

# THE ELKHORN RANCH OWNERS ASSOCIATION

## BY-LAWS

(Superseded and replaced in its entirety May 26, 2012)

### ARTICLE I

#### OBJECT

1. The purpose for which this nonprofit association is formed is, to govern The Elkhorn Ranch Subdivision, Filings no. 2, 3, 4, and 5 (hereinafter called the "Subdivision") which is platted and recorded in Park County, Colorado.
2. All present or future owners, tenants, future tenants, or any other person that might use or have an interest in any manner in the facilities of the Subdivision are subject to the provisions, covenants, governances and obligations set fort in these by-Laws. The mere acquisition or rental of any of the platted lots (hereinafter referred to as "Lots") or the mere occupancy of any of said Lots will signify that the By-Laws are accepted, ratified and will be complied with.

### ARTICLE II

#### MEMBERSHIP, VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

1. Membership. Except as is otherwise provided in these By-Laws, ownership of a lot within the Subdivision is required in order to qualify for membership in this association. Any person, on becoming an owner of a lot within the Subdivision, shall automatically become a member of this association and be subject to these By-Laws. Membership shall terminate without any formal association action whenever a person ceases to own a lot; provided, however, such termination shall not relieve or release any such former owner of that lot from any liability or obligation incurred under or in any way connected with this association during the period of such ownership and membership in the association. Termination shall not impair any rights or remedies which the lot owners have, either through the Board of Directors of the association, or directly against any such former owner and member arising out of or in any way connected with ownership and membership and the covenants and obligations incident thereto. As used hereby, the words member(s) and lot owner(s) shall be interchangeable.
2. Members shall be all owners of platted lots situated within and upon the properties comprising a part of the Subdivision (~~excluding the developer~~). Each ~~class A~~ member shall be entitled to one vote in the association for each lot owned by that member.
3. Voting. At every meeting of members, each member in good standing shall be entitled to vote in person, by mail, or by proxy. Voting shall be based upon one (1) vote for each platted lot within the Subdivision owned by each lot owner. An owner of a n undivided interest (joint or common) on and to a lot shall be required to designate one (1) person to vote his ownership interest in such lot. Such designation shall be in writing signed by the designee and shall be effective until revoked by written signed instrument. The aggregate

of all the votes in all the lots be considered one hundred percent (100%) for voting purposes. Cumulative voting is prohibited. As used in the By-Laws, the words "undivided interest" or "ownership in the association" mean, for voting purposes, that fractional or percentage interest in and to the association.

4. Good Standing. A member shall be considered in good standing so long as that member has paid all dues and assessments as provided herein.
5. Majority of Lot Owners. As used in these By-Laws, the terms "majority of lot owners" shall mean those owners of more than fifty percent (50%) of the total lots in the Subdivision.
6. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of 15% of lot owners shall constitute a quorum. An affirmative vote of a majority of lot owners present, either in person or by proxy, shall be required to transact the business of the meeting, except where a different percentage is required by these By-Laws.
7. Proxies. Votes may be cast in person or by written proxy. Proxies must be signed and filed with the Board before the appointed time of each meeting; however, no such proxy shall be valid after eleven (11) months from the date of its execution.

### ARTICLE III

#### ADMINISTRATION

1. Association Responsibilities. The owners of the lots will constitute the association of property owners, hereinafter referred to as "Association", who will have the responsibility of administering the Subdivision through a Board of Directors in accordance with these By-Laws and the Articles of Incorporation of the Association.
2. Place of Meeting. Meeting of the Association shall be held at such place within the State of Colorado as the Board of Directors, may determine.
3. Annual Meeting. The annual meeting of the Association shall be at a time and date selected by the Board of Directors.
4. Special Meetings. The President may call a special meeting of the owners upon his own initiative or as directed by resolution of the Board of Directors or upon receipt of a petition signed by at least twenty percent (20%) of the lot owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business except as stated in the notice shall be transacted at a special meeting unless by consent of two-thirds (2/3) of the lot owners present, either in person or proxy. Any such meeting shall be held at such place and time in the State of Colorado as the President determines within 30 days after receipt by the President of such resolutions or petition.
5. Notice of Meetings. Notice of each annual or special meeting stating the purpose thereof as well as the time and place it is to be held to each owner of record shall be delivered (as defined in ARTICLE IV section 11) at least then (10) but not more than fifty (50) days prior to such meeting.

6. Adjourned Meetings. If a quorum in person, by mail, or by proxy cannot be organized, the meeting shall be adjourned.

## ARTICLE IV

### BOARD OF DIRECTORS

1. Number and Qualification. The Board of Directors shall consist of 6 (six) elected members of the Association who shall thereafter govern the affairs of the Association until their successors have been duly elected and qualified.
2. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association for the operation and maintenance of the Subdivision as a first class residential subdivision. The Board of Directors may do all such acts and things except as by law or by these By-Laws or the Articles of Incorporation of the Association may not be delegated to the Board of Directors.
3. Other Power and Duties. Such powers and duties of the Board of Directors shall include, but shall not be limited to the following: all of which shall be done for and in behalf of the owners of the lots within the Subdivision.
  - a. To administer the covenants, conditions, restrictions, easements, uses, limitations, obligations, governance and all other provisions set forth in the recorded Protective Covenants for the Subdivision which shall be updated as needed.
  - b. To administer the terms and conditions of the water augmentation plans approved by the Water Court for the diversion of water through individual wells on the Subdivision.
  - c. To establish compliance with such reasonable rules and regulations as may be necessary for the operation, use, and occupancy of all the lots and to amend same as needed.
  - d. Further, to obtain and maintain comprehensive liability insurance covering the common properties in the amounts not less than \$100,000 per person and \$300,000 per accident and \$50,000 property damages.
  - e. To prepare a budget for the Association annually in order to determine the amount of common assessments payable by the lot owners to the common expenses of the Subdivision.
  - f. To protect and defend in the name of the Association any part or all of the common properties from loss and damage.
  - g. To enter into contracts to carry out their duties ~~and power~~.

- h. To establish a bank account or accounts for the common treasury and for a ll separate funds which are required or may be deemed advisable.
  - i. To make acquisitions, repairs, additions, alterations and improvements to the common properties consistent with managing the affairs of the Association and Subdivision in a first class manner and consistent with the best interests of the lot owners.
  - j. To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof at mutually reasonable times by the lot owners of the Association, and to cause a complete financial review of the accounts at least once every two years by a person selected by the Board of Directors.
  - k. To prepare and deliver annually to each owner a statement showing receipts, expenses or disbursements since the last such statement.
  - l. In general, to carry on the administration of the Association and to do all of those things necessary and reasonable in order to carry out the operation of the Association.
4. No Waiver of Rights. The omission or failure of the Association or any lot owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, or other provisions of these By-Laws or the rules and regulations adopted pursuant thereto shall not constitute or be deemed a waiver, modification or release thereof.
5. Term of Office. The term of office for a Director shall be for a period of 3 (three) years. The term of office for all Directors shall not start on the same year, it shall rotate so that every year will cause the election of 2 full term Directors.
6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by a vote of the majority of the remaining Directors even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.
7. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors elected by members may be removed with or without cause by a two-thirds (2/3) majority of the owners quorum present, by mail, or by proxy. Thereupon, a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.
8. Organization Meeting. The first meeting of a newly elected Board of Directors following the annual meeting of the lot owners shall be held immediately following the annual meeting. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, providing a majority of the whole Board present.
9. Regular Meeting. Regular meetings of the Board of Directors may be held at such time and place as shall be determined by the majority of Directors, but at least one such

meeting shall be held during each calendar quarter. Notice of regular meetings of the Board of Directors shall be given to each Director at least seven (7) days prior to the day named for such meeting.

10. Special meeting. Special meetings of the Board of Directors may be called by the President with three (3) days' notice to each Director. The notice shall state the time, place, and purpose of the meeting.
11. Delivery of Notice. Acceptable methods of delivery of notice include hand-delivered, facsimile, e-mail, posting to the web site, telephone, courier, or US Mail.
12. Board of Directors Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be is less than a quorum present, the majority of those present will adjourn the meeting.
13. Compensation. No member of the Board of Directors shall receive any compensation for acting a s such, but shall be entitled to reimbursement for any actual out-of-pocket expenses incurred in the performance of his duties.
14. Action of Board of Directors by Consent. Any action which may be taken by the Board of Directors may be taken without a meeting by written consent signed by all of the Directors; such written consent may be obtained by facsimile, e-mail; hand delivered; courier, or US Mail.
15. Elections. Elections shall be held during the annual meeting. Elections shall be conducted for those Directors, whose term will expire. Members who wish to run for a position on the Board shall notify the Elections Committee.
16. Types of Nominations. Self-nomination is written intent and a short biography. Notification of a Director who wishes to continue for an additional term. A Member may also submit a nomination of another Member, with the permission of the nominated Member.

## ARTICLE V

### FISCAL MANAGEMENT

The provisions of r fiscal management of the affairs of the Association for and on behalf of all of the lot owners as set forth in the By-Laws hall be supplemented by the following provisions.

1. Accounts. The funds and expenditures of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, and of which expenditures shall be common expenses:

- a. Current expenses, which shall include all funds and expenditures within the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditure chargeable to reserves or to additional improvements.
- b. Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.
- c. Reserve for replacement, which shall include funds for repair or replacement required because of damage, wear, or obsolescence.

Sections a, b, and c immediately set forth above shall not be deemed to be all-inclusive and shall not preclude the establishment and maintenance of such other and further designated account classification as shall be deemed necessary by the Board of Directors.

2. Restricted Water Fund. Thirty three and three tenths (33.3) percent of all membership dues collected on behalf of the Association shall be designated to this fund for expenses directly related to the maintenance and administration of the water augmentation plans as provided for in case nos. W-7903 and W-8107 in District Court, Water Division 1, State of Colorado. Income and expenses shall be accounted separate from any other fund. Expenditure from this fund for a purpose not directly related to water storage and delivery, maintenance and repair of the facility or legal issues concerning said water storage or water rights MUST be approved by a vote of the membership.

## ARTICLE VI

### OFFICERS

1. Designation. The officers of the Association shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board of Directors, and such assistant officers as the Board of Directors shall elect. Such officers need not be members of the Board of Directors, but each shall be a lot owner. The office of the President and Treasurer and/or Secretary may not be combined, and may not be held by the same person, but the offices of Vice President, Treasurer and Secretary may be combined and held by the same person.
2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board.
3. Removal of Officers. Upon an affirmative vote of majority of the members of the Board of Directors or a two-thirds (2/3) majority vote of the quorum of lot owners, any officer may be removed, either with or without cause. His successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.
4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and the Board of Directors. He shall have all of

the general powers and duties which are usually vested in the office of president of an incorporated association, including but not limited to the power to appoint committees from among the owners which he may, at his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

5. Vice President. The Vice President shall have all of the powers and authority and perform all of the functions and duties of the President in the absence of the President or his inability for any reason to exercise such powers and functions or to perform such duties.
6. Secretary. The secretary shall keep all the minutes of the meetings of the Board of Directors and the minutes of all meeting of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all of the duties incident to the office of secretary.
7. Treasurer. The Treasurer shall have the responsibility for Association funds and shall be responsible for the keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may, be designated by the Board of Directors.

- a. Duties Include, but are not limited to:

Check Mail regularly and distribute to the proper recipient.

Receive, record, and deposit all monies collected.

Reconcile bank statements monthly.

Keep separate and accurate accounting of the general fund and the water augmentation fund.

Accurately divide and credit homeowners' dues to the proper fund.

Promptly disburse monies as provided for in the annually adopted Association budget and/or as directed by the Board of Directors.

Maintain proper receipts/invoices for all disbursements.

Maintain adequate balances in the checking and money market accounts, transfer as necessary.

Provide Board with recommendations on CD investments, implement decision.

Maintain petty cash.

Audit and replenish welcome committee finances as necessary

Dues/Special Assessments – send out notices, late notices, collection notices, in compliance with the Association governance policies.

Prepare quarterly financial statements to present at each Board of Directors meeting.

Close books at the end of the fiscal year; prepare information for the financial review.

Deliver year end financials to the tax preparer for federal and state tax filing.

Budget – request budget work session as needed; prepare budget worksheets to include previous, current and proposed year.

Provide final budget proposal to be voted on at the January meeting for distribution to the Members.

Maintain up-to-date and complete contact information on each property owner and provide a copy to any Board member upon request.

Non listed telephone numbers and email addresses are confidential and shall be disclosed to Board members only for Association business; the exception to this rule is the person responsible for emailing notices and newsletters.

Promptly fill out and return forms provided by title companies concerning the sale of property.

Send new owner's information to the Welcome Committee.

Provide a 1099 Form to each person providing contract labor to the Association.

Upon reasonable request provide financial records for review by any Association member in compliance with Association governance policies.

## ARTICLE VII

### INDEMNIFICATION OF OFFICERS AND DIRECTORS

1. Indemnification. The Association shall indemnify every office and Director, and their respective successors, to the extent required under the Colorado Revised Nonprofit Corporation Act and the Colorado Common Interest Ownership Act ("CCIOA"). After thorough evaluation and upon finding that indemnification is appropriate and in the best interests of the Association. The Association may adopt written resolution where it agrees to provide indemnification beyond Colorado State laws and acts.
2. Other. Contracts or other commitments bade by the board of Directors or officers shall be made as gent for the Association and they shall have no personal responsibility on any such contract or commitment (except as lot owners), and the liability of any lot owner on any such contract or commitment shall be limited to such proportionate share of the total liability thereof as the common interest of each lot owner bears to aggregate common interest of all of the lot owners, except that any losses incurred because of an inability to



collect such proportionate amount of the total liability owned by an owner shall be shared proportionately by the other owners.

## ARTICLE VIII

### AMENDMENTS TO BY-LAWS AND ARTICLES

1. Amendments to By-Laws. These By-Laws may be amended by the Board of Directors as needed and delivered to the Association at an annual meeting or at a duly constituted special meeting for such purpose. The vote of two-thirds (2/3) majority of the lot owners quorum present in person, by mail, or by proxy shall be required for amendment specified in the By-Laws. Members may also make written requests to the Board of Directors.
2. Amendments to the Articles of Incorporation. The Articles on Incorporation of the Association may be amended only as provided herein. No amendment prohibited by applicable laws, including but not limited to, Federal and State of Colorado tax laws and the Colorado Nonprofit Corporation Act, may be Adopted.
3. Amendments to the Governance Policies. The Governance Policies may be amended by the Board of Directors as needed and delivered to the Association at an annual meeting or at a duly constituted special meeting for such purpose. The vote of two-thirds (2/3) majority of the lot owners quorum present in person, by mail, or by proxy shall be required for amendment to the Governance Policies.

## ARTICLE IX

### MORTGAGES

1. Notice of Unpaid Common Assessments. The Board of Directors, whenever so requested in writing by a mortgagee of a lot, shall promptly report any then unpaid common assessment due for, or any other default by, the owner of a mortgaged lot.

## ARTICLE X

### EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS AND DESIGNATION OF VOTING REPRESENTATIVE

1. Proof of Ownership Any person on becoming an owner of a lot shall furnish to the Board of Directors a copy of the recorded instrument vesting that person with an interest or ownership in the lot, which copy shall remain in the files of the Association.
2. Registration of Mailing Addresses. The owners or several owners of an individual lot shall have one and the same registered mailing address to be used by the

3. Designation of Voting Representative-Proxy. If a lot is owned by one person, his right to vote shall be established by the record title thereof. If title to a lot is held by more than one person or by a firm, corporation, partnership, association, or other legal entity, or any combination thereof, such owners shall execute a written proxy appointing and authorizing one person or alternate persons to attend all annual and special meetings of members and thereat to cast whatever vote the owner himself might cast if he were personally present.

## ARTICLE XI

### OBLIGATIONS OF THE OWNERS

1. Assessments. All owners shall be obligated to pay the yearly assessments imposed by the Association to meet the common expenses. The assessments shall be made pro rata according to the undivided fractional interest of an owner in the Association and shall be due in advance.
2. Notice of Lien or Suit. An owner shall give notice to the association of every lien or encumbrance upon his lot, other than for taxes and special assessments, and notices of every suit or other proceeding which may affect the title to his lot, and such notice shall be given in writing within five (5) days after the owner has knowledge thereof.
3. Maintenance and Repair.
  - a. Every lot owner must perform promptly, at his own expense, all maintenance and repair work upon his own lot which, if omitted, would affect the appearance of or the aesthetic integrity of part or all of the Subdivision.
  - b. Each lot owner shall be obligated to reimburse the Association promptly, upon receipt of its statement, for any expenditures incurred by it in repairing or replacing any common properties damaged by his negligence or by negligence of his tenants or agents or guests.
4. General.
  - a. If any provision of these By-Laws shall be found to be inconsistent with the Articles of Incorporation of the Association and/or the recorded covenants, these documents shall govern.
5. Use of Lots. All lots shall be utilized only for residential purposes as is provided in the covenants and/or Park County Land Use Requirements.
6. Use of Common Properties. Each lot owner may use the common properties, pathways, roads and streets, and other common properties located within the entire subdivision in accordance with the purpose for which they are intended without hindering or

encroaching upon the lawful rights of the other owners, and subject to the rules and regulations contained in these By-Laws and established by the Board of Directors.

7. Right of Entry.

- a. In case of emergency originating in or threatening his lot, whether the lot owner is present at the time or not, an owner shall and does grant the right of entry of the Board of Directors or their agents or to any other person authorized.

ARTICLE XII

COMMITTEES

1. Designation. The Board of Directors may, but shall not be required to, appoint an executive committee. The Board may designate and appoint members to the standing committee, except as otherwise hereinafter provided or by the recorded covenants.
2. Election Committee. Before annual meetings the Board of Directors shall appoint a committee of three (3) members of the Association who shall coordinate nominations for the Board to be elected at the election. The nominations of the candidates shall be submitted on or before ninety (90) days before the election. Members may submit names of candidates other than those submitted by the Election Committee ninety (90) days prior to the election. Unless such names are submitted, no person shall be elected whose name is not so submitted unless no nominations are made, in which event the name of candidates shall be submitted at the election by the members. If the nominations equal the number of vacancies, the election will be cancelled by the Elections Committee and those nominees will fill the vacancies, as if elected. The Election Committee will oversee the election process.
3. Architectural Control Committee. The Architectural Control Committee will be composed of up to three (3) persons who shall be required to be lot owners. The purpose of this committee is to review and approve plans for construction in compliance with the Association covenants. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant, but shall be entitled to reimbursement for out-of pocket expenses.
4. Vacancies. A vacancy in any committee shall be filled by the Board of Directors unless otherwise required by the recorded covenants, these By-Laws or the Articles of Incorporation of the Association.

ASSOCIATION- NOT FOR PROFIT

This Association is not organized for profit. No members, member of the Board of Directors, officer, or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no

event shall any part of the funds or assets of the Association be paid as a salary or compensation to, or distributed to, or inure to the benefit of any member of the Board of Directors, officer or member, provided, however, always, (1) that reasonable compensation be paid to any member, Director, or officer while acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the Association, and (2) that any member, Director, or officer may, from time to time be reimbursed for his actual and reasonable out-of-pocket expenses incurred in connection with the administration of the affairs of the Association.