

# BYLAWS OF THE SHINING MOUNTAINS OWNERS ASSOCIATION

(Revised: July 7, 1985)

## ARTICLE 1 – GENERAL PROVISIONS

### SECTION 1: NAME

The name of the association is THE SHINING MOUNTAINS ~~OWNERS~~ OWNERS' ASSOCIATION (the "Association"). The principal office of the Association shall be at such place in the County of Madison, State of Montana, as the Board of Directors may designate from time to time.

### SECTION 2: PURPOSE

The Association has been formed for the purpose of performing the powers and duties of the Association as set forth in these Bylaws, the Articles of Incorporation of the Association ("Articles"), and in those certain documents entitled Protective Covenants ("Covenants"), Unit I-Plat Book 4, Pages 41-46, Unit II-Plat Book 4, Pages 50-57, and Unit III-Plat Book 4, Pages 58-63.

## ARTICLE II – MEMBERSHIP PRIVILEGES AND VOTING RIGHTS

### SECTION 1: MEMBERSHIP QUALIFICATION

Each equitable Owner or Owners (hereafter "Owner" or "Owners") of a parcel in the ~~Project~~ in any of the now or future existing Phases of the Shining Mountains Subdivision in Ennis, Montana shall be a member of the Association and the membership shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the sale of a parcel and then only to the purchaser of said parcel.

### SECTION 2: RIGHTS & PRIVILEGES OF MEMBER

Each member shall have all the rights and privileges granted by these Bylaws, the Articles, and Covenants to ~~members~~ Members of the Association expressly or by implication, including, but not limited to, property rights and rights of access to and over, and use and enjoyment of the common area owned or controlled by the Association, subject to such limitations as may be imposed by the Association Rules and Regulations and Bylaws.

### SECTION 3: LIMITATION ON RIGHTS & PRIVILEGES OF ~~MEMEBERS~~ MEMBERS

Notwithstanding the grant of rights set forth in Section 1 of this Article II, no ~~member~~ Member shall have the right, without the prior approval of the Board, to exercise any of the powers or to perform any of the acts or duties delegated to the Board or Association by these Bylaws, the Articles, or Covenants. The right to the use and enjoyment of the common areas is denied to ~~members~~ Members who have not paid current assessments to date.

### SECTION 4: VOTING RIGHTS

Members who have paid all assessments to date are entitled to one vote for each parcel owned. Each parcel, regardless of the number of Owners thereof, shall be represented in the Association by only one (1) vote which may be cast only as a unit by the Owner or Owners thereof. Fractional votes are not allowed. Voting rights for current fiscal year expire at the conclusion of the annual members' meeting in July.

### SECTION 5: VOTING RIGHTS OF SHINING MOUNTAINS PARTNERSHIP

The General Partner of The Shining Mountains, a Limited Partnership, shall be entitled to one vote for each Parcel within the Project which is owned by the partnership and not yet sold provided that the current assessments levied by the Association have been paid

#### SECTION 6: CUMULATIVE VOTING

In any election of the Board of Directors for the Association, each parcel is entitled to one vote for each director being elected. These votes may be cast in any manner so long as the total votes do not exceed that allowed for the parcel(s) owned. Those receiving the higher number of votes, up to the number of directors to be chosen, shall be deemed elected.

#### SECTION 7: PROXIES

Every person entitled to vote shall have the right to do so either in person or by an agent authorized by a written proxy executed by such person and filed with the Secretary of the Association prior to the commencement of the meeting at which the proxy is to be exercised. Proxies are not transferable by the recipient. Every proxy shall be revocable by the person granting it by announcing its revocation to the Secretary of the meeting at which it would otherwise be exercised prior to the exercise thereof.

#### SECTION 8: EVIDENCE OF MEMBERSHIP

The Board shall have the power, but not the obligation, to issue evidence of membership in the Association to the members.

### ARTICLE III – MEETING OF MEMBERS

#### SECTION 1: ANNUAL MEETINGS OF MEMBERS

A) The annual meeting of Association members and owners shall be held at such time during the first two weeks in July of each year and at such location as the Board of Directors may designate. Notification to the members shall be mailed not less than 10 or more than 60 days prior to the meeting to the owner's address of record.

B) At each annual meeting the ~~members~~ **Members** of the Association shall elect, by secret ballot, a Board of Directors in accordance with the requirements of the Bylaws. The members may also transact such other business of the Association as may properly come before them at such annual meetings.

#### SECTION 2: SPECIAL MEETINGS

Special meetings of members, for any purpose whatsoever, may be called at any time by the President or by **the** majority of the Board of Directors, or by members having one-fifth (1/5) or more of the votes entitled to be cast ~~as~~ **at** such meetings. Notice of such special meetings shall be given in the same manner as for annual meetings of members and may be given by any person or persons entitled to call such a meeting. **In addition to the place, day, and hour of such meeting,** ~~notices of any special meeting shall specify in addition to the place, day, and hour of such meeting,~~ the purpose or purposes for which the meeting was called.

#### SECTION 3: ADJOURNED MEETINGS & **AND** NOTICE THEREOF.

A) If a meeting of the members **Members of the Association** cannot be organized because a quorum has not ~~attended~~ **been reached**, those present may adjourn the meeting until a quorum is present. **There is no time limit before which a subsequent meeting be set in an effort to reach a quorum (e.g. a subsequent meeting could be set for thirty (30) minutes later or thirty (30) days later, and so forth.**

- B) In the absence of a quorum, no other business may be transacted at such meeting unless these Bylaws or the Articles otherwise provide.
- C) Any meeting where a quorum is present may also be adjourned from time to time by the affirmative vote of a majority of the votes present and represented at such meeting in person or by proxy.
- D) When any membership meeting, annual or special, is adjourned for thirty (30) days or more, notice of the reconvening of the adjourned meeting shall be ~~give~~ **given** in the ~~case of~~ **same manner(s) as** the original meeting.

#### SECTION 4: QUORUM

- A) At the initial meeting of the Member of the Association, the presence of Members who, in the aggregate, ~~holding hold~~ **fifty percent (50%) of the votes entitled to be cast on the matter to be voted upon, represented in person or by proxy, shall constitute a quorum at a meeting of members, the Members of the Association, unless a different requirement is imposed by these Bylaws or Articles.**
- B) If a quorum is not present as provided in ~~Section A~~ **Section 3, Paragraph A**, those present may adjourn the meeting from ~~time to time~~ **for any reasonable amount of time (see Section 3, Paragraph A above)** until members holding at least twenty percent **(20%)** of votes entitled to be cast in person or by proxy are present; said percentage shall constitute a quorum.
- C) **If a quorum is not present as provided in Section 3, Paragraph B, all non-voting members become proxy votes and will be assigned to the Secretary to be distributed equally.**
- D) **All subsequent meetings shall be subject to the Departing Member Protocol, described above.**
- E) A majority of the total votes present at a meeting at which a quorum is present shall be necessary for the adoption of any matter to be voted on, unless a different percentage is required by these Bylaws or the Articles.
- F) ~~Notwithstanding the withdrawal of enough members so that less than a quorum remains from a duly called and held meeting at which a quorum was initially present, the members then remaining and entitled to vote shall constitute a quorum in connection with the conduction of business.~~

### ARTICLE IV – ASSESSMENTS AND ENFORCEMENT RIGHTS

#### SECTION 1: DEFINITION OF ASSESSMENTS

- A) COMMON ASSESSMENTS are those levied for expenses and activation of the common good of the Owners and the Association including, but not limited to, repair and maintenance of roads and common areas, the management and administration of the ~~Owners~~ Association and such other activities that pertain to the common interests.
- B) LIMITED ASSESSMENTS are those levied for a specific reason or activity for the benefit of one or more owners and shall be prorated among those affected by and/or benefiting from the activity.

#### SECTION 2: LEVYING ASSESSMENTS

The Association, through the Board of Directors, shall fix, levy, collect and enforce such assessments in the manner specified in these Bylaws, the Articles, the Covenants, and the Laws of the State of Montana. The Common Assessments must comply with the following requirements:

- A) The amount assessed must be limited to the amount reasonably anticipated to be required by the Association to enable it to perform its duties and obligations.
- B) Not less than **thirty (30)** days nor more than **sixty (60)** days prior to the start of the new Fiscal year, the Board shall mail to each owner at the owner's address of record the notice of assessment, the basis of the assessment schedule, the amount of the assessment, the date when the assessment is due and the annual budget for expenditures and operations of the Association.
- C) The Common Assessments will prevail for the following fiscal year and may only be changed by a majority vote of the Board of Directors. ~~The Board has the power, by a majority vote of the Board members, to adjust assessments in individual cases where inequities arise.~~

### SECTION 3: ENFORCEMENT OF ASSESSMENTS.

- A) Assessments are payable upon receipt and shall be considered delinquent if payment is not received by the Association within ~~90~~ **sixty (60)** days of the due date. The amount of the Assessment levied for each parcel shall be the personal and individual debt of the owner(s) thereof. No owner may exempt himself from liability for his contribution toward the Common Assessments by waiver of the use or enjoyment of any of the common areas or common elements of the project or the Association.
- B) In the event of delinquency in the payment of assessments, the owner(s) shall be obligated for the amount of the assessment together with all expenses, **including interest at the then highest prevailing rate in Montana and all legal fees and costs incurred, including those legal fees and costs at the appellate level.** The Board of Directors may (at their discretion) bring suit on behalf of the Association to recover a money judgment **and/or** may file a lien on said parcel(s) for the unpaid assessments and expenses.
- C) Once a Member is delinquent for more than sixty (60) days, the Board shall not be required to provide further notice of said delinquency to the Member and may immediately proceed with legal action forthwith.**
- D) If, as part of the Association's legal action for the collection of delinquent assessments, the Member raises one or more counterclaim(s) against the Association, and counterclaim(s) shall, the parties agree, with the court's permission be separated from the collection action for convenience, to avoid prejudice, and to economize the resolution of the issue of unpaid assessments. At the same time, in any action, suit, or proceeding in any jurisdiction brought by the Association against any Member of the Association, the parties each knowingly and intentionally, to the greatest extent permitted by applicable law, hereby absolutely, unconditionally, irrevocably, and expressly waive forever trial by jury.**
- (E) Payments received will be applied to the earliest open assessments.
- ~~D) If payment of assessments has not been made by January 1, the Board of Directors may, at their discretion, assess interest charges of not more than nine per cent per annum against past due accounts provided that such assessments are levied against all delinquent members and are not selective in nature.~~

## ARTICLE V – DIRECTORS

### SECTION 1: NUMBER, ~~QUALIFICATION~~ **QUALIFICATION**, & **AND** TERM OF OFFICE

- (A) The affairs of the Association shall be managed by a Board of ~~five (5)~~ Directors **comprised** of five (5) **Directors** who must be voting **M**embers of the Association and residents of Madison County, Montana. No more than one member of an immediate family may be on the Board of Directors at the same time.
- B) The Board of Directors shall be comprised of a chairman of the board (the "Chairman") and a vice chairman of the board. The other three (3) members of the Board may be given titles and responsibilities as the President and/or overall Board deem appropriate. Nothing herein shall be construed as limiting the

Chairman's ability to be selected as an officer of the Association (e.g. president) as well.

(B) Directors shall be elected for a period of two (2) years, with two directors to be elected in ~~the~~ even numbered fiscal year (i.e. ~~82/83~~ Fiscal Year 2024) and three directors to be elected in the odd-numbered ~~fiscal~~ year (i.e. ~~83/84~~ Fiscal Year 2023).

## SECTION 2: REMOVAL AND ~~VANCANCIES~~ VACANCIES

A) The entire Board or any individual director may be removed from office, with or without cause, at any duly called, noticed, and held annual or special meeting of the members at which a quorum is present by a majority of the members present at such meeting and entitled to vote either in person or by proxy.

B) Vacancies in the Board of Directors may be filled by a majority vote of the remaining ~~Directors~~, or by the members at a duly called special meeting and each director so elected shall hold office until his successor is elected at a subsequent meeting of the members.

C) A vacancy or vacancies shall be deemed to exist in case of the death, resignation, or removal of any director. If the Board of Directors accepts the resignation of a director tendered to take effect at a future time, the Board shall have the power to elect a successor to take office when the resignation ~~shall~~ **is to** become effective.

## SECTION 3: PLACE OF MEETING

All meetings of the Board of Directors shall be held at such place within the State of Montana as designated by the Board of Directors.

## SECTION 4: ANNUAL MEETING OF THE BOARD

Immediately after the Annual Meeting of the Members of the Association, or, at the latest, **within** ten (10) days immediately following the **Annual** meeting of ~~the~~ **Members** of the Association, the Board of Directors shall hold a regular meeting for the purpose of **the** election of officers and the transaction of other business. Notice of such meeting to the members is not required.

## SECTION 5: SPECIAL MEETINGS

A) Special meetings of the Board of Directors for any purpose may be called at any time by the President **of the Association or by the Chairman**, or if ~~he~~ either is absent or unable or refuses to act, by any other two (2) members of the Board of Directors or two (2) officers. ~~Vice President, Secretary, or by any two (2) directors.~~

B) Notice of the time and place of special meetings shall be given to each **Director** at least three (3) days prior to the date of such meeting and shall be delivered personally to the **Directors** by **any two (2) of the following three (3) methods**: telephone, email or ~~sent to each director by letter~~ U.S. Mail addressed to the Director ~~him~~ at his/**her** address of record.

## SECTION 6: DIRECTOR'S QUORUM.

Three **(3)** members of the Board of Directors shall constitute a quorum. Every act or decision done or made by a majority of the **Directors** present at a meeting duly held at which a quorum is present, shall be regarded as the act of the Board of Directors.

## SECTION 7: ACTION WITHOUT MEETING

Any action required to be taken by law at a meeting of ~~the Board of~~ Directors or any action which may usually be taken at a meeting of ~~the Board of~~ Directors, may be taken without a meeting if a consent, in writing, setting forth the action so taken, ~~shall be~~ is signed by all of the Directors entitled to vote with respect to the subject matter thereof.

## SECTION 8: ADJOURNMENT

A quorum of the ~~Directors~~ may adjourn any ~~meeting of the Board of~~ Directors ~~meeting~~ and schedule a subsequent day and time for the ~~Board of~~ Directors to meet again ~~at a stated day and hour~~; provided, however, that in the absence of a quorum, a majority of the Directors present at the Directors' meeting, may adjourn from time to time until a quorum is present.

## SECTION 9: COMPENSATION

- A) No director of the Association shall receive any salary or other compensation for services rendered as a director or officer of the Association. However, directors and officers shall be reimbursed for expenses incurred in connection with the business of the Association and authorized by the Board.
- B) Nothing herein shall preclude any director from serving the Association in any capacity other than as an officer or a director and receiving compensation therefore as authorized and approved by the Board. Any director receiving any special compensation for services in any such other capacity shall be excluded from voting by the Board relative to the authorization thereof and fixing compensation with regard thereto.

## SECTION 10: DIRECTORS COMMITTEES.

Directors may appoint a committee of property owners to assist in solving problems that may arise. These committee members have no ~~other~~ greater rights than other property owners. A minimum of one Director shall be a member of any committee appointed. Documentation of the committee activities shall be maintained by the committee and retained ~~in the Association's~~ records. Any committee activities must have the approval of the Board to obligate the association for any expenses or actions.

## SECTION 11: POWERS AND DUTIES

Subject to the limitations of the Articles, these Bylaws, the Covenants, the Montana Non-Profit Corporation Act, and other applicable law, all Association powers and duties shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be controlled by the Board. Without limiting the generality of the foregoing, the Board shall:

- A) Exercise for the Association all powers, duties, and authority vested in or delegated to the Board or the Association, whether by these Bylaws, the Articles, the Covenants, or otherwise.
- B) Administer all matters regarding surface water rights and the location and procedures applicable to the drilling of water wells within the various easements.
- C) Oversee and maintain all common areas, including upkeep, grading, and maintenance of major transverse roads.

- D) Coordinate the upkeep and maintenance of the existing ranch fencing around the perimeter of the Project, the expense of which is the responsibility of the property owners adjacent to the perimeter.
- E) Exercise architectural approval for building and exterior lighting of each residence and outbuilding within the Project.
- F) Receive and expend monies.
- G) Cause the Common Areas ~~of the Project~~ and the improvements, road, facilities, structures, landscaping and lakes and other water bodies thereon to be operated, protected, maintained, and stocked, and procure and pay for liability and hazard insurance, if required, together with such other insurance as may be required.
- H) Have the power to adopt and amend uniform rules and regulations governing the parcels and the members' use of the Common Areas, including the personal conduct of members, their guests, servants, tenants, invitees and family members thereon.
- I) Establish, levy, assess, collects, and enforce the assessments referred to in these Bylaws in the manner set forth herein. The maintenance of the Common Areas and the performance by the Board of Directors of all of its duties and powers shall be paid for out of the assessments so made and collected.
- J) The Board may employ a Manager, independent contractors, **attorneys, accountants** and ~~such other~~ **professionals from time to time** and such other employees **and advisors** as it deems necessary and prescribe their duties, and enter into contracts and agreements for the purpose of providing **the Board of Directors services deemed necessary** for the performance of its powers and duties. ~~The Board may further delegate any of its powers to such persons or entities as the Directors may determine.~~
- K) Cause to be kept a complete record of all of its acts and corporate affairs and present a statement thereof to the members at the annual meeting of the **Members** or at any duly called special meeting of **Members**.
- L) Supervise all officers, agents, and employees of ~~this~~ **the** Association, and see that their duties are properly performed.
- M) Appoint and remove, at its pleasure, all officers, agents, and employees of the Association, prescribe their duties, fix their compensation, subject to the limitations on compensation ~~to Directors set forth herein~~, and obtain such fidelity bonds as it may deem necessary or appropriate. The premium on such bonds shall be paid for by the Association.
- N) Coordinate any activities pertaining to the common safety and betterment ~~of the Project~~ including, but not limited to, fire prevention, grazing and surveying.
- O) Have also as its powers any and all powers designated by the "Montana Nonprofit Corporation Act". Sections 35-12-113 et seq., MCA.**

## **ARTICLE VI – OFFICERS**

### **SECTION 1: ENUMERATION OF OFFICERS.**

The officers of the Association shall be a president, vice-president, a secretary, a treasurer and such other officers and assistants as the Board of **D**irectors may deem necessary. Any director may hold more than one office but not more than two, provided that no one **D**irector may be both the **p**resident and **s**ecretary of ~~this~~ the Association.

## SECTION 2: ~~ELECTION~~ SELECTION

The officers shall be ~~chosen~~ **selected** annually by a majority vote of the Directors. **In lieu of selecting separate Members to serve as officers, or if no Member(s) shall seek to be selected by the Board of Directors to serve as an officer of the Association, the Board of Directors may designate its members to serve in the capacity of the president, vice-president, secretary, and treasurer of the Association. If the officers are selected exclusively from those who also serve as Directors, then, in that case, no Director may hold more than one (1) office.**

## SECTION 3: TERM

All officers shall hold office for a term of one year ~~including the duration of the annual members' meeting~~ until their successors are **selected** and installed. However, ~~all officers~~ **any officer** may be removed from office at any time at the pleasure of the Board **or by a majority vote of the Members entitled to vote either in person or by proxy.**

## SECTION 4: PRESIDENT

The president shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have supervision, direction, and control of the business and officers of the Association. ~~He~~ **The president** shall preside at all meetings of the members and at all meetings of the Board of Directors. ~~He~~ **The president** shall be **an** *ex-officio* ~~a~~ member of all standing committees, ~~including the Executive committee, if any, and~~ and shall have the general powers and duties of management usually vested in the office of **the** president of a Montana non-profit corporation, and shall have such powers and duties as may be prescribed by the Board of Directors or by these Bylaws.

## SECTION 5: VICE-PRESIDENT

In the absence or disability of the **p**resident, the **v**ice-**p**resident shall perform all the duties of the **p**resident, and, when so acting, shall have all power of, and be subject to all the restrictions upon, the **p**resident. The **v**ice-**p**resident shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board of Directors or by these Bylaws.

## SECTION 6: SECOND VICE-PRESIDENT

In the absence or disability of the **v**ice-**p**resident, the **s**econd **v**ice-**p**resident shall perform all the duties of the **v**ice-**p**resident.

## SECTION 7: SECRETARY

A) The **s**ecretary shall keep or cause to kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of **D**irectors and members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those persons present at the **D**irectors' meeting, the number of those persons present at the **D**irectors meetings and the proceeding thereof.

B) The **s**ecretary shall give, or cause to be given, notice of all the meetings of the members and of the Board of Directors required by the Bylaws or by law to be given, and he shall keep the Seal of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.



## SECTION 8: TREASURER

A) The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director.

B) The treasurer shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board of Directors. He/she shall disburse the funds of the Associations as may be ordered by the Board of Directors, shall render to the president and Directors, whenever they request it, an account of all of his transactions as treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

## ARTICLE VII – MISCELLANEOUS

### SECTION 1: SEAL

The association shall have a seal in circular form having within its circumference the name of the Association, its date of incorporation, and such other matters as may be required by the laws of Montana.

### SECTION 2: AMENDMENTS

Except where a greater number is provided by the Articles, the Bylaws, or by law, these Bylaws may be amended only by the affirmative vote of Members of the Association representing a majority of all of the Parcels in the Project all new or existing Phases of the Shining Mountains Subdivision entitled to vote, **subject to the Quorum Protocol outlined herein**. Amendments shall be kept by the **secretary of the Association** with the other records and books of the Association. Amendments to the Articles of Incorporation shall be made by the affirmative vote of two-thirds of the Members of the Association entitled to vote, either in person or by proxy.

### SECTION 3: CONFLICTS

In the event of any inconsistency between these Bylaws and the Articles, the Articles shall control, ~~and~~ in the event of any inconsistency between these Bylaws, the Articles, or the Covenants, the Covenants shall control.

### SECTION 4: CHECKS, DRAFTS, ETC.

All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness, issued in the name of or payable to the Association shall be signed or endorsed by ~~such persons~~ and one (1) of three (3) in such manner as determined by the Board of Directors.

## SECTION 5: CONTRACTS, ETC., HOW EXECUTED

The Board of Directors, except as in the Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by a contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

## SECTION 6: INSPECTION OF BYLAWS

The Association shall keep in its principal office the original or a copy of the Bylaws as amended or otherwise altered to date, certified by the Secretary **of the Association**, which shall be open to inspection by the **Members** of the Association at all reasonable business hours.

## ~~SECTION~~ **SECTION 7: FISCAL YEAR**

The fiscal year of the Association shall begin on July 1 of each year and terminate on June 30 of the following year.

## SECTION 8: BOOKS AND RECORDS

The books, records, minutes, names and addresses of members entitled to vote, and papers of the Association shall be kept at the principal place of business of the Association in the State of Montana, and shall at all times, during reasonable business hours, be subject to inspection by any member, his attorney, or agent.

The Shining Mountains Owners' Association

By: \_\_\_\_\_

As its: \_\_\_\_\_

Dated: \_\_\_\_\_