

# **BYLAWS**

## **OF**

## **EVERGREEN ESTATES SERVICE ASSOCIATION, INC.**

### **(The “Corporation”)**

#### **ARTICLE I        Name**

The name of the association shall be “Evergreen Estates Service Association, Inc.”

#### **ARTICLE II        Principal Office**

The principal office of the Corporation shall be located at the home of the President of the Board of Directors, currently located at 1839 Cypress Way, West Fargo, North Dakota. This location may be changed from time to time, subsequent to the election, dismissal or resignation of a Board member, without amendment to the Bylaws.

#### **ARTICLE III        Definitions**

- 3.1    “Approval” shall mean and refer to the issuance by any public agency of written approval, or any written waiver of approval rights or a letter of “no objection”.
- 3.2    “Association” shall mean Evergreen Estates Service Association, Ind., its successors, and assigns.
- 3.3    “Board” shall mean and refer to the Board of Directors of the Association.
- 3.4    “Builder” shall mean and refer to Adamar Development, LLC d/b/a Heritage Homes.
- 3.5    “Certified Notice” shall mean and refer to any notice that has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered to the address of the intended recipient. In case of refusal, ordinary mail then constitute due notice.
- 3.6    “Common Areas” shall mean and refer to all real property for maintenance and improvements thereon owned or leased by the Association or over which the association has an easement for the common use and enjoyment of the Members.

- 3.7 "Covenants Committee" shall mean and refer to that committee appointed by the Board of Directors, the duties of which shall include regulation of the external design appearance and location of the Properties and improvements, and to monitor and enforce compliance with the Governing Documents.
- 3.8 "Declaration" shall mean this Declaration of Covenants and Restrictions and the covenants, conditions and restrictions and all other provisions herein set forth, as the same may from time to time be amended.
- 3.9 "Developer" shall mean and refer to Adamar Development, LLC, d/b/a Heritage Homes, its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or by operation of law.
- 3.10 "Easements" shall mean those easements which are dedicated as such on the plat of Charleswood Twenty First Addition.
- 3.11 "First Mortgage" shall mean and refer to an Institutional Lender who holds the first mortgage on a Unit and who has notified the Association of its holdings.
- 3.12 "Governing Documents" shall mean and refer collectively and severally to the Bylaws, the Declaration of the Covenants and Restrictions, Articles of Incorporation, or other documents created by the Board of Directors and approved by the members, as such may be amended from time to time.
- 3.13 "Institutional Lender" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, business trusts, or other similar lenders, including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction or improvement of real estate or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.
- 3.14 "LDC" shall mean The Land Development Code of the City of West Fargo, North Dakota.
- 3.15 "Lot" shall mean and refer to any buildable parcel of land shown upon the recorded plat of Charleswood twenty First Addition for the use solely as single family residential purposes.
- 3.16 "Member" shall mean and refer to members of the Association that shall consist of all Owners and all Occupants.

- 3.17 "Notice" shall mean and refer to written notice delivered personally or mailed to the last known address of the intended recipient.
- 3.18 "Occupant" shall mean and refer to the occupant of a unit who shall be the Lot Owner, a contract purchaser, or a lessee who holds a written lease having an initial term of at least six (6) months.
- 3.19 "Owner" shall mean and refer to (1) the record holder of the fee simple title to any Lot, whether one or more persons or entities and (2) contract for deed buyer. The term shall exclude those having an interest merely as security for the performance of an obligation, as well as any tenant.
- 3.20 "The Properties" shall mean and refer to all real property this is subject to the Declaration.
- 3.21 "Quorum of Members" shall mean the representation by presence or proxy of Members who hold seventy-one percent (71%) of the outstanding votes of each voting class.
- 3.22 "Single Family" shall mean and refer to a single housekeeping unit, which consists of not more than three adults who are legally unrelated.
- 3.23 "Unit" shall mean and refer to any portion of a structure situated upon The Properties designed and intended for use and occupancy as a resident by a Single Family.

## **ARTICLE IV        Purpose**

- 4.1 This corporation does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are:
  - a) To provide for maintenance, preservation and architectural control of the Common Areas, within that certain tract of property commonly known as Evergreen Estates of Charleswood, located in Charleswood Twenty First Addition.
  - b) To promote the health, safety and welfare of the residents within the above described property.

- c) To exercise any and all powers, rights and privileges that a corporation organized under the law of the State of North Dakota may now or hereafter have or exercise.
- d) To exercise all of the powers and privileges and to perform all of the duties and obligations of the corporation as set forth in the Declaration of the Covenants and Restrictions, hereinafter called the “Declaration”, and all Supplementary Declarations applicable to the property and recorded in the Office of the County Recorder of Cass County, North Dakota, and herein, as may be amended from time to time as therein provided.

## **ARTICLE V      Property Subject to the Bylaws**

### **5.1      Existing property**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all of Charleswood Twenty First Addition to the City of West Fargo, North Dakota, and represents the Development known as Evergreen Estates.

#### **5.2.1      Merger**

In accordance with its Articles of Incorporation, the property, rights and obligations of this Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes. Alternatively, the properties, rights and obligations of an association similar in corporate nature and purposes may, by operation of law, be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidations, however, shall affect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided. Such merger or consolidation shall have assent of seventy-five percent (75%) of the members.

## **ARTICLE VI      Organization and Membership of the Association**

### **6.1      Organization**

- a) The Association. The Association is a “not-for-profit” corporation organized and existing under the laws of North Dakota. The Association is charged with the duties and vested with powers prescribed by law and

set forth in the Governing Documents, as such may be amended from time to time.

- b) Subsidiary Corporations. Where lack of staff, proficiency or equipment limits its ability to perform its functions, the Association shall have the right to form one or more subsidiary corporations, for any purpose or purposes deemed appropriate by a majority vote on the Board and of a Quorum of Members. Without limiting the generality of the foregoing, one or more subsidiary corporations may be formed for the operation and maintenance of any specific area or to perform any function within the Properties. However, such subsidiary corporation shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Members.

## 6.2 Membership

- a) Definition

Members shall include all Owners. Membership shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except as provided in the Governing Documents.

- b) Member's Rights and Duties

Each Member shall have the rights, duties and obligations set forth in the Governing Documents

- c) Voting Rights.

Members shall be all Owners. Members shall be entitled to one vote for each Lot owned. Where a Lot is owned by more than one person, each such Owner shall be a Member, but there shall be only one vote cast for each Lot.

Members shall vote to approve an increase in the maximum annual assessments that is greater than allowed by the Declaration; to approve special capital improvement assessments, to approve mergers, consolidations or dissolution of the corporation; to approve conveyance, dedication or mortgaging of the Common Areas; and to approve amendments to this Declaration or to any Supplementary Declaration.

Members shall vote to approve amendments to the Articles of Incorporation or the Bylaws and to elect Directors.

Except as provided otherwise by law, in the Declaration, or these Bylaws, where a vote of the Members is required, the Board of Directors shall determine by resolution whether the question shall be decided by ballot vote at a meeting or by mail or at polling places designated by the Board, and shall give notice thereof as provided in the Bylaws.

d) **Exercise of Vote**

The vote for any membership that is held by more than one person may be exercised by any one of them, unless an objection or protest by any co-holder of such membership is made prior to the completion of a vote, in which case the vote for such membership shall not be counted.

## **ARTICLE VII      Board of Directors**

- 7.1      The Board of Directors shall have all powers for the conduct of the affairs of the Association that are enabled by law that are not specifically reserved to Members, the Developer or the Covenants Committee.
- 7.2      The Board of Directors shall exercise its powers in accordance with the Governing Documents
- 7.3      Without limiting the generality thereof, the Board shall have the power and obligation to perform the following duties:
  - a) Real and Personal property. To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except that the acquisition, mortgaging or disposal of Common Area or improvements shall be subject to the provisions of Article V and the Declaration, respectively.
  - b) Rule Making. To establish rules and regulations for the use of the property as provided in the Declaration, and to review, modify and approve architectural standards proposed by the Covenants Committee, and to establish regulations, from time to time, as to use of the designated guest parking area, including hours of permitted use.
  - c) Assessments. To fix, levy and collect assessments as provided in the Declaration.

- d) Easements. The sole and exclusive power and authority to grant and convey easements to the Common Areas as may become necessary and as provided in the Declaration.
- e) Employment of Agents. To employ, enter into contract with delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct and perform the business obligations and duties of the Association and as provided in the Management Standards Agreement.
- f) Mergers/Consolidations. To participate in mergers and consolidations with other corporations as provided in the Declaration.
- g) Appeals: To decide appeals of Covenants Committee decisions as provided herein.
- h) Enforcement of Governing Documents. To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed, or suspending membership rights, to enforce or effectuate any of the provisions of the Governing Documents.
- i) Power to Convey. To convey all or any part of any Common Area to any public entity or quasi-public entity for public purposes with or without consideration, upon the approval of the Developer and seventy-five percent (75%) of the Members.

7.4 All Board members shall serve 2-year terms, but are eligible for re-election. Election of new directors or election of current directors for a second term shall be the first item of Special Business at the Annual General Meeting of the Association.

7.5 Board members must be voting Members of the Association.

7.6 A quorum of at least 66 2/3 % of the Board members prior to the first annual meeting of the Association are required before business can be transacted or motions can be made or passed.

7.7 An official Board meeting requires that each Board member be given at least seven (7) calendar days notice.

7.8 When a vacancy on the Board exists, nominations for new members may be received from present Board members by the Secretary two weeks in advance of a Board meeting.. These nominations shall be sent out to Board members with the regular Board meeting announcement, to be voted upon at the next Board

member's meeting. These vacancies will be filled only to the end of the particular Board member's term.

7.9 Resignation from the Board must be in writing and received by the Secretary. A Board member shall be dropped for excess absences from the Board if s/he has 3 unexcused absences from the Board meeting in a year. A Board member may be removed for other reasons by a  $\frac{3}{4}$  vote of the remaining directors.

## **ARTICLE VIII      Officers**

The elected officers of the Association, their selection and their terms of office shall be as follows:

**President:** The President shall preside over all meetings of the Association and shall be responsible for the day-to-day affairs of the Association and shall appoint the Chair of the Covenants Committee. The President shall serve for a 2-year term and shall be eligible for re-election. The President shall execute all contracts for the provision of services to or on behalf of the Association

**Vice-President:** Shall perform all the duties of the President in the President's absence or at the President's request and perform such other duties as may be required by the Association. The Vice-President shall serve for a 2-year term and shall be eligible for re-election.

**Secretary:** The Secretary shall be responsible for keeping records of Board actions, including overseeing the taking of minutes at all Board meetings, sending out meeting announcements, distributing copies of minutes and the agenda to each Board member and assuring that corporate members are maintained. The Secretary shall serve for a 2-year term and shall be eligible for re-election.

**Treasurer:** The Treasurer shall make a report at each Board meeting. The Treasurer shall chair any finance committee, assist in the preparation of the budget, and make financial information available to the Board members and Members of the Association. The Treasurer shall serve for a 2-year term and shall be eligible for re-election.

## **ARTICLE IX      Committees**

In addition to the establishment of the Covenants Committee, additional Committees to assist in Association activities may be established or discontinued by the Board. Chairs of these additional committees shall be appointed by the Vice-President and shall serve for 2-year

terms, with reappointment possible for not more than two (2) additional terms, unless otherwise expressly stated.

**Covenants Committee:** This committee shall regulate the external design, appearance, Units and improvement, including the development and monumental signs thereon in accordance with the Declaration and design standards approved by the Board of Directors, and subject to appeal to the Board of Directors. There shall be three (3) members elected from the membership at large to serve on this committee for 2-year terms. The President shall appoint one of the elected members to the chair of the Covenants Committee. The Covenants Committee shall meet at least three (3) times annually, or at such additional times as may be required.

## **ARTICLE X        Meeting**

10.1 An annual meeting of the entire Association shall be called, once per calendar year, by the Board of Directors. The precise date to be determined by the Board of Directors.

10.2 Subsequent to the first annual meeting of the entire Association, the Board of Directors shall provide the Members of the Association at least fifteen (15) days notice of the annual meeting of the Association.

10.3 Association business shall be conducted at the annual meeting by the Members present. There shall be present at least 60% Members, including officers of the Board, present in person or by proxy to constitute a quorum for the purpose of conducting business at the annual meeting.

10.4 Special meetings may be called upon request of the President or 40% of the Board. Notices of special meetings shall be given by the Secretary to each Board member seven (7) calendar days in advance.

## **ARTICLE XI        Checks, Deposits, and Funds**

11.1 All checks, drafts or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Association shall be signed by an officer or officers and in the manner determined by resolution of the Board of Directors. In the absence of such determination, such instruments shall be signed by the President.

11.2 All funds of the Association shall be deposited to the credit of the Association in banks, trust companies or other depositories selected by the Board of Directors.

## **ARTICLE XII        Limitation of Activities**

The Association shall not be operated for profit, save and except that the Association is authorized and empowered to pay reasonable compensation for services rendered.

12.1 The activities of the Association shall be limited to:

- a) Establish rules and regulations for the use of property.
- b) Fix, levy and collect assessments.
- c) Pay all expenses incident to the conduct of business of the Corporation.
- d) Grant and convey easements to the Common Areas. Any easement granted to the Common Areas should not interfere with the rights and use of Members to the use of such Common Areas.
- e) Employ, enter into contract with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the corporation, including the maintenance and repair, *inter alia*, of the private Drives known as Evergreen Way and Cypress Way, the ornamental lighting thereon, the sewer and water services serving Evergreen Estates, and all developmental signs, as well as the monumental sign located in the park.
- f) Acquire, own, hold, maintain, manage, lease, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging or disposal of Common Area or improvements shall be subject to the provisions of the Declaration.
- g) Perform such acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, to enforce or effectuate any of the provisions of the Declaration, any Supplementary Declaration, these Articles, or the Bylaws.
- h) Regulate the external appearance of the Units and improvements thereon in such a manner so as to preserve and enhance values and to

maintain a harmonious relationship among structures and the natural vegetation and topography.

## **ARTICLE XIII      Amendments of Bylaws**

- 13.1 These Bylaws may be amended or revised by a majority vote at an annual meeting of the Association.
- 13.2 Members must be notified in writing of any proposed amendments at least fifteen (15) calendar days of the annual meeting.
- 13.3 An amendment not proposed in advance may be adopted by a 2/3 vote of the voting Members present at the annual meeting.
- 13.4 So long as the Developer shall own any Lot, any amendment(s) to these Bylaws by its Members must receive written approval from the Developer prior to becoming effective. Amendments made without such written approval shall be considered of no effect. This section shall not survive the dissolution of Adamar Development, LLC, or its disposition or ownership of the last of its Lots.

These Bylaws were enacted by the Board of Directors this 1st day of December, 2001.

EVERGREEN ESTATES SERVICE ASSOCIATION, INC.

By: Adamar Development, LLC  
Its: Sole Initial Director and Member

By: \_\_\_\_\_  
Daryl L. Braham  
Its: Chief Operating Officer