thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty with no more than ninety (90) days' written notice.
- 3.8.10 Authorizing the withdrawal of moneys from the Association's reserve accounts, upon the signatures of two (2) directors or one (1) director and one (1) officer who is not a director.
- 3.8.11 Entering any Unit to perform necessary construction, maintenance, or emergency repair work for the benefit of the General Common Elements or the Members in the aggregate.
- 3.8.12 Filling vacancies on the Board, except for a vacancy created by the removal of a director by Members.
- 3.8.13 Extending the time for return of ballots when an action is taken without a meeting pursuant to section 2.11 herein, by majority approval of the Board.
- 3.8.14 Providing any Owner with the following documents within ten (10) days of the mailing or delivery of a written request therefor and receipt of the costs to prepare and reproduce said documents:
- (a) A copy of the Governing Documents.

- (b) A copy of the most recent financial statement.
- (c) A written statement from an authorized representative of the Association specifying (i) the amount of the Association's current regular, special or other assessments and fees; (ii) the amount of any assessments levied on the Owner's Unit that are unpaid on the date of the statement; and (iii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Unit pursuant to the Declaration.
- (d) A statement noting any change in the Association's current assessments and fees which have been approved by the Board, but which have not become due and payable as of the date disclosure is provided pursuant to this section.

3.8.15 Bringing suit against those Owners who fail to comply with the requirements of the Articles, Bylaws, Condominium Plan and Declaration of the Association, in the event that the Board chooses not to bring the disciplinary action set forth in section 3.11 below.

3.8.16 Maintaining, upkeeping, repairing and replacing the Common Elements and additions or improvements to the Common Elements as set forth in Article 6 of the Declaration.

3.9 Limitations on Powers. Notwithstanding the provisions of section 3.8, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the total voting power of the Association:

- 3.9.1 Entering into a contract with a third person under which the third person will furnish goods or services for the General Common Elements or the Association for a term longer than one (1) year with the following exceptions:
 - (a) A management contract approved by the Federal Housing Administration or Veterans Administration.
 - (b) A contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate.
 - (c) Prepaid casualty and/or liability insurance of not more than three (3) years duration, provided that the policy provides for short rate cancellation by the insured.

- 3.9.2 Incurring aggregate expenditures for capital improvements to the General Common Elements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- 3.9.3 Selling, during any fiscal year, property of the Association having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- 3.9.4 Borrowing money, incurring indebtedness and executing therefore promissory notes or other evidences of debt for the Association in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- 3.9.5 Filling a vacancy on the Board created by the removal of a director by the Members.

3.10 ***Financial Documentation; Preparation, Reporting and Review Responsibilities.***
With regard to the preparation, reporting and review of the Association's financial documentation, the Board shall have the following responsibilities:

- 3.10.1 Levying assessments, subject to the limitations set forth in Article 4 of the Declaration, and preparing a pro forma operating budget for each fiscal year.
- 3.10.2 Preparing and distributing an annual report.

3.11 ***Disciplinary Actions Against Owners.*** In connection with the general power of enforcement, the Association may discipline Owners for violation of any of the provisions of the Governing Documents by one or more of the following: (1) suspending the Member's membership rights, including the Member's voting rights and (2) by imposing monetary fines, subject to the following limitations:

- 3.11.1 The accused Owner shall be given notice of the intention of the Board to meet and consider imposition of a suspension or monetary fine, or any combination of these, with respect to any alleged violation not less than fifteen (15) days prior to the meeting date to consider the proposed imposition of the discipline.
- 3.11.2 The accused Owner shall be given an opportunity for a hearing before the Board at the Board meeting to consider the imposition of the discipline.
- 3.11.3 Notwithstanding the foregoing, under circumstances involving conduct that constitutes (a) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (b) a traffic or fire hazard, (c) a threat of material damage to, or destruction of, the General Common Elements or (d) a violation of the Governing

Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (i.e. delinquent assessment payment or parking violations), the Board or its agents may undertake immediate corrective or disciplinary action and conduct a hearing as soon thereafter as reasonably possible, if either (1) requested by the offending Owner within five (5) days following the Association's actions, or (2) on its own initiative.

- 3.11.4 The amount of any monetary penalties shall be established from time to time by the Board, and a schedule thereof shall be distributed to the Members by personal delivery or first class mail. Distribution of additional schedules is not required unless there are any changes to an existing schedule.
- 3.11.5 Any suspension of an Owner's membership privileges shall not exceed thirty (30) days for each violation. Suspension of membership privileges shall include suspension of the right of a Member to vote at meetings of the Association.
- 3.11.6 Except as provided in Article 4 of the Declaration relating to foreclosure for failure to pay assessments and in Article 5 of the Declaration imposing general restrictions on use, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Unit.

ARTICLE 4 - MEETINGS OF DIRECTORS

4.1 **Regular Meetings.** A regular meeting of the Board of Directors shall be held without notice other than this section, immediately after and at the same place as, the annual meeting of Members. The Board of Directors may provide, by resolution, the date, time and place, for the holding of additional regular meetings without additional notice to Directors other than such resolution, subject, however, to the requirements of Notice to Members set forth in section 4.8. Regular meetings of the Board of Directors may be held by conference call or similar communications equipment, if convened in accordance with section 4.5.

4.2 **Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by any two (2) directors other than the President.

- 4.2.1 The notice shall specify the time and place of the meeting and the nature of any special business to be considered, and shall be sent to all directors not less than forty-eight (48) hours before the meeting, if delivered personally or by telephone or telegraph, or five (5) days if by first class mail; provided, however, that notice need not be given to any director

who has signed a waiver of notice or a written consent to holding of the meeting.

4.2.2 A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformance with the Montana Nonprofit Corporation Act, the Articles or Bylaws, objects to lack of notice and does not vote for or assent to that action.

4.2.3 Special meetings of the Board of Directors may be held by conference call or similar communications equipment, if convened in accordance with section 4.5.

4.3 **Organizational Meetings.** Immediately after the annual meeting, described in section 2.2, above, or as soon thereafter as reasonably practicable, the Board shall meet to elect the officers of the Association and conduct any other business of the Association as the Board, in its discretion, shall determine is necessary.

4.4 **Emergency Meetings.** An emergency meeting of the Board may be called by the President, or by any two Board members if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required herein.

4.5 **Board of Director Meetings by Conference Telephone.** The Board of Directors may permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through, the use of a conference telephone or similar communications equipment, provided all persons entitled to participate in the meeting may simultaneously hear each other during the meeting and they received notice of such meeting and instructions for participating in such meeting. A Director participating in a conference telephone or similar communications equipment meeting shall be deemed present in person at the meeting. The chairperson of the meeting may establish reasonable rules as to conducting such meeting by conference telephone or similar communications equipment.

4.6 **Quorum.** A majority of the Board shall constitute a quorum and if a quorum is present, the decision of majority of the Directors present shall be the act of the Board.

4.7 **Adjournment.** A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment shall be given, prior to the time of the continued meeting, to the directors who were not present at the time of the adjournment.

4.8 **Owner Attendance at Board Meetings; Notice.** Any Member of the Association may attend meetings of the Board; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of the majority of a quorum of the Board, or the decision of the President or presiding officer conducting the meeting. Notice of the time and place of a Board meeting, except for an emergency meeting,

shall be communicated to Members not less than five (5) days prior to the meeting. Notice may be given by posting the notice in a prominent place or places within the General Common Elements, by mail, by delivery to all Units in the Project, or by newsletter or similar means of communication. As used in this section 4.8, the term "meeting" includes any congregation of a majority of the members of the Board at the same time and place to hear, discuss or deliberate upon any item of business scheduled to be heard by the Board.

4.9 **Action Without a Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Any action taken by written consent shall be effective when the last Director executes the written consent, unless the written consent specifies a different effective date. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action taken shall be communicated to the Members by any means the Board deems appropriate.

4.10 **Board Deliberation Regarding Member Discipline.** In any matter relating to the disciplining of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend that portion of the executive session in which the Board discusses the discipline of that Member.

4.11 **Meeting Minutes; Availability to Owners.** The Board shall keep accurate written minutes of its meetings, and shall retain them in the permanent records of the Association.

ARTICLE 5 - OFFICERS

5.1 **Enumeration of Officers.** The officers of this Association shall be a President, a Vice-President, a Secretary, and a Treasurer. The Board may appoint such additional officers as it may, in its sole discretion, determine necessary or desirable. Any number of offices may be held by the same person except for the offices of (a) President and Treasurer, and (b) President and Secretary.

5.2 **Appointment and Term.** The officers shall be elected annually by the Board. Any vacancies shall be filled by the Board. Each officer shall hold his or her office at the pleasure of the Board.

5.3 **Duties.** Unless otherwise delegated by the Board, the duties of each officer shall be, subject to the standards of conduct for officers set forth in section 35-2-441 of the Montana Code Annotated, as follows:

5.3.1 The President shall:

- (a) Preside over all meetings of the Members and of the Board.
- (b) Sign as President all deeds, contracts, and other written instruments that have been approved by the Board, unless the Board, by

duly adopted resolution, authorizes the signature of a lesser officer, or Montana law requires otherwise.

- (c) Call meetings of the Board whenever he or she deems it necessary, in accordance with any rules and notice requirements imposed by the Board and the Governing Documents.
- (d) Have, subject to the approval of the Board, general supervision, direction, and control of the affairs of the Association.
- (e) Discharge any other duties required of him or her by the Board.

5.3.2 The Vice-President shall:

- (a) Act in the place and in the stead of the President in the event of his or her absence, inability, or refusal to act.
- (b) Exercise and discharge any other duties required of him or her by the Board. In connection with any such additional duties, the Vice-President shall be responsible to the President.

5.3.3 The Secretary shall:

- (a) Keep a record of all meetings and proceedings of the Board and of the Members, and be custodian of those records.
- (b) Keep the seal of the Association, if any, and affix it on all papers requiring the seal.
- (c) See that all required notices of meetings of the Board and the Members are given in accordance with the provisions of these Bylaws or as required by Montana law.
- (d) Keep current records showing the names and addresses of all Members.
- (e) Sign as Secretary all deeds, contracts, and other written instruments that have been approved by the Board, if the instruments that have been approved by the Board and signed by the President require a second Association signature and the Board has not passed a resolution authorizing another officer to sign in the place and stead of the Secretary.

5.3.4 The Treasurer shall:

- (a) Receive and deposit all of the funds of the Association in any bank or banks selected by the Board.
- (b) Be responsible for and supervise the maintenance of books and records to account for Association funds and other Association assets.
- (c) Disburse and withdraw Association funds in the manner specified by the Board.
- (d) Prepare and distribute the financial statements for the Association required by these Bylaws.

5.4 **Resignation and Removal.** The Board may remove any officer from office either with or without cause. An officer may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation by the Board shall not be necessary to make it effective.

5.5 **Compensation.** An officer shall not receive any compensation for any service he or she may render to the Association; provided, however, that any officer may be reimbursed for actual out of pocket expenses incurred by the officer in the performance of his or her duties. The Association may not lend money to or guarantee the obligation of an officer of the corporation.

5.6 **Delegation.** With Board approval, an officer may delegate his or her powers and duties to any committee, employee or agent of the Association, including, but not limited to a property manager.

ARTICLE 6 - BOOKS AND RECORDS; INSPECTION RIGHTS

6.1 **Required Books and Records.** The Association shall maintain at its principal office:

- 6.1.1 Copies of the Governing Documents, including all restatements and amendments to them currently in effect;
- 6.1.2 Adequate and correct books and records of account, including financial statements.
- 6.1.3 Written minutes of the proceedings of its Members, of its Board, and of committees of its Board.
- 6.1.4 A membership register containing each Member's name, mailing address and voting rights.

- 6.1.5 A list of the names and business or home addresses of the current Board of Directors and officers.
- 6.1.6 The most recent annual report delivered to the Montana Secretary of State.
- 6.1.7 Rules and regulations adopted by the Board of Directors.

6.2 **Member Inspection of Accounting Records and Minutes.** The documents listed in section 6.1 above, with the exception of minutes of executive meetings, shall be open to inspection upon the written demand on the Association by any Member at any reasonable time, for a purpose reasonably related to such Person's interests as a Member, subject, however to sections 6.3 and 6.4 below. Members may not inspect the minutes of executive meetings. If a Member has made a demand for inspection, such Member or the Member's agent or attorney shall be entitled to inspect and copy, during regular business hours at the Association's principal office, said records.

The right to copy includes the right to photograph, Xerox or copy by other reasonable means. The Association may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the Member. The charge may not exceed the reasonable cost of production or reproduction of the records.

6.3 **Member Inspection of Membership Register.** Members may inspect the membership register as follows:

- 6.3.1 Members may inspect and copy the membership register at reasonable times, upon not less than five (5) business days' prior written demand upon the Association. The written demand must state the purpose for which the inspection rights are requested.
- 6.3.2 Members may obtain copies of the membership register upon a written demand and payment of a reasonable charge. The demand shall state the purpose for which the list is requested.

6.4 **Denial of Inspection Request.** The membership register is a corporate asset. The Association may deny a Member access to the membership register, including copies thereof, where the Association reasonably believes that the information will be used for a purpose not reasonably related to the Members' interest as a Member, or where the Association provides a reasonable alternative method of achieving the purpose identified in the written demand from the Member, subject, however, to section 35-2-535 of the Montana Code Annotated.

6.5 **Director Inspection of All Association Records.** Subject to any limitations imposed by law, every director shall have the right to inspect all Association records and the physical properties owned or controlled by the Association at any reasonable time.

ARTICLE 7 - NONLIABILITY AND INDEMNIFICATION

7.1 ***Limitation on Liability of Association's Directors and Officers.*** No directors or officers of the Association (collectively and individually referred to as the "Released Party") shall be responsible to any Owner, any member of an Owners' family, any of the Owners' tenants, guests, servants, employees, licensees, invitees, or any other person for:

7.1.1 Any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required by the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of the Common Elements and enforcement of the Governing Documents.

7.1.2 Any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Unit or Limited Common Element or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Project, or by any other cause, unless the same is attributable to the Released Party's own willful or wanton act or gross negligence. It is the intent of this section to provide volunteer directors and officers with protection from liability to the full extent permitted by Montana law.

7.2 ***Indemnification of Association.*** Each Owner shall be liable to the Association for any damage to the Common Elements caused by the negligence or willful misconduct of the Owner or his or her family, guests, invitees, employees or lessees. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within any Unit owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose gross negligence or willful misconduct caused or contributed to the injury or damage. This section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this section.

7.3 ***Indemnification by Association of Directors, Officers, Employees and Other Agents.*** To the fullest extent permitted by law, the Association shall indemnify its directors, officers, employees, and other agents described in sections 35-2-446 through 35-2-454 of the Montana Code Annotated, including persons formerly occupying any such positions, against all

expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in section 35-2-446 of the Montana Code Annotated, and including an action by or in the right of the Association, by reason of the fact that such person is or was a person described by that section. "Expenses," as used in this section, shall have the same meaning as in section 35-2-446(3) of the Montana Code Annotated.

7.4 Approval of Indemnity by Association. On written request to the Board by any person seeking indemnification hereunder, the Board shall promptly determine whether the applicable standard of conduct set forth in section 35-2-447 of the Montana Code Annotated has been met, and if it has, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to the proceeding, the Board shall promptly call a meeting of Members. At that meeting, the Members shall determine whether the applicable standard of conduct has been met, and if it has, the Members present at the meeting in person or by proxy shall authorize indemnification.

7.5 Advancement of Expenses. To the fullest extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a director, officer, employee or agent seeking indemnification under sections 7.3 and 7.4 of this Article in defending any proceeding covered by those sections shall be advanced by the Association before final disposition of the proceeding, on receipt by the Association of:

7.5.1 A written affirmation by the Director or officer of his or her good faith belief that the Director or officer has met the standard of conduct necessary for indemnification by the Association as set forth in section 35-2-447 of the Montana Code Annotated and

7.5.2 A written undertaking by or on behalf of the Director or officer to repay the advance if it is ultimately determined that the Director or officer has not met such standard of conduct

and a determination is made that the facts then known to those making the determination would not preclude indemnification under sections 35-2-446 through 35-2-454 of the Montana Code Annotated.

7.6 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of its directors, officers, employees or other agents against other liability asserted against or incurred by any director, officer, employee or agent in such capacity or arising out of the director's, officer's, employee's or agent's status as such.

ARTICLE 8 - AMENDMENTS

These Bylaws may be amended by the vote or written consent of two-thirds of the votes cast or a majority of the voting power, whichever is less. Notwithstanding the foregoing, the percentage of a quorum or of the voting power of the Association necessary to amend a specific clause or

provision in these Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

If the Board of Directors or the Members seek to have the amendment approved by the members at a membership meeting, the Secretary of the Association shall give written notice to the Members of the proposed membership meeting, in accordance with section 2.4 above. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy of or summary of the amendment.

If the Board of Directors or the Members seek to have the amendment approved by the members by written consent or by written ballot, the material soliciting the approval must contain or be accompanied by a copy of or a summary of the amendment.

Upon amendment, a copy of the Bylaws, as amended, certified by the presiding officer and secretary of the Association, shall be recorded with the County Clerk and Recorder of Missoula County, Montana.

ARTICLE 9 - CONDOMINIUM PROJECT

9.1 ***Required Contents.*** In order to comply with the Montana Unit Ownership Act with respect to the contents of the Bylaws, the following terms and conditions of the Declaration are incorporated into these Bylaws by reference as through copied in full:

9.1.1 The manner of collecting from the Owners their share of the common expenses is set forth in Article 4 of the Declaration and in the other terms and conditions of the Declaration which provide for the manner of collecting from the Owners their shares of the common expenses;

9.1.2 Pursuant to the power vested in the Association in sections 3.6.2 and 5.2.5 of the Declaration of Restrictions to adopt reasonable Rules and Regulations governing the details of the operation and use of the Common Elements, a majority of a quorum of the Board shall have the authority to adopt and amend the Rules and Regulations, which will not be effective until thirty (30) days after written notice to the members.

9.1.3 The restrictions on and requirements respecting the use and maintenance of the units and the use of the Common Elements as are designed to prevent unreasonable interference with the use of their respective units and of the Common Elements by the several Owners are found in Article 5, Article 6, Article 7 and in the other terms and conditions of the Declaration relating to such restrictions and requirements respecting such use and maintenance of the Units and the use of the Common Elements; and

9.1.4 In accordance with section 70-23-609 of the Montana Code Annotated, in any foreclosure suit against a Condominium, the Owner shall be required to pay a reasonable rental for the Condominium, and the plaintiff in any such foreclosure shall be entitled to the appointment of a receiver to collect the rent.

9.2 **Coordinated Interpretation.** The terms of these Bylaws shall be interpreted in the manner that is consistent with the terms and provisions of the Condominium Plan and the Declaration.

9.3 **Conflict with Montana Law.** If any provision of these Bylaws conflicts with the mandatorily applicable provisions of the Montana Unit Ownership Act (MCA, §§ 70-23-101 *et seq.*) such mandatorily applicable provisions shall supersede and apply in place of the provisions of these Bylaws so in conflict with the Montana Unit Ownership Act.

CERTIFICATE OF PRESIDENT AND SECRETARY


OF

THE VILLAGE AT ELK HILLS HOMEOWNERS' ASSOCIATION

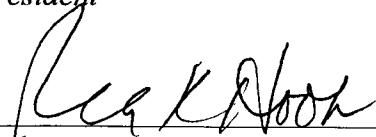
a Montana Nonprofit
Mutual Benefit Corporation

The undersigned, President and Secretary of The Village at Elk Hills Homeowners' Association, do hereby certify that these Bylaws were adopted by the Board of Directors of the Association on November 5, 1996, and that they are true and complete and are presently in full force and effect.

DATED this 6th day of November, 1996.



President



Secretary