

**ELKINS LAKE RECREATION CORPORATION  
BY-LAWS**

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**Re-stated and Amended By-laws– Approved February 10, 2021**

**RESTATED AND AMENDED BY-LAWS OF  
ELKINS LAKE RECREATION CORPORATION**

**ARTICLE I  
NAME AND PURPOSE**

**Section 1: Name and Address:** The name of the Corporation is ELKINS LAKE RECREATION CORPORATION, hereinafter referred to as the "Corporation". The principal office of the Corporation is located at Elkins Lake, Huntsville, Texas. Meetings of Property Owners and/or Directors shall normally be held at Elkins Lake.

**Section 2: Purpose:** The Corporation is a non-profit organization chartered under the laws of the State of Texas and is organized as a social welfare organization that benefits the Elkins Lake community and the community in an area within Walker County, Texas. More specifically, the Corporation is organized:

- A. To render constructive service for the promotion of the social welfare of the Elkins Lake community and the Property Owners, local school districts, and residents of Walker County;
- B. To promote and provide educational and recreational facilities for the Property Owners;
- C. To acquire, maintain, and operate buildings and property for the stated purposes. Neither any donation made to the Corporation nor any fund or property arising therefrom, in whatever forms it may take, shall be diverted from the purposes herein stated.

**ARTICLE II  
DEFINITIONS**

**Section 1: "Annual Assessment"** shall mean and refer to the maintenance charges established by the Board of Directors (as applicable to each Property Owner) which are used to create a fund known as the "Maintenance Fund" and is secured by a continuing lien upon the Lot against which such Assessment is made.

**Section 2: "Board of Directors"** shall mean the elected group of persons vested with the management of the affairs of the Corporation.

**Section 3: "Common Area" and "Facilities"** shall mean all real property owned by the Corporation for the common use and enjoyment of the Property Owners as well as limited use by local schools and residents.

**Section 4: "Corporation"** shall mean and refer to Elkins Lake Recreation Corporation, its successors and assigns.

**Section 5: "Declaration"** shall mean and refer to all instruments recorded in the office of the County Clerk of Walker County, Texas, imposing restrictions against all or a portion of the properties, and any amendments to such instruments.

**Section 6: "Designated Family Member"** shall mean that individual who may be assigned Membership Privileges by a Property Owner. The designation must be made in writing to the Corporate Secretary. An individual is only eligible for designation if he / she maintains full time residence within the household of the sponsoring Property Owner and is a relative in no more than the second degree as defined in the Texas Government Code.

**Section 7: "Director"** shall mean a member of the Board of Directors of this Corporation organized under the Texas Non-Profit Corporation Act.

**Section 8: "Lot"** shall mean and refer to any plot of land defined on any recorded subdivision map of Elkins Lake by Section, Block, & Lot number with the exception of the Common Areas.

**Section 9: "Membership Privileges"** shall mean access to Common Areas, use of Facilities, and charging privileges for the Property Owner, his / her spouse, dependent(s) and Designated Family Member, providing all are permanent residents within the same household, and providing that their account is in good standing.

**Section 10: "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation. However, with respect to Lots being purchased under a Contract for Deed and payment of the applicable Transfer Fee, the purchaser shall be deemed the Owner of the Lot, provided no Contract for Deed shall be for a term exceeding ninety (90) days from the date of the Contract for Deed.

**Section 11: “Participating Property Owner”** In case of ownership of a Lot by a partnership, corporation, trust or other group of more than two persons, there shall be only one Participating Property Owner (as they decide amongst themselves). The Participating Property Owner shall have the status of Property Owner. The designation of the Participating Property Owner must be made in writing to the Corporate Secretary.

**Section 12: “Properties”** shall mean and refer to the tracts and parcels of land in Walker County, Texas, described in a deed dated August 30, 1968, from J. A. Elkins and wife Isabell Elkins to J. B. Belin, Jr., recorded in Volume 215, Page 580, Deed Records of Walker County, Texas; and the property conveyed by deeds recorded in Volume 227, Page 643; Volume 228, Page 647; and Volume 241, Page 64, all in the Deed Records of Walker County, Texas, and such additions thereto as may thereafter be brought within the jurisdiction of the Corporation (sometimes herein also referred to as the “Elkins Lake Subdivision”).

**Section 13: “Property Owner”** shall mean and refer to those persons entitled to Membership Privileges as provided in these By-laws. Property Owners are members of the Social Welfare Organization established by the existing 501(c)4 tax exemption for Elkins Lake Recreation Corporation. For voting purposes, Property Owner shall also refer to the “**Personal Representative**” (as defined in Article III, Section 6) of the Property Owner. Property Owner shall mean:

- A. an individual or group of no more than two individuals owning a Lot or Lots in Elkins Lake Subdivision;
- B. the legally recognized spouse of the individual Owner; and
- C. the dependent(s) of the individual Owner,

provided all of the above maintain permanent residence within the same household. A Property Owner may assign one other Designated Family Member (as defined herein) to have Membership Privileges provided both individuals are full time residents within the same household.

**Section 14: “Transfer Fee”** shall mean that fee levied by the Corporation for the transfer of membership from one Owner to another. Payment of the applicable Transfer Fee is a requirement for purchase of any Lot unless specifically exempted by the Board of Directors.

**Section 15: “Voting Property Owner”** shall mean and refer to those Property Owners returning the written ballots described in these By-laws.

### **ARTICLE III PROPERTY OWNERS AND PROPERTY OWNERS’ MEETINGS**

**Section 1: Property Owners:** Every Property Owner shall become a Member of Elkins Lake and shall continue to be a Member for so long as he, she or it owns a Lot. The foregoing does not include persons or entities holding an interest in property merely as security for the performance of an obligation or those having only an interest in the mineral estate. Membership shall be appurtenant to, and may not be separated from, the ownership of any Lots. Except as otherwise provided in these By-laws, all actions to be taken or authorized by the Property Owners shall be deemed validly taken or authorized upon adoption by vote of a majority of the Voting Property Owners, in person or by proxy executed in writing in accordance with the Texas Non-Profit Corporation Act or through their attorney-in-fact pursuant to Article III, Section 6, at any properly called meeting at which a Quorum, as defined in Article III, Section 5, is present, in person or by proxy or by the presence of attorneys-in-fact.

**Section 2: Annual Meeting:** An Annual Meeting of Property Owners shall be held on or before May 1 of each year with the time and place to be determined by the Board of Directors.

**Section 3: Special Meetings:** Special Meetings of the Property Owners may be called at any time by the President of the Board of Directors, or upon written request of one-fourth (1/4) of the Property Owners. Attendance of a Property Owner at a Special Meeting shall constitute a waiver of notice of such meeting, except where a Property Owner attends a Special Meeting for the express purpose of (a) objecting to the transaction of any business, or (b) objecting to the fact that such meeting is not lawfully called or convened.

**Section 4: Notice of Meetings:** Written notices of each Special Meeting of Property Owners shall be given by or at the direction of the Secretary or person authorized to call the meeting. Notices will be mailed, postage prepaid, at least fifteen (15) days before such meeting to each Property Owner entitled to vote thereat, addressed to the Property Owner’s address last appearing on the books of the Corporation, or supplied by such Property Owner to the Corporation for the purpose of notice, and, in the case of a Special Meeting, the purpose(s) of the meeting.

**Section 5: Quorum:** The presence of Property Owners entitled to cast twenty percent (20%) of the votes of all Property Owners shall constitute a Quorum for any action at any Special Meeting, for which notice of the meeting has been given. If, however, such Quorum shall not be present or represented at any meeting, the Property Owners shall have the power to adjourn the meeting from time to time, without notice, other than announcement at the meeting, until a Quorum, as aforesaid, shall be present or be represented.

**Section 6: Attorneys-in Fact, Personal Representatives and Guardians:** At all Special Meetings of Property Owners, each

Property Owner may vote in person or by an attorney-in-fact. All powers of attorney shall be in writing and under oath and filed with the Secretary in advance of the meeting. Any Personal Representative of a Property Owner or guardian of the Estate of a minor or of an incompetent may vote for said Property Owner at any meeting or pursuant to any written ballot. When voting on behalf of Property Owners, the Personal Representative shall deliver evidence to the Secretary of the Corporation of the authority of said person's appointment as the Personal Representative. A Property Owner's power of attorney shall no longer be effective upon conveyance of his, her or its Lot.

**Section 7: Voting Rights:** For purposes of voting on any matters submitted to the Property Owners, each Property Owner shall be entitled to cast one (1) vote regardless of the number of Lots owned. No group of joint titleholders shall have more than one (1) vote regardless of the number of lots owned. When more than one (1) person or entity holds an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine. Such Property Owners shall specify the designation of who shall exercise such voting privileges in a written notice to the Board of Directors.

For the purpose of electing members of the Architectural Control Committee, each Lot Owner shall be entitled to one (1) vote for each whole Lot owned by that Owner.

A Property Owner's voting rights may be suspended if in default in the payment of any obligation, including the Annual Assessment, lawfully levied by the Corporation. A Property Owner will be considered in default if such payment is more than 30 days past due.

**Section 8: Voting Procedures:** In all instances of voting only by written ballots by Property Owners, the following procedures will apply:

A. **Voting List:** The Officer or agent in charge of the Corporation's books shall maintain an alphabetical listing of all Property Owners in Elkins Lake Subdivision showing the address of each Property Owner. This listing shall be current at least ten (10) days prior to:

1. any Special Meeting of Property Owners; or
2. the production of ballots for any matter submitted to the Property Owners.

Such list shall be kept on file at the registered office of the Corporation for three (3) years after any election and shall be subject to inspection by any Property Owner during usual business hours. Such list shall also be produced and kept open at the time and place of any election, or vote, as applicable, or at any Special Meeting of the Property Owners and shall be open to inspection of any Property Owner during the whole time of the meeting. The Corporation's book of Property Owners shall be prima facie evidence as to which Property Owners are entitled to examine such list and to vote at any election, Special Meeting or any other matter submitted to the Property Owners for approval pursuant to these By-laws.

B. **Notice:** Not less than thirty (30) days prior to the date ballots are provided to all Property Owners, the Board of Directors shall announce in the Elkins Lake Subdivision Newsletter or any other written material distributed to all Property Owners, the proposed voting and the reasons therefor.

C. **Ballots:** Not less than thirty (30) days, but not more than sixty (60) days after announcing the proposed voting, the Board of Directors shall cause ballots to be distributed to all eligible Property Owners. Each ballot will be produced with the Property Owner's name and identification as to the Property Section, Block and Lot Number and contain precise wording of the corporate matters to be voted upon. The Property Owners shall be instructed to sign, whether physically or electronically, and return said ballots within thirty (30) days if they want to exercise their voting privileges.

D. **Voting Results:** Ballots returned to the Corporation shall be counted by the Corporate Secretary and staff and shall be retained by the Corporation for a period of three (3) years after the effective date of said vote. The Corporation shall immediately announce the results of said ballot by posting the results in appropriate places within Elkins Lake Subdivision and also by publishing the results of said ballot on the website and on all official communication channels.

#### **ARTICLE IV BOARD OF DIRECTORS**

**Section 1: General:** The determination of policy and the control of the affairs, property and funds of the Corporation shall be entrusted to a Board of Directors elected by the Property Owners. The various Standing and Special Committees shall assist the Board of Directors in the formation of policies and directions in particular areas. The Board of Directors shall elect Officers of the Corporation and engage the service of a General Manager, independent contractors, or such other employee(s) to manage the daily affairs of the Corporation.

**Section 2: Composition:** The Board of Directors shall consist of seven (7) Property Owners.

**Section 3: Qualifications:** Only individuals who own property in Elkins Lake Subdivision are eligible to serve on the Board of Directors. However, owners of property in Elkins Lake Subdivision may not serve as Directors if they are delinquent in the payment of any obligation, including maintenance fees or Annual Assessment, to the Corporation.

**Section 4: Compensation:** No Director shall receive compensation for any services he or she may render to the Corporation within the scope of their Director duties. However, any Director may be reimbursed for reasonable and actual expenses incurred in the performance of his or her duties, exclusive of expenses in attending meetings of the Board of Directors.

**Section 5: Election:** The election of Directors shall take place in November of each year and those elected shall take office on January 1<sup>st</sup> of each succeeding calendar year. Each Director shall be elected to serve a three (3) year term and shall continue to serve until his or her successor takes office. Nominations of potential Directors shall be allowed under such procedures as may be adopted from time to time by the Board, but no person shall be nominated who is not a Property Owner. The nominating procedure adopted by the Board shall in all cases permit any Property Owner to submit the name of at least one nominee for consideration by the Board or general membership, as applicable. All nominees placed on any ballot must have indicated, to the Corporation, in writing, their willingness to accept such position if elected.

Voting procedures are set forth in Article III, Section 8.

The nominees receiving the greatest number of votes shall be declared elected to the number of vacancies existing in descending order of the number of votes received by each of them. In the event that a tie vote between two (2) or more nominees makes such order of election impossible, a run-off election between those particular nominees tied shall be called to fill such vacancy. Property Owners shall complete run-off voting no later than December 15.

Beginning with the November 2003 election and continuing annually thereafter, two (2) or three (3) new Directors (depending upon the number of vacancies to be filled) shall be elected each year to serve a three (3) year term. Directors may serve two (2) consecutive three (3) year terms but cannot succeed themselves more than once. A Director may run for election after completion of two consecutive terms and a one-year absence from Board service.

**Section 6: Oath of Office:** Prior to assuming office, each Director shall take the following oath:

*I SWEAR OR AFFIRM THAT I WILL FAITHFULLY PERFORM THE DUTIES, RESPONSIBILITIES AND EXERCISE THE POWERS AS SET FORTH IN THESE BY-LAWS, SO HELP ME GOD.*

The Oath of Office shall be administered in accordance with Texas Government Code.

**Section 7: Vacancy:** Any vacancy occurring on the Board of Directors, other than by expiration of the term of a Director, shall be filled by the majority vote of the remaining Directors. The appointee shall hold office until the unexpired term is completed.

**Section 8: Removal:** Any Director may be removed from the Board by a majority vote of the Voting Property Owners. In the event a Director is removed, his or her successor shall be selected in the same manner as provided in Article IV, Section 7: Vacancy.

**Section 9: Meetings:** Regular meetings of the Board of Directors shall be held monthly with notice, at such place and hour as may be fixed from time to time by resolution of the Board. An agenda shall be posted at the Clubhouse, Post Office or the Corporate Office not less than 72 hours prior to the meeting.

Special meetings of the Board of Directors shall be held when called by the President of the Board, or by any three (3) other Directors, after not less than three (3) days notice to each Director. Attendance of Directors at a special meeting shall constitute a waiver of notice of such special meeting, except when a Director attends the special meeting for the express purpose of (a) objecting to the transaction of any business, or (b) objecting to the fact that such meeting is not lawfully called or convened. The business to be transacted, and the purpose of any special meeting of the Board of Directors shall be specified in the notice or waiver of notice of such meeting, except as may be otherwise provided by statute or by the Articles of Incorporation.

A majority of the total number of Directors shall constitute a Quorum of Directors for the transaction of business. Except as otherwise provided herein, every act or decision done or made by a majority of the Directors present at a duly held meeting shall be regarded as the act of the Board.

Any Property Owner shall be entitled to attend any meeting of the Board; provided, however, that the Board shall have the right to hold private executive sessions for the purpose of conducting business relating to personnel and legal matters as they relate to the Corporation. Property Owners who are not Directors may be excluded from said private executive session portion of any meeting of the Board.

**Section 10: Action Taken Without a Meeting:** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining a permanently recorded vote of a Quorum of Directors. Any action(s) so approved shall have the same effect as though taken at a meeting of the Directors.

**Section 11: Authority and Responsibility:** It shall be the responsibility of the Board of Directors to determine and implement the policy for the maintenance, operation and improvement of the Corporation. Neither the Board nor any individual Director shall have the authority or duties for the day-to-day operation of the Corporation.

The Board of Directors shall not have the authority to take any action(s) or expend any sum or incur any obligation on behalf of the Corporation with respect to the following decisions (Major Decisions), affecting the Corporation, as described below, unless such Major Decisions have been approved by a majority of the Board of Directors. A Major Decision is:

- A. the sale or purchase of real and personal property by the Corporation;
- B. making any expenditure or incurring any obligation by or for the Corporation involving a sum in excess of Twenty-five thousand dollars (\$25,000.00) for any transaction or series of similar transactions;
- C. expenditures of less than \$25,000 not covered by the annual budget; or
- D. entering into any employment or service contracts on behalf of the Corporation, which are not terminable at any time by the Board of Directors.

**Section 12: Powers:** The Board of Directors shall have the power to:

- A. adopt and publish rules and regulations governing the use of all Common Areas and Facilities, the conduct of Property Owners and/or guests thereon, and to establish penalties for the infraction thereof;
- B. suspend a Property Owner's voting rights and the right to use the Common Areas and Facilities during any period in which such Property Owner shall be in default in the payment of any obligation, including maintenance fees or Annual Assessment, to the Corporation;
- C. exercise for the Corporation all powers, duties and authority vested in or delegated to the Corporation by the Articles of Incorporation, Declaration, or authorized by law and not reserved to the Property Owners by other provisions of these By-laws, the Articles of Incorporation, or the Declaration;
- D. declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent, without prior written approval of the Board, from three (3) consecutive regular meetings of the Board of Directors; and
- E. employ a General Manager, independent contractors, or such other employee(s) as they deem necessary, and prescribe to their duties.

**Section 13: Duties and Responsibilities:** It shall be the duty and responsibility of the Board of Directors to:

- A. cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof at the annual meeting of Property Owners, or at any special meeting when such statement is requested in writing by one fourth (1/4) of the Property Owners who are entitled to vote;
- B. supervise the General Manager of the Corporation by establishing Policy and Procedures and see that his or her duties are properly performed;
- C. determine the amount of Annual Assessment, which may be collected monthly, against each lot at least thirty (30) days in advance of each Annual Assessment period;
- D. send written notice of each Annual Assessment to each Property Owner subject thereto at least thirty (30) days in advance of each Annual Assessment period;
- E. cause the Annual Assessments to be collected;
- F. foreclose the lien against any property for which Annual Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Property Owner personally obligated to pay the same;
- G. issue, or cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not an Assessment has been paid. A reasonable charge may be made for the issuance of these certificates. If a certificate states that an Assessment has been paid, such certificate shall be prima facie evidence of such payment;
- H. procure and maintain adequate worker's compensation, comprehensive liability and hazard insurance on property owned by the Corporation;
- I. cause all Officers, Directors or employees having fiscal responsibilities to be bonded or obtain liability insurance for such individual, as it may deem appropriate;
- J. cause the Common Areas and Facilities to be maintained, repaired and operated;
- K. take action(s), with input and discussion with the elected Architectural Control Committee, to assure that all Reservations, Restrictions & Covenants and By-laws are complied with in accordance with applicable laws;
- L. assure that each new Property Owner or a Property Owner who submits building plans for approval by the Architectural Control Committee shall be provided with a copy of these By-laws and a copy of the applicable Reservations, Restrictions & Covenants. A signed receipt from the Property Owner shall be kept on file in the Corporate office;
- M. periodically, but not less than once every ten years, implement a professionally developed demographic study of all Property Owners. Such study will provide the Board with needed information as an adjunct to the planning process. Property Owners will thereby have another avenue to express their needs and concerns. The study will include ages and gender of each eligible family member and will reflect the frequency of participation in the various facilities and programs available at Elkins Lake. Suggestions for additional activities, programs and/or facilities will be documented and the degree of participation recorded; and
- N. adopt and publish rules and regulations governing the use of all Common Areas and Facilities.

**ARTICLE V  
OFFICERS OF THE CORPORATION**

**Section 1: Enumeration:** The Officers of this Corporation shall be a President, Vice President(s), and Treasurer, who shall at all times be members of the Board of Directors, a Secretary, and such other officers as the Board may from time to time create by resolution.

**Section 2: Election and Term:** The election of Officers will occur annually at a January Special Meeting of the Board of  
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Directors. Officers shall hold office for one (1) year unless he or she should resign or be removed, or otherwise be disqualified to serve.

**Section 3: Special Appointments:** The Board may elect such other Officers as the affairs of the Corporation may require, each of whom shall hold office for no longer than twelve (12) months, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 4: Resignation and Removal:** The Board may remove any Officer from office. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to be effective.

**Section 5: Vacancy:** A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

**Section 6: Multiple Offices:** The offices of Secretary and Treasurer may be held by the same person if qualifications for each office are met. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 3 of this Article V.

**Section 7: Duties:** The duties of the Officers are as follows:

- A. President.** The President shall preside at all Property Owner meetings and meetings of the Board of Directors. The President shall appoint all Committee Chairpersons subject to the approval of the Board of Directors. The President shall also perform such other duties as may be prescribed by the Board of Directors from time to time.
- B. Vice President(s).** The Vice President (or in the event there is more than one Vice President, the Vice President in the order designated, or in the absence of any designation, then in the order of their election) shall act in the place and instead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required or assigned by the Board or the President.
- C. Secretary.** The Secretary shall record the votes and/or cause to be kept the minutes of all meetings and proceedings of the Board and of the Property Owners; keep the corporate seal of the Corporation and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Property Owners; keep appropriate current records showing the Property Owners, together with their addresses; certify the voting rights of Property Owners from time to time and collect the votes of the Property Owners at any meeting of the Property Owners; and shall perform such other duties as required by the Board.
- D. Treasurer.** The Treasurer shall receive and/or cause to be deposited in appropriate bank accounts all moneys of the Corporation and shall disburse such funds as directed by resolution of the Board of Directors; shall be authorized to co-sign checks and promissory notes of the Corporation; keep proper books of account; cause an annual audit of the Corporation books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at the regular annual meeting, and shall cause a summary of said report to be available to each Property Owner.

## ARTICLE VI GENERAL MANAGER

The General Manager shall be the Registered Agent and Chief Operational Officer of the Corporation and is responsible for the proper management of all aspects of the Corporation's activities so as to ensure maximum Property Owner satisfaction; the maintenance and improvement of the Corporation's activities; and the security and protection of the Corporation's assets and facilities. The General Manager reports to the Board of Directors, and is selected by (and serves at the pleasure of) the Board of Directors.

## ARTICLE VII COMMITTEES

The Board of Directors shall appoint such committees it deems appropriate in carrying out its purposes and duties. However, the designation of such committees and the delegation thereto of authority shall not relieve the Board of Directors or any individual Director, of any responsibility imposed by these By-laws or by law. Any non-Director who becomes a member of any such committee shall have the same responsibility with respect to such committee as a Director who is a member thereof. Committee recommendations shall be presented to the Board of Directors for consideration. Consultants may be required from time to time as approved by the Board.

**Section 1: Standing Committees:** The Corporation shall have six (6) advisory committees.

- A. House**
- B. Property and Facilities**

- C. **Lakes**
- D. **Golf**
- E. **Non-Golf Recreational**
- F. **Long Range Planning:** This committee shall consist of at least a majority of the Directors plus at least an equal number of non-Directors.

**ARTICLE VIII  
BOOKS, RECORDS, CONTRACTS, LOANS, CHECKS  
DEPOSITS, TRANSACTIONS WITH TRUSTEES AND OFFICERS**

**Section 1: Contracts.** The Board of Directors may, subject to the limitations contained in Section 2 of this Article VIII, authorize any Officer or Officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**Section 2: Voting Property Owners Major Decisions.** Unless the majority of the Board of Directors and the majority of the Property Owners casting votes agree otherwise (in the manner set forth below), the Board of Directors shall, at no time,

- A. cause the Corporation to incur unsecured debt in an amount in excess of ten percent (10%) of the gross revenues of the Corporation for the preceding calendar year (inclusive of the Annual Assessments and the gross revenues from the operation of facilities owned by the Corporation), in the aggregate; or
- B. cause the Corporation to incur secured debt in an amount in excess of twenty-five percent (25%) of the gross revenues of the Corporation for the preceding calendar year (inclusive of the Annual Assessments and the gross revenues from the operation of facilities owned by the Corporation), in the aggregate;
- C. cause any and all indebtedness, including any indebtedness unsecured or secured, to be repaid more than seven (7) years after the date such indebtedness is incurred. In no event shall any property owned by the Corporation be mortgaged or pledged as security for any loan, other than as authorized by these By-laws.

As provided in A, B & C above, the majority of the Board of Directors and the majority of Property Owners casting ballots must approve any modification or amendment of these requirements for them to be effective. The modification or amendment approved in the manner provided by these By-laws shall apply only to the specific transaction or transactions, unless the provisions of this Section 2 are modified by an amendment to these By-laws.

Voting procedures are set forth in Article III, Section 8.

**Section 3: Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation, shall be signed by such Officer or agent of the Corporation and in such manner as shall, from time to time, be determined by Resolution of the Board of Directors or as permitted by these By-laws.

**Section 4: Deposits.** All funds of the Corporation not otherwise employed shall be deposited to the credit of the Corporation in such banks, savings and loan associations or other depositories as the Board of Directors may select.

**Section 5: Transactions with Directors and Officers.** All contracts, transactions and acts entered into by the Directors and/or Officers on behalf of the Corporation shall be at “arm’s length” and not violative of the limitations provided in the Articles of Incorporation or these By-laws against the Corporation’s use or application of its funds for private benefit; and provided further that no contract or transaction shall be entered into on behalf of the Corporation if such contract or transaction is a prohibited transaction or would result in the denial of the tax exemption of the Corporation under any section of the Internal Revenue Code or Regulations.

In no event may the Corporation lend, contract for a loan, or issue evidence of indebtedness to any Director, Officer or Disqualified Persons (as that term is defined in the Internal Revenue Code). Moreover, the Directors of the Corporation who vote for or assent to the making of a loan to a Director or Officer of the Corporation or to such Disqualified Person and any Officer or Officers participating in the making of such loan, shall be held jointly and severally liable to the Corporation for the amount of such loan until repayment thereof.

**Section 6: Indemnity of Directors and Officers.**

- A. Subject to the exceptions and limitations contained in B. below:
  - (1) Every person who is, or has been a Director or Officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by law against liability and against all expenses reasonably incurred or paid by him or her in connection with any claim, action, suit or proceeding in which he or she becomes involved as a party or otherwise by virtue of his or her being or having been a Director or Officer and against amounts paid or incurred by him or her in the settlement thereof;
  - (2) The words “claim,” “action,” “suits” or “proceedings” shall apply to all claims, actions, suits or proceedings (civil, criminal or other, including appeals), actual or threatened, made or commenced subsequent to the adoption of these By-laws; and the words “liability” and “expenses” shall include, without limitation, attorneys’ fees, costs, judgments, amounts paid in settlement, fines, penalties, and other liabilities.



- B.** No indemnification shall be provided hereunder to a Director or Officer or any other individual:
- (1) against any liability by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office;
  - (2) with respect to any matter as to which he or she shall have been finally adjudicated not to have acted in good faith in the belief that his or her action was in the best interests of the Corporation;
  - (3) with respect to any criminal actions wherein that Director or Officer or any other individual pleads or is found to be guilty or pleads nolo contendere;
  - (4) in the event of a settlement unless there has been a determination that such Director or Officer or any other individual did not engage in willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office;
    - a) by the Court or other body approving the settlement; or
    - b) by vote of not less than two-thirds (2/3) of those members of the Board of Directors, constituting at least a majority of such Board, who are not themselves involved in the claim, action, suit or proceeding; or
    - c) by written opinion of independent counsel, appointed by the Court.
- C.** The rights of indemnification herein provided:
- (1) may be insured against by policies maintained by the Corporation;
  - (2) shall continue as to a person who has ceased to be such Director or Officer;
  - (3) and shall inure to the benefit of the heirs, executors and administrators of such a person.
- D.** Expenses in connection with the preparation and presentation of a defense to any claim, action, suit or proceeding of the character described above may be advanced by the Corporation prior to final disposition thereof upon receipt of an undertaking by or on behalf of the Director or Officers, secured by a surety bond or other suitable insurance issued by a company authorized to conduct business in the State of Texas, to repay such amount if it is ultimately determined that he or she is not entitled to indemnification.

**Section 7: Financial Records and Annual Reports.** The Corporation shall maintain true and accurate current financial records with full correct entries made with respect to all financial transactions of the Corporation, including all income and expenditures, in accordance with generally accepted accounting practices. The books, records and papers of the Corporation shall at all times, during reasonable business hours, be subject to inspection by any Property Owner. The Declaration, the Articles of Incorporation, the By-laws of the Corporation and the minutes of all meetings and proceedings of the Board and the Corporation shall be available for inspection by any Property Owner at the principal office of the Corporation. Property Owners may purchase copies of such at a reasonable cost.

**Section 8: Fiscal Year.** The fiscal year of the Corporation shall begin on January 1 and end on December 31 of every year.

## **ARTICLE IX** **ANNUAL ASSESSMENTS; MAINTENANCE FUND**

**Section 1: Assessments.** As more fully provided in the Declaration, each Property Owner is obligated to pay to the Corporation an Annual Assessment charge, which is used to create a fund known as the Maintenance Fund and is secured by a continuing lien upon the Lot against which such Assessment is made. Any Assessments not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Assessment may bear interest from the date of delinquency at the rate specified in the Declaration, and the Corporation may bring action at law against the Property Owner personally obligated to pay the same or foreclose the lien against such Property Owner's Lot, and interest, costs, and reasonable attorney fees of such action shall be added to the amount of such Assessment. No Property Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or Facilities or abandonment of the Lot or Lots.

The annual assessment of a Property Owner who is 75 years or older and has been a property owner for 10 years will be fixed at the rate for the year the application is made and is accepted by the Board of Directors of the Elkins Lake Recreation Corporation. The surviving Spouse of a deceased Property Owner who previously qualified for and whose application for fixed fees was accepted, may continue to qualify for the fixed fee rate even if he / she does not personally qualify. Fixed fees may not be transferred to any other person for any reason. It is the responsibility of the Property Owner to provide the Board of Directors with proof of age and ownership to qualify for the fixed rate. The application of the fixed rate for the Annual Assessment will apply to only one property regardless of the number of properties owned. In the event the annual dues are reduced below the owner's fixed rate, the owner is entitled to the lower rate.

**Section 2: Increases in Assessments.** Unless the Voting Property Owners agree otherwise, in the manner set forth in Section 3 of this Article IX below, the Annual Assessments charged to Property Owners of Lots in the Elkins Lake Subdivision shall not be increased by an amount greater than ten percent (10%) per year. The right to increase the Annual Assessment shall not be cumulative.

**Section 3: Membership Decision.** The Annual Assessments may be increased above that provided in Section 2 above, by the affirmative approval of (a) a majority of the Board of Directors and (b) the majority of Property Owners voting via written ballots.

Voting procedures are set forth in Article III, Section 8.

**ARTICLE X  
DIVIDENDS AND INCOME OF THE CORPORATION**

No dividends shall be paid and no part of the income of the Corporation shall be distributed to or inure to the benefit of Directors, Officers, Property Owners or any individual, except upon total dissolution of the Corporation, and in that event according to the Texas Non-Profit Corporation Act, as amended.

**ARTICLE XI  
CORPORATE SEAL**

The Corporation shall have a seal in circular form having within its circumference the words:  
ELKINS LAKE RECREATION CORPORATION.

**ARTICLE XII  
MISCELLANEOUS**

**Section 1: Amendments.** These By-laws may be amended at any time by the affirmative approval of (a) a majority of the Board of Directors and (b) sixty percent (60 %) of the Property Owners voting via written ballots.

Voting procedures are set forth in Article III, Section 8. Ballots shall contain the precise wording of each proposed amendment.

If the proposed amendment to the By-laws is approved by a majority of the Board of Directors and sixty percent (60 %) of the Property Owners voting, the Board of Directors shall prepare a formal amendment of the By-laws as so approved.

**Section 2: Conflicts.** In the case of any conflict between the Articles of Incorporation and these By-laws, the Articles of Incorporation shall control. In the case of any conflict between the Declaration and these By-laws, the Declaration shall control.

**Section 3: Notices and Ballots.** Any notice permitted or required to be given under these By-laws shall be in writing and shall be delivered by United States Mail, adequate postage prepaid, addressed to the last known address of the party to whom such notice is to be given according to the most recent records of the party sending such notice. The Corporation shall retain full and complete records of the list of all Property Owners and others to whom notices were sent, including the address of such Property Owners and others.

**Section 4: Severability.** Each of the provisions of these By-laws shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**Section 5: Terminology.** The use of any gender herein shall be applicable to all genders; the singular shall include the plural and vice versa.

**Section 6: Covenant to Obey Laws, Rules and Regulations.** Each Property Owner shall be subject to the Declaration and shall abide by the By-laws and the rules and regulations as the same are, or may from time to time be established by the Board of Directors. Each Property Owner shall observe, comply with and perform all rules, regulations, ordinances and laws made by any governmental authority or any municipal, state and federal government having jurisdiction over the Properties or any part thereof.

END