

# BYLAWS OF THE EVERGREEN MEADOWS HOMEOWNERS ASSOCIATION

As approved at the 1990 Annual Meeting

## Article I. NAME AND LOCATION

In accordance with the Articles of Incorporation heretofore filed with the Secretary of State of Colorado, the name of this association shall be: EVERGREEN MEADOWS HOMEOWNERS ASSOCIATION, INC. The principal address of the corporation shall be known as P.O. Box 2228, Evergreen, Colorado 80439, but meetings of Members and directors may be held at such places within the State of Colorado, County of Jefferson, as may be designated by the Board of Directors.

## Article II. OBJECTIVES

In accordance with the Articles of Incorporation, the primary objectives of this Association shall be to represent the interests of the property Owners who have paid all dues and are Members of the Evergreen Meadows Homeowners Association as herein described, to protect and enhance the value of the area, to enforce the protective covenants, and also to have and exercise the rights and powers provided for in said Articles of Incorporation. However, pursuit of the primary objectives stated above shall not be to the exclusion of the interests of property Owners who are not Members of the Evergreen Meadows Homeowners Association.

## Article III. DEFINITIONS

**Section 1. "Association"** shall mean and refer to Evergreen Meadows Homeowners Association, Inc., its successors and assigns.

**Section 2. "Board"** shall mean and refer to the Board of Directors of the Evergreen Meadows Homeowners Association.

**Section 3. "Common Area"** shall mean all the real property, including improvements thereon owned by the Association for the common use and enjoyment of the Owners of the Properties; specifically Tract R-1, Unit 4; Tract P-1, Tract P-2, Tract P-3, Tract A, Unit 6; Tract D, Unit 8; and any other Lots or Tracts that may be owned by the Association in the future.

**Section 4. "Declaration"** shall mean and refer to the Declaration of Covenants and Restrictions applicable to the Properties recorded in the Office of the Clerk and Recorder of Jefferson County, Colorado on December 30, 1988 under Reception Number 88126241.

**Section 5. "Lot"** shall mean any numbered plat of land shown upon any recorded subdivision plat of the Properties which is not designated as Common Area.

**Section 6. "Member"** shall mean and refer to the Owner of a Lot who has paid all current annual dues as provided in the Declaration of Covenants and Restrictions and the Bylaws of the Association.

**Section 7. "Membership"** shall mean the status of being a Member of the Evergreen Meadows Homeowners Association by virtue of being an Owner and having paid current annual dues. The Lot and Unit Number of the Property for which dues are paid must be identified by those Members who own multiple Lots. Dues on only one Lot must be paid to become a Member. Annual Membership will be conveyed with the transfer of ownership of the Lot.

**Section 8. "Owner"** shall mean the Owner of record of fee simple title to any Lot situated upon the Properties, whether one or more persons or entities, including a seller of a land contract, but shall not mean a mortgagee.

**Section 9. "Properties"** shall mean and refer to that certain real property described in the subdivision plat for Evergreen Meadows Units 1-9, County of Jefferson, Colorado, and any additions thereto which are subject to the Declaration or any supplemental Declaration.

## **Article IV. MEETING OF MEMBERS**

**Section 1. Annual Meetings.** The annual meeting of the Membership of the Association shall be held in September or October of each year at such convenient place and time as may be determined by the Board of Directors and designated in the notice of such meeting.

**Section 2. Special Meetings.** Special meetings of the Members may be called at any time by the President or by a majority of the Board of Directors, or upon written request of 25% the Members.

**Section 3. Notice of Annual and Special Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, first class postage prepaid, not less than fifteen (15) days nor more than fifty (50) days before such meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 4. Voting.** Only Members shall be eligible to vote. Each Member may cast only one vote per Lot owned. Members owning multiple Lots may cast one vote per each Lot owned and for which current annual dues have been paid.

**Section 5. Quorum.** Twenty percent (20%) of the Members shall constitute a quorum for the conducting of official business at any meeting of the Association. If a quorum is not present, the President of the Association or the Members present may adjourn the meeting to any date within three (3) weeks. Fifteen percent (15%) of the Members shall constitute a quorum for this secondary meeting. In any case, not more than 20% of the quorum can be made up by proxies. Such postponed meeting, when held, shall have the same force and effect as if held at the original time. Notice of such postponed meeting shall be mailed to each Member at least seven (7) days prior to the date of said postponed meeting via first class mail. In the event a quorum is not met after the second attempt, and at the discretion of the Board of Directors, the Association may become inactive, see Article XV. For reactivation procedures, see Article XVI.

**Section 6. Proxies.** At all meetings of Members, each Member may vote in person or by proxy appointed in writing by the Member or by his duly-authorized attorney-in-fact. All proxies shall be filed with the Secretary of the Association before or at the time of the meeting. Unless otherwise provided in the proxy, a proxy may be revoked at any time before it is voted, either by written notice filed with the Secretary of the meeting, or by oral notice given by the member to the presiding officer during the meeting. The presence of a member who has filed his proxy shall not of itself constitute a revocation. Persons exercising proxies must be a Member of the Association. No Member may hold more than five (5) proxies at any given time. All proxies shall automatically cease upon conveyance by the Member of his Lot. The Board of Directors shall have the power and authority to make rules establishing presumption as to the validity and sufficiency of proxies.

## **Article V. BOARD OF DIRECTORS**

**Section 1. Number and Election of Directors.** The principal policy-making body of the Association shall be a Board of Directors of five (5) to seven (7) Members. Nomination for election to the Board of Directors shall be made by a Nominating Committee or from the floor at the annual meeting. All persons nominated must be Members. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under provisions of these Bylaws. Those persons receiving at least a majority of the votes cast shall be elected. Cumulative voting is not permitted. If more than seven (7) persons receive a majority vote, the seven (7) with the greatest number of votes shall be elected and shall serve from January 1 of the following year until December 31 of that same year. In the event the Association becomes inactive, the Board Members shall serve until the Association is reactivated as per Article XVI or until the Corporation has been dissolved in accordance with applicable Colorado law.

**Section 2. Removal and Vacancies.** Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association present in person or by proxy at a duly called meeting. The Board of Directors, at its discretion, may vacate the position of any Director who places his property on the market for sale or who leases it for a period of more than six months in any calendar year. Any Director may resign at any time giving written notice to the Board. 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 make it effective. In the event of death, resignation or removal of a director, a successor may be appointed by the remaining Members of the Board and shall serve to complete the remaining unexpired term of the vacated Board position.

**Section 3. Suspension of Board Members.** The failure of any Director to attend scheduled Board meetings for three consecutive meetings shall terminate his office as Director, unless excused by the Board. Scheduled meetings for this purpose shall mean meetings for which at least seven (7) days advance notice was given.

**Section 4. Compensation.** No Director shall receive compensation for any service he may render to the Association. However, any Director shall be reimbursed for authorized expenses reasonably incurred in the performance of his duties.

**Section 5. 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 the written approval of all of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

**Section 6. Indemnification.** The Association shall indemnify its Directors and officers to the full extent permitted by Colorado law. Each Director and officer of the Association shall be indemnified by said Association against the actual amount of expense or loss (less the amount paid by members, if any), including attorney fees, reasonably incurred by or imposed on him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or officer, except as to matters in which he shall be finally found to be liable for gross negligence or willful misconduct. In the event of a settlement of such matter, indemnification shall be provided only in connection with such issues covered by the settlement to which the Association is advised by an independent and qualified arbitrator that the person to be indemnified has not been guilty of gross negligence or willful misconduct.

**Section 7. Liability.** The personal liability of a Director to the Association or its Members for monetary damages for breach of fiduciary duty is eliminated; except that this shall not eliminate or limit the liability of a Director to the Association or its members for monetary damages for: Any breach of the Director's duty of loyalty to the Association or its Members; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; loans as specified in C.R.S., Section 7-24-111; or any transaction from which the Director derived an improper personal benefit; or any act or omission occurring prior to the date when this provision becomes effective. Each Member shall be bound by the good faith actions of the Directors and the officers in the execution of the duties of said Directors and officers.

## Article VI. MEETINGS OF DIRECTORS

**Section 1. Regular Meetings.** Regular meetings of the Board of Directors shall be held on notice, at such place and hour as may be fixed from time to time by resolution of the Board but in no case shall there be less than one regular Board Meeting during any calendar quarter.

**Section 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than two (2) days notice to each director.

**Section 3. Joint Meeting.** A meeting of the existing and newly elected Boards of Directors of the Association shall be held within thirty (30) days after the annual meeting of the Association for the purpose of electing officers for the ensuing year.

**Section 4. Quorum.** A majority of the Board of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. If there is no quorum at a meeting, a majority of the Directors present may postpone the meeting to an agreed upon time and all Directors shall be notified.

**Section 5. Voting.** At any meeting of the Board of Directors, the presiding officer shall have no vote, except in the case of a tie vote. All votes shall be carried by a simple majority, unless otherwise specified in these Bylaws.

## **Article VII. RESPONSIBILITIES, POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 1. Responsibilities.** The Board of Directors shall supervise, control and direct the affairs of the organization; shall determine its policies and changes therein within the limits of the Bylaws; shall actively pursue its objectives; shall adopt a budget for each fiscal year; and shall have discretion in the disbursement of its funds consistent with such objectives. It may adopt such rules and regulations for the conduct of its business as may be deemed advisable and may, in the execution of its powers, appoint such agents or committees as it may consider necessary. Resolutions and decisions by the Board of Directors on major policy matters affecting the Association shall be subject to review and approval by the Members. Such matters shall require approval by a majority vote of Members present at the next regular or special meeting of the Association, providing adequate notice of the subject matter has been provided in advance.

**Section 2. Powers.** The Board of Directors shall have the power to:

(a) create by resolution such committees as are deemed necessary and which shall have the authority of the Board within the limitations of the law.

(b) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties and enforcement procedures for the infraction thereof;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, the Declaration of Covenants, or the Colorado Revised Statutes for the efficient management and general welfare of the Association;

(d) engage independent contractors, or others as they deem necessary, and to prescribe their duties.

(e) represent the Association in obtaining the enforcement of rules, regulations and restrictions concerning the zoning of the property in Evergreen Meadows Subdivision in respect to the covenants, size of building sites, location, architecture, and design of buildings and sanitary facilities and concerning the use of the structures and Lots.

(f) the Board of Directors shall not spend or obligate more funds than are in the treasury at the time the expenditure is authorized except as provided in this paragraph. No authorization may be given for the borrowing or lending of money or for the purchase or sale of any personal or real property or for the mortgaging or the placing of any encumbrance or lien upon any real property of the Association unless approved by a two-thirds (2/3) majority of the Members voting at a meeting called in accordance with these By-Laws.

(g) only in the event Association funds are inadequate to purchase adequate insurance required by these Bylaws, the Board shall have the power to assess each Owner their proportionate share of the annual premiums for such insurance, whether or not the Association is inactive as described in Article XV.

**Section 3. Duties.** It shall be the duty of the Board of Directors to:

(a) enforce the Protective Covenants of the Association in a reasonable and fair manner;

(b) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members;

(c) supervise all officers, agents of the Association, and those engaged by the Association, and to see that their duties are properly performed;

(d) procure and maintain adequate liability and hazard insurance on property owned by the Association, adequate liability insurance for all officers and directors, and worker's compensation insurance coverage when necessary and appropriate;

(e) cause all officers or those having fiscal responsibilities to be bonded, as it may deem appropriate;

## Article VIII. OFFICERS AND THEIR DUTIES

**Section 1. Enumeration of Officers.** The officers of this Association shall be a president, a vice-president, a secretary and a treasurer. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices.

**Section 2. Election of Officers.** Only the newly-elected Directors shall cast secret ballots for the election of officers for the ensuing year at a meeting held in accordance with Article VI, Section 3. The results of such election, including the names of Committee Chairpersons, shall be made available to all Members before January 1 of the next year.

**Section 3. Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**Section 4. Resignation and Removal.** Any officer may be removed from office with or without cause by a 2/3 majority vote of the Board. Any officer may resign at any time giving written notice to the Board. 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 make it effective.

**Section 5. Vacancies.** A vacancy in any office shall be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the unexpired term.

**Section 6. Duties.** The duties of the officers are as follows:

**a) President:** If possible, the President should have served at least one (1) year as a member of the current Board of Directors. The President shall preside at meetings of the Association and at meetings of the Directors. The President shall, with the Secretary, sign the written contracts of the Association and shall perform such other duties as the Directors may prescribe.

**b) Vice-President:** The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. In the absence of both the President and the Vice-President, the Board of Directors may elect a President pro tem.

**c) Secretary:** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; cause to be kept appropriate current records showing the Members of the Association together with their addresses; shall, together with the President, sign the written contracts of the Association; shall file an annual Corporate Report with the Secretary of State providing the name and address of current Secretary as the registered office of the Association; and shall perform such other duties as required by the Board.

**d) Treasurer:** The treasurer shall be bondable and shall be responsible for the collection of all monies payable to the Association, and shall be responsible for the custodianship of the funds and securities of the Association by having same deposited in such bank or banks as are approved by the Board. All checks covering the disbursement of funds so held in the custody of the Treasurer shall be signed by any two (2) of the persons designated by the Board for such purposes. The Treasurer shall be responsible for keeping the accounts of the Association, and shall report thereon at each regular meeting of the Board of Directors. The Treasurer shall prepare an annual report and a year to date report which shall be made available to all Members before the annual meeting. Following the Treasurer's term of office, he shall prepare a written report on the prior fiscal year and shall submit such report to the Board by January 15 of each year. The Treasurer shall cooperate fully with any review of the books deemed necessary by the Board.

## Article IX. COMMITTEES

**Section 1. Special Ad Hoc Committees.** The Board shall annually appoint such special or ad hoc committees as may be desired.

**Section 2. Operating or Administrative Committees.** The Board of Directors shall appoint the Chairman of all committees. The following shall constitute standing committees:

a) **Architectural Review Board Committee** - The Architectural Review Board Committee shall review and approve such construction within Evergreen Meadows as is outlined in the Protective Covenants in accordance with their published Guidelines. Written records shall be kept regarding the review of all submittals, approvals and rejections. Enforcement of the Guidelines and the applicable Covenants shall be unbiased.

b) **Audit and Finance Committee** - The Audit and Finance Committee shall consist of the Treasurer, the President, and at least one other individual not on the Board of Directors. The non-Board Member(s) shall be elected at the Annual Meeting of the Association. The function of the Audit and Finance Committee shall be to audit and review the books of the Association after the end of each fiscal year and at other such intervals as the Board of Directors may prescribe, or upon the written request of at least 1/4 of the Members. Written reports of findings from the annual audit shall be made to the Board of Directors by January 31 each year.

c) **Covenants Control Committee** - The Covenants Control Committee shall be responsible for the fair and reasonable enforcement of the Protective Covenants of the Association and shall report on it's activities at all Board meetings or when requested by the Board. Written records shall be kept by the Covenants Control Committee regarding all complaints, correspondence and resolution of Covenants Control issues. The Covenants Control Committee shall be responsible for representing the Association's interests in any legal proceedings which may result from a covenants violation. Enforcement of the Covenants shall be unbiased.

d) **Nominating Committee** - The Nominating Committee shall consist of two members of the Board of Directors and two or more Members of the Association who shall be elected by the Members at the Annual Meeting and shall serve until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than five. All persons nominated shall be Members.

Members of all committees shall be appointed by the Board and thereafter reappointed on an annual basis, provided, however, that each committee shall consist of at least three (3) individuals, including two Board members.

**Section 3. Notification of Adverse Committee Decisions.** When any committee reaches a decision or recommendation adverse to any Member, notification of such decision shall be given to the affected Member within 10 days of the decision. Notification shall be sent by certified mail, return receipt requested, and shall include an explanation of the Members' right to appeal the decision as provided in these Bylaws.

**Section 4. Appeals.** Any Committee's decisions may be appealed to the Board within thirty (30) days of the notification of said decision. An appeal to the Board shall be submitted in writing listing reasons and providing evidence why the Committee's decisions should be modified. The Board, upon receipt of such appeal, shall schedule an informal hearing within twenty-one (21) days for the purpose of receiving testimony and evidence. The Board shall thereafter render all decisions and findings in writing to the appellant with a duplicate copy to the Chairman of the involved committee. Board members who are also members of a committee involved in an appeal shall have no vote in the appeal decision but shall be allowed to participate in the appeal hearing.

## Article X. BOOKS AND RECORDS

**Section 1. Recordkeeping.** The Association shall maintain adequate and correct accounts, books, and records of its business and funds. All of such books, records, and accounts shall be kept at it's principal place of business in the State of Colorado, as may be fixed by the Board of Directors from time to time. Upon the expiration of the term of office of any officer(s) and director(s), whether through resignation or succession, all books and records in the possession of the outgoing officer(s) or director(s) shall be turned over to the Association within 2 weeks of said expiration or resignation.

**Section 2. Audit.** An audit of the books shall be made at the end of each fiscal year by the Audit and Finance Committee and may be taken at such other intervals as the Board of Directors may prescribe. Upon Board direction, the accounts may be reviewed and/or audited by an independent firm of certified public accountants, engaged by the Board of Directors.

**Section 3. Inspection.** The books of accounts and minutes of proceedings of the Members and the Board of Directors shall be open to inspection upon the written demand of any Member, at any reasonable time, with at least ten (10) days written notice, and for a purpose reasonably related to his or her interest as a Member. Such inspection shall be made in person or by an agent or attorney, and shall include the right to make copies, for which there may be a reasonable charge. Demand of inspection other than at a Members' meeting shall be made in writing upon the President and Secretary of the Association.

## **Article XI. MEMBERSHIP AND DUES**

**Section 1. Membership.** Membership in this Association shall be restricted to Owners of Lots located within the Evergreen Meadows Subdivision as previously defined in Article III. The legal Owner or Owners of one or more Lots shall be eligible for Membership in the Association. Where legal ownership is held in common by more than one party, such parties shall constitute one Membership.

**Section 2. Dues.** Each membership of the Association shall pay such annual dues on or before April 1, or as the Board of Directors shall prescribe. Membership annual dues in excess of Twenty-Five Dollars (\$25.00) may not be levied without prior consent of a two-thirds (2/3) majority vote of the Members present at any duly constituted annual or special meeting. However, the Board of Directors shall have sole discretionary power to alter the amount of the annual dues to the aforesaid maximum.

**Section 3. New Owners.** If Membership has not been conveyed with purchase of a Lot, a new Owner may initiate Membership by payment of dues up to the time of the annual meeting.

## **Article XII. CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: Evergreen Meadows Homeowners Association, Inc., Colorado.

## **Article XIII. AMENDMENTS**

These By-Laws may be altered, amended or suspended by a two-thirds (2/3) majority vote of the Members present at any special or annual meeting of the Members called in accordance with Article IV, Section 3. All rights of Membership shall be subject to such power of amendment. Changes to these By-Laws may be proposed by either the Board of Directors or by petition of at least 1/4 of the Members. A proposed By-Laws change shall be mailed with the notice of annual or special meeting. Alteration to wording without change of intent can be accomplished at the meeting by a two-thirds (2/3) majority vote of the Members present.

## **Article XIV. MISCELLANEOUS**

**Section 1. Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

**Section 2. Fractions of Majority Vote.** For voting purposes, when a fraction is involved in obtaining a required majority, rounding up to the next whole number is required.

## **Article XV. INACTIVE STATUS OF THE ASSOCIATION**

**Section 1. Inactive Status.** Only when the Association is unable to meet the quorum requirements of Article IV or when insufficient nominations are made for the Board of Directors as outlined in Article V and then, only with a 2/3 majority vote of the Board, the Association shall become inactive. While inactive, meetings of the Members shall be suspended, publication of newsletters, notices and correspondence shall cease, activities sponsored by the Association shall cease, and all financial responsibilities, other than those required by state law and as

provided for herein, shall be suspended. Adequate insurance coverage shall be maintained during periods of inactivity by the Association.

**Section 2. Maintenance of Records.** The incumbent officers of the Association shall be responsible for the maintenance of all records of the Association until reactivation is initiated as provided herein, or until the Corporation is finally and legally dissolved and legal and tax liability has expired. Should any officer be unwilling or unable to serve in this capacity, he shall be empowered to appoint a successor. Applicable reports and fees shall be filed with the Secretary of State as required of Colorado Corporations.

**Section 3. Perpetuity of Protective Covenants.** It should be expressly understood that even though the Association may become inactive and the Corporation may eventually become defunct, the Protective Covenants of the Association shall not become void; the Protective Covenants shall continue in perpetuity.

## **Article XVI. REACTIVATION**

**Section 1. Reactivation.** The Association may be fully reactivated at any time prior to the legal dissolution of the Corporation by a simple majority vote of Owners present at a special meeting called for that purpose and upon election of a new Board of Directors as outlined in this Article XVI.

**Section 2. Notice and Quorum for Reactivation Meeting.** Notice shall be mailed by first class mail to all Owners of record at least fifteen (15) days and no more than fifty (50) days prior to the date of the Reactivation Meeting. Five percent (5%) of the Owners shall constitute a quorum for the conducting of official business at this meeting and each Owner shall be entitled to one vote per lot owned.

**Section 3. Election of Board of Directors.** Upon opening the Reactivation Meeting, the first order of business shall be the election of a new Board of Directors. This shall be done in accordance with Article V, Section 1 of these Bylaws, except that all nominations shall be taken from the floor of the special meeting.