

**AMENDED AND RESTATED BYLAWS  
OF  
ACRES GREEN HOME OWNERS' ASSOCIATION  
INCORPORATED**

<b>ARTICLE I.....</b>	<b>4</b>
<b>OFFICES.....</b>	<b>4</b>
Section 1.1 Business Offices.....	4
Section 1.2 Registered Office.....	4
<b>ARTICLE II.....</b>	<b>5</b>
<b>MEMBERS .....</b>	<b>5</b>
Section 2.1 General Membership, Right to Vote.....	5
Section 2.2 Dues.....	5
Section 2.3 Termination of Membership for Failure to Pay Dues.....	5
Section 2.4 No Transfer of Membership.....	5
Section 2.5 Annual Meeting of Members.....	5
Section 2.6 Special Meetings of Members.....	5
Section 2.7 Notice of Membership Meeting.....	5
Section 2.9 No Proxies.....	6
Section 2.10 Quorum and Voting.....	6
Section 2.11 Voting.....	6
Section 2.13 Open Meetings.....	6
<b>ARTICLE III.....</b>	<b>6</b>
<b>BOARD OF DIRECTORS .....</b>	<b>6</b>
Section 3.1 General Powers.....	7
Section 3.2 Number, Election, Tenure, and Qualifications.....	7
Section 3.3 Regular Meetings.....	7
Section 3.4 Special Meetings.....	7
Section 3.5 Notice of Board Meetings.....	7
Section 3.6 Quorum and Voting.....	7
Section 3.7 Compensation.....	7
Section 3.8 Meetings by Telephone.....	8
Section 3.9 Open Meetings.....	8
<b>ARTICLE IV.....</b>	<b>9</b>
<b>OFFICERS AND AGENTS.....</b>	<b>9</b>
Section 4.1 Number and Qualifications.....	9
Section 4.2 Election and Term of Office.....	9
Section 4.3 Compensation.....	9
Section 4.4 Removal.....	9
Section 4.5 Vacancies.....	9
Section 4.6 Authority and Duties of Officers.....	9
Section 4.7 Surety Bonds.....	10
<b>ARTICLE V.....</b>	<b>11</b>
<b>INDEMNIFICATION.....</b>	<b>11</b>
Section 5.1 Definitions.....	11
Section 5.2 Right to Indemnification.....	11
Section 5.3 Prior Authorization Required.....	12
Section 5.4 Success on Merits or Otherwise.....	12
Section 5.5 Advancement of Expenses.....	12
Section 5.6 Payment Procedures.....	13
Section 5.7 Notification to Members.....	13
Section 5.8 Insurance.....	13

Section 5.9 Right to Impose Conditions to Indemnification.....	13
Section 5.10 Other Rights and Remedies. ....	14
Section 5.11 Applicability: Effect. ....	14
Section 5.12 Indemnification of Agents . ....	14
Section 5.13 Savings Clause; Limitation. ....	14
<b>ARTICLE VI.....</b>	<b>15</b>
<b>MISCELLANEOUS.....</b>	<b>15</b>
Section 6.1 Account Books, Minutes, Etc. ....	15
Section 6.2 Fiscal Year.....	15
Section 6.3 Conveyances and Encumbrances.....	15
Section 6.4 Designated Contributions. ....	15
Section 6.5 Conflicts of Interest. ....	15
Section 6.6 Loans to Directors and Officers Prohibited. ....	16
Section 6.7 Amendments. ....	16
Section 6.8 Payment of Bills. ....	16
Section 6.9 Release of Names and Addresses. ....	16
Section 6.10 Severability.....	16

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# ARTICLE I

## *OFFICES*

### Section 1.1 Business Offices.

The principal office of the corporation shall be located in unincorporated Douglas County, Colorado. The corporation may have such other offices, within Colorado, as the members of the Association may designate or as the affairs of the corporation may require from time to time.

### Section 1.2 Registered Office.

The registered office of the corporation required by the Colorado Nonprofit Corporation Act to be maintained in Colorado may be, but need not be, the same as the principal office of the Corporation in Colorado, and the address of the registered office may be changed from time to time by the board of directors or by the officers of the corporation.

## **ARTICLE II**

### **MEMBERS**

#### **Section 2.1 General Membership, Right to Vote.**

The corporation shall have general members comprised of all individuals who own real property in the Membership Area as hereinafter defined and who have paid annual membership dues to the corporation in an amount that may be fixed by the board of directors of the corporation. General Members shall have the right to vote at all meetings of the corporation. Only one General Membership per property or household shall be allowed. The term "Membership Area" shall consist of those properties within filings 1, 2, 3, 4, 5, and 6 of Acres Green.

#### **Section 2.2 Dues.**

Membership dues shall be assessed on a per property basis. The board of directors may provide that persons who become members during the fourth quarter of any year shall have their dues applied to the next full year. All dues are due and payable by the first meeting of each year.

#### **Section 2.3 Termination of Membership for Failure to Pay Dues.**

A member who fails to pay dues by the first meeting of the year shall not be recognized as a General Member, nor permitted to vote as a member in good standing and their dues will be considered delinquent. The total membership fee shall be due for new members at the time they apply for membership.

#### **Section 2.4 No Transfer of Membership.**

Membership is nontransferable.

#### **Section 2.5 Annual Meeting of Members.**

An annual meeting of the members shall be held in October of each year, beginning with the year 1997 for the purpose of electing directors and officers and for the transaction of such other business as may come before the meeting. Failure to hold an annual meeting as required by these bylaws shall not work a forfeiture or dissolution of the corporation or invalidate any action taken by the officers of the corporation.

#### **Section 2.6 Special Meetings of Members.**

Special meetings of the members, for any purpose or purposes, may (unless otherwise prescribed by statute) be called by the board, and shall be called by the president at the request of members having at least 5% of the votes entitled to be cast at such meetings.

#### **Section 2.7 Notice of Membership Meeting.**

Notice of meeting shall be given by the Board of directors by the best media of communication available in order to assure notice to each of the members, and shall be given at

least five days in advance of the date of such meeting. If mailed, such notice shall be deemed delivered when deposited in the United States mail, addressed to each member at such member's address as it appears in the records of the corporation, with any class of postage thereon prepaid. Any member may waive notice of any meeting before, at, or after such meeting. The attendance in person of a member at a meeting shall constitute a waiver of notice of such meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

### **Section 2.9 No Proxies.**

There shall be no proxies.

### **Section 2.10 Quorum and Voting.**

Except as otherwise required by the laws of Colorado or the articles of incorporation, a quorum shall consist of those present and eligible to vote, but not less than ten (10) General Members entitled to vote. The affirmative vote of a majority of the members at a meeting shall be the act of the General Membership; however, an affirmative vote of two-thirds of the members at a regular or special meeting shall be required to amend these bylaws or the articles of incorporation.

### **Section 2.11 Voting.**

(a) Each individual member is entitled to one vote on each matter submitted to a vote of the members.

(b) The right to vote of any member which is a corporation, partnership, limited liability company or unincorporated association may be exercised by such officer, or agent of said entity.

### **Section 2.12 Committees.**

The members at any time and from time to time may establish one or more committees of members for any appropriate purposes and may dissolve any such committee. When each committee is formed, the Board of Directors, shall determine if the committee is to be standing or Ad-hoc. Standing committee chairpersons shall sit on the board of directors.

### **Section 2.13 Open Meetings.**

All meetings of the members and any committees of members shall be open to all members of the corporation.

## **ARTICLE III**

### **BOARD OF DIRECTORS**

### Section 3.1 General Powers.

The business and affairs of the corporation shall be managed by its board of directors, except as otherwise provided in the Colorado Nonprofit Corporation Act, the articles of incorporation, or these bylaws.

### Section 3.2 Election, Tenure, and Qualifications.

The directors of the corporation shall include, but be not limited to the President, Vice-president, Treasurer, Recorder, and the chair persons of standing committees. All chairpersons shall serve at the pleasure of the board of directors.

### Section 3.3 Regular Meetings.

A regular meeting of the board of directors shall be held annually in the month of October at a time and place deemed appropriate by the board.

### Section 3.4 Special Meetings.

Special meetings of the board of directors may be called by or at the request of the president or any two (2) directors. The person or persons authorized to call special meetings of the board of directors may fix any place as the place, either within or outside the Membership Area, for holding any special meeting of the board called by them.

### Section 3.5 Notice of Board Meetings.

Notice of each meeting of the board stating the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each director not less than five (5) days before the date of the meeting, either personally or by first class mail. If mailed, such notice shall be deemed delivered when deposited in the United States mail, addressed to each director at such director's address as it appears in the records of the corporation. Any director may waive notice of any meeting before, at, or after such meeting. The attendance in person of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

### Section 3.6 Quorum and Voting.

A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the board of directors, and the vote of a majority of the directors at a meeting at which a quorum is participating shall be the act of the board of directors

### Section 3.7 Compensation.

Directors shall not receive compensation for their services as such, although the reasonable expenses of directors incurred on behalf of the corporation and with the consent of the board may be paid

or reimbursed by the corporation. Directors shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the corporation in any other capacity.

### Section 3.8 Meetings by Telephone.

Members of the board of directors or any committee thereof may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

### Section 3.9 Open Meetings.

All meetings of the board of directors and any committee established by the board of directors shall be open to all members of the corporation; provided, however, that the board of directors shall be entitled to adjourn any meeting of the board of directors and reconvene such meeting in executive session for the purposes of discussing any matter except that no official board action may be taken in executive session.



# ARTICLE IV

## OFFICERS AND AGENTS

### Section 4.1 Number and Qualifications.

The elected officers of the corporation shall be a president, a vice-president, a recorder and a treasurer. The board of directors may appoint such other assistants and agents, including assistant secretaries and assistant treasurers, as it may consider necessary. One person may hold more than one office at a time, except that no person may simultaneously hold the offices of president and treasurer. Officers shall be directors of the corporation. All officers must be at least eighteen years old.

### Section 4.2 Election and Term of Office.

The officers of the corporation shall be elected by the members at the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon as convenient thereafter. Each officer shall hold office until such officer's successor shall have been duly elected and shall have qualified, or until such officer's earlier death, resignation, or removal.

### Section 4.3 Compensation.

Officers and agents shall not receive payment or compensation (other than reimbursement of expenses) for their services as such. Officers and agents shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the corporation in any other capacity.

### Section 4.4 Removal.

Any officer or agent may be removed by a majority of voting members at which there is a majority of the General Membership present, whenever in their judgment the best interests of the corporation will be served thereby, or if such officer or agent shall cease to meet the criteria for being an officer or agent of the corporation at any time. Election or appointment of an officer or agent shall not in itself create any contract rights.

### Section 4.5 Vacancies.

Any officer may resign at any time by giving written notice to the president or vice-president. An officer's resignation shall take effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled by the board of directors for the unexpired portion of the term.

### Section 4.6 Authority and Duties of Officers.

The officers of the corporation shall have the authority and shall exercise the powers and perform the duties specified below and as may be additionally specified by the president, the

board of directors or these bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

(a) President. The president shall, subject to the direction and supervision of the board of directors: (i) be the chief executive officer of the corporation and have general and active control of its affairs and business and general supervision of its officers, agents, and employees; (ii) preside at meetings of the members and the board of directors; (iii) see that all orders and resolutions are carried into effect; and (iv) perform all other duties incident to the office of president and as from time to time may be assigned to such office by the board of directors.

(b) Vice-President. The vice-president shall assist the president and shall perform such duties as may be assigned by the president or the board of directors. The vice-president shall, at the request of the president, or in the president's absence or inability or refusal to act, perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions on the president.

(c) Recorder. The recorder shall (i) keep the minutes of the proceedings of the members and the board of directors (ii) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (iii) keep a record containing the names and addresses of all members; (iv) be responsible for all written communications between the corporation and any individual, organization, corporation, entity or agency external to the corporation with whom the corporation may interact and; (v) maintain records and files of significant correspondence sent or received by the corporation (other than records and files maintained by the treasurer of the corporation and; (vi) in general, perform all duties incident to the office of recorder and such other duties as from time to time may be assigned to such office by the president or by the board of directors.

(e) Treasurer. The treasurer shall (i) be the principal financial officer of the corporation and have the care and custody of all its funds, securities, evidences of indebtedness, and other personal property and deposit the same in accordance with the instructions of the president or vice president(s); (ii) receive and give receipts and acquittances for moneys paid in on account of the corporation, and pay out of the funds on hand all bills, payrolls, and other just debts of the corporation of whatever nature upon maturity; (iii) be the principal accounting officer of the corporation and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all local, state, and federal tax returns and related documents, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the president statements of account showing the financial position of the corporation and the results of its operations; (iv) upon request of the president, make such reports to it as may be required at any time; and (v) perform all other duties incident to the office of treasurer and such other duties as from time to time may be assigned to such office by the president or the board of directors.

#### Section 4.7 Surety Bonds.

The board of directors may require any officer or agent of the corporation to execute to the corporation a bond in such sums and with such sureties as shall be satisfactory to the members, conditioned upon the faithful performance of such person's duties and for the restoration to the corporation of all books, papers, vouchers, money, and other property of whatever kind in such person's possession or under such person's control belonging to the corporation.

# ARTICLE V

## INDEMNIFICATION

### Section 5.1 Definitions.

For purposes of this Article, the following terms shall have the meanings set forth below:

(a) "Corporation" means the Acres Green Home Owners' Association, Incorporated and, in addition to the resulting or surviving corporation, any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(b) "Expenses" means the actual and reasonable expenses, including attorneys' fees, incurred by a party in connection with a proceeding.

(c) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to a private foundation or an employee benefit plan), or expense incurred with respect to a proceeding.

(d) "Official capacity" when used with respect to a director of the corporation, means the office of director in the corporation, and when used with respect to a person in a capacity other than as a director (even if such person is also a director) means the office in the corporation held by the officer.

(e) "Party" means any person who was, is, or is threatened to be made, a named defendant or respondent in a proceeding by reason of the fact that such person is or was a director, officer, or employee of the corporation.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, or any appeal therein, whether civil, criminal, administrative, arbitrative, or investigative (including an action by or in the right of the corporation) and whether formal or informal.

### Section 5.2 Right to Indemnification.

(a) Standards of Conduct. **Except as provided** in Section 5.2(d) below, the corporation shall indemnify any party to a proceeding against liability incurred in or as a result of the proceeding if (i) such party conducted himself or herself in good faith, (ii) such party reasonably believed (A) in the case of a director acting in his or her official capacity, that his or her conduct was in the corporation's best interests, or (B) in all other cases, that such party's conduct was at least not opposed to the corporation's best interests, and (iii) in the case of any criminal proceeding, such party had no reasonable cause to believe his or her conduct was unlawful. For purposes of determining the applicable standard of conduct under this Section 5.2, any party acting in his or her official capacity who is also a director of the corporation shall be held to the standard of conduct set forth in this Section 5.2(a), even if such party is sued solely in a capacity other than as such director.

(b) Settlement. The termination of any proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not of itself determinative that the party did not meet the applicable standard of conduct set forth in Section 5.2(a).

(c) Indemnification Prohibited. Except as hereinafter set forth in this Section 5.2 (c), the corporation may not indemnify a party under this Section 5.2 either (i) in connection with a proceeding by or in the right of the corporation in which the party is or has been adjudged liable to the corporation, or (ii) in connection with any proceeding charging improper personal benefit to the party, whether or not involving action in the party's official capacity, in which the party was adjudged liable on the basis that personal benefit was improperly received by the party (even if the corporation was not thereby damaged). Notwithstanding the foregoing, the corporation shall indemnify any such party if and to the extent required by the court conducting the proceeding, or any other court of competent jurisdiction to which the party has applied, if it is determined by such court, upon application by the party, that despite the adjudication of liability in the circumstances in clauses (i) and (ii) of this Section 5.2 (c) or whether or not the party met the applicable standard of conduct set forth in Section 5.2 (a), and in view of all relevant circumstances, the party is fairly and reasonably entitled to indemnification for such expenses as the court deems proper in accordance with the Colorado Nonprofit Corporation Act.

(d) Indemnification of Expenses in Claims by AGHOA. Indemnification permitted under this Section 5.2 in connection with a proceeding by or in the right of the corporation shall be limited to expenses incurred in connection with the proceeding.

(e) Combined Proceedings. If any claim made by or in the right of the corporation against a party is joined with any other claim against such party in a single proceeding, the claim by or in the right of the corporation (and all expenses related thereto) shall nevertheless be deemed the subject of a separate and distinct proceeding for purposes of this Article.

### Section 5.3 Prior Authorization Required.

Any indemnification under Section 5.2 (unless ordered by a court) shall be made by the corporation only if authorized in the specific case after a determination has been made that the party is eligible for indemnification in the circumstances because the party has met the applicable standard of conduct set forth in Section 5.2(a) and after an evaluation has been made as to the reasonableness of the expenses. Any such determination, evaluation, and authorization shall be made by the board of directors by a majority vote of a quorum of such board, which quorum shall consist of directors not parties to the subject proceeding, or by such other person or body as permitted by law.

### Section 5.4 Success on Merits or Otherwise.

Notwithstanding any other provision of this Article, the corporation shall indemnify a party to the extent such party has been successful, on the merits or otherwise, including without limitation, dismissal without prejudice or settlement without admission of liability, in defense of any proceeding to which the party was a party against expenses incurred by such party in connection therewith.

### Section 5.5 Advancement of Expenses.

The corporation may pay for or reimburse the expenses, or a portion thereof, incurred by a party in advance of the final disposition of the proceeding if: (a) the party furnishes the corporation a written affirmation of such party's good-faith belief that he or she has met the standard of conduct described in Section 5.2(a); (b) the party furnishes the corporation a written undertaking, executed personally or on behalf of such party, to repay the advance if it is ultimately determined that the party did not meet such standard of conduct; and (c) authorization of payment and a determination that the facts then known to those making the determination would not preclude indemnification under this Article have been made in the manner provided in Section 5.3. The undertaking required by clause (b) must be an unlimited general obligation of the party, but need not be secured and may be accepted without reference to financial ability to make repayment.

### **Section 5.6 Payment Procedures.**

The corporation shall promptly act upon any request for indemnification, which request must be in writing and accompanied by the order of court or other reasonably satisfactory evidence documenting disposition of the proceeding in the case of indemnification under Section 5.4 and may be by the written affirmation and undertaking to repay as required by Section 5.5 in the case of indemnification under such Section. The right to indemnification and advances granted by this Article shall be enforceable in any court of competent jurisdiction if the corporation denies the claim, in whole or in part, or if no disposition of such claim is made within ninety days after written request for indemnification is made. A party's expenses incurred in connection with successfully establishing such party's right to indemnification, in whole or in part, in any such proceeding shall also be paid by the corporation.

### **Section 5.7 Notification to Members.**

Any indemnification of or advance of expenses to an officer or director (but not to any other party) in accordance with this Article, and arising out of a proceeding by or on behalf of the corporation, shall be reported in writing to the members, with or before the notice of the next meeting of members.

### **Section 5.8 Insurance.**

The corporation may purchase and maintain insurance in such amounts as the board of directors deems appropriate to protect itself and any person who is or was an, officer, employee, fiduciary, or agent of the corporation against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under applicable provisions of law or this Article. Any such insurance may be procured from any insurance company designated by the board, whether such insurance company is formed under the laws of Colorado or any other jurisdiction. The corporation may create a trust fund, grant a security interest, or use other means (including, without limitation, a letter of credit) to ensure the payment of such sums as may become necessary to effect indemnification as provided herein.

### **Section 5.9 Right to Impose Conditions to Indemnification.**

The corporation shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as may appear appropriate to the board of directors in each specific case and circumstances, including but not limited to any one or more of the following: (a) that any counsel representing the party to be

indemnified in connection with the defense or settlement of any proceeding shall be counsel mutually agreeable to the party and to the corporation; (b) that the corporation shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated, or threatened against the party to be indemnified; and (c) that the corporation shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified party's right of recovery, and that the party to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the corporation.

#### **Section 5.10 Other Rights and Remedies.**

Except as limited by law, the indemnification provided by this Article shall be in addition to any other rights which a party may have or hereafter acquire under any law, provision of the articles of incorporation, any other or further provision of these bylaws, vote of the officers, agreement, or otherwise.

#### **Section 5.11 Applicability: Effect.**

The indemnification provided in this Article shall be applicable to acts or emissions that occurred prior to the adoption of this Article, shall continue as to any party entitled to indemnification under this Article who has ceased to be an officer, or employee of the corporation or, at the request of the corporation, was serving as and has since ceased to be an officer, partner, trustee, employee, fiduciary, or agent of any other domestic or foreign corporation, or of -any partnership, joint venture, trust, other enterprise, or employee benefit plan, and shall inure to the benefit of the estate and personal representatives of each such person. The repeal or amendment of this Article or of any section or provision hereof that would have the effect of limiting, qualifying, or restricting any of the powers or rights of indemnification provided or permitted in this Article shall not, solely by reason of such repeal or amendment, eliminate, restrict, or otherwise affect the right or power of the corporation to indemnify any person, or affect any right of indemnification of such person, with respect to any acts or omissions that occurred prior to such repeal or amendment. All rights to indemnification under this Article shall be deemed to be provided by a contract between the corporation and each party covered hereby.

#### **Section 5.12 Indemnification of Agents .**

The corporation shall have the right, but shall not be obligated, to indemnify any agent of the corporation not otherwise covered by this Article to the fullest extent permissible by the laws of Colorado. Unless otherwise provided in any separate indemnification arrangement, any such indemnification shall be made only as authorized in the specific case in the manner provided in Section 5.3.

#### **Section 5.13 Savings Clause; Limitation.**

If this Article or any section or provision hereof shall be invalidated by any court on any ground, then the corporation shall nevertheless indemnify each party otherwise entitled to indemnification hereunder to the fullest extent permitted by law or any applicable provision of this Article that shall not have been invalidated.

## **ARTICLE VI**

### **MISCELLANEOUS**

#### **Section 6.1 Account Books, Minutes, Etc.**

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members and Board of Directors. All books and records of the corporation may be inspected by any member or director or such person's authorized agent or attorney, for any proper purpose at any reasonable time.

#### **Section 6.2 Fiscal Year.**

The fiscal year of the corporation shall be as established by the board of directors.

#### **Section 6.3 Conveyances and Encumbrances.**

Property of the corporation may be assigned, conveyed, or encumbered by such officers of the corporation as may be authorized to do so by the board of directors, and such authorized persons shall have power to execute and deliver any and all instruments of assignment, conveyance, and encumbrance; however, the sale, exchange, lease, or other disposition of all or substantially all of the property and assets of the corporation shall be authorized only in the manner prescribed by applicable statute.

#### **Section 6.4 Designated Contributions.**

The corporation may accept any designated contribution, grant, bequest, or devise consistent with its general tax-exempt purposes, as set forth in the articles of incorporation. As so limited, donor-designated contributions will be accepted for special funds, purposes or uses, and such designations generally will be honored. However, the corporation shall reserve all right, title, and interest in and to and control of such contributions, as well as full discretion as to the ultimate expenditure or distribution thereof in connection with any such special fund, purpose, or use. Further, the corporation shall acquire and retain sufficient control over all donated funds (including designated contributions) to assure that such funds will be used to carry out the corporation's tax-exempt purposes.

#### **Section 6.5 Conflicts of Interest.**

If any person who is a director or officer of the corporation is aware that the corporation is about to enter into any business transaction directly or indirectly with such person, any member of such person's family, or any entity in which such person has any legal, equitable, or fiduciary interest or position, including without limitation as a director, officer, shareholder, partner, beneficiary, or trustee, such person shall: (a) immediately inform those charged with approving the transaction on behalf of the corporation of such person's interest or position; (b) aid the persons charged with making the decision by disclosing any material facts within such person's knowledge that bear on the advisability of such transaction from the standpoint of the corporation; and (c) not be entitled to vote on the decision to enter into such transaction.

### **Section 6.6 Loans to Directors and Officers Prohibited.**

No loans shall be made by the corporation to any of its officers or directors.

### **Section 6.7 Amendments.**

The power to alter, amend, or repeal these bylaws and adopt new bylaws shall be vested in the members. Amendments to the Bylaws may be made by a two-thirds vote of those members in attendance at a regular or special meeting for the purpose to amend such Bylaws.

### **Section 6.8 Payment of Bills.**

Any money above \$500.00 dispersed from the General Fund to a committee must be approved by the voting membership.

### **Section 6.9 Release of Names and Addresses.**

The Association will not release names and addresses of residents or members for advertising purposes without the consent of residents.

### **Section 6.10 Severability.**

The invalidity of any provision of these bylaws shall not affect the other provisions hereof, and in such event these bylaws shall be construed in all respects as if such invalid provision were omitted.



BYLAWS CERTIFICATE

The undersigned certifies that (he) (she) is the Recorder of Acres Green Home Owners' Association, Incorporated, a Colorado nonprofit corporation, and that, as such, [he] (she) is authorized to execute this certificate on behalf of said corporation, and further certifies that attached hereto is a complete and correct copy of the presently effective bylaws of said corporation.

Dated: June 19, 1997.

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Jean M. Henke

Recorder, AGHOA