

**BY-LAWS OF  
EVENING SHADOWS HOMEOWNERS ASSOCIATION, INC.**

As Amended, August 7, 2004

**ARTICLE I**

The name of the corporation is EVENING SHADOWS HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the corporation shall be located at the street address of the president who is in office at the time<sup>1</sup> but the meetings of members and directors may be held at such places within the State of North Carolina, County of Ashe as may be designated by the Board of Directors.

**ARTICLE II - DEFINITIONS**

Section 1. "Association" shall mean and refer to EVENING SHADOWS HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Permanent Common Open Space" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. Common areas shall specifically include but shall not be limited to all private streets as shown on recorded plats.

Section 4. "Lot" shall mean and refer to any plot of land upon any recorded subdivision map of the Properties with the exception of the Permanent Common Open Space.

Section 5. "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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to EVENING SHADOWS HOMEOWNERS' ASSOCIATION, INC., its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the properties recorded in the Office of Register of Deeds, Ashe County, North Carolina.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the declaration.

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<sup>1</sup> This sentence was modified at the general meeting on August 7, 2004

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Section 9. "Common Expense" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of the common area and administration, maintenance, repair or replacement of the Permanent Common Open Space;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- (d) Hazard, liability or such other insurance premiums as the Declaration or the By-Laws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges levied against common areas;
- (f) Expenses agreed by the members to be common expenses of the Association.

**ARTICLE-III - MEETING OF MEMBERS.**

Section 1. Annual meetings - The first meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be set at the discretion of the officers and/or members. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special meetings - Special meetings of the members may be called at any time by the President or by the Board of Directors or upon written request of the members who are entitled to vote one-fourth (1/4) of all votes of the Class A membership.

Section 3. Notice of meetings - Unless otherwise specified in the Declaration, Articles of Incorporation or By-Laws, written notice of each meeting of the members shall be given by, or at the discretion of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting, to each member entitled to vote thereat, 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. Quorum - Unless otherwise specified in the Declaration, Articles of Incorporation or By-Laws, the presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to

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vote thereat shall have 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 5. Proxies - At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

**ARTICLE IV - BOARD OF DIRECTORS.**

Section 1. Number - The affairs of this Association shall be managed by a Board of four (4) directors after the first year.

Section 2. Term of Office - At the first annual meeting the members shall elect two (2) directors for a term of one (1) year. Said directors shall remain in office until their successors have been duly elected and qualified, and, after the first year, an additional two (2) directors shall be elected, so that the Board shall thereafter consist of four (4) persons.

Section 3. Removal - Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. General members may make nominations to the board of Directors thirty (30) days before the meeting.

Section 4. Compensation - No director shall receive compensation for any services he may render to the Association. However, any director may be reimbursed for his actual expenses 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 the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

**ARTICLE V - NOMINATION AND ELECTION OF OFFICERS.**

Section 1. Election - Election to the Board of Directors shall be by secret written ballot. At such elections the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number<sup>1</sup> of votes shall be elected. Cumulative voting is not permitted.

**ARTICLE VI - MEETINGS OF DIRECTORS**

Section 1. Regular Meetings - Regular meetings of the board of Directors shall be held every six (6) months without notice, at such place and hour as may be fixed from time to time by

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resolution of the Board. Should said fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

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 (2) directors, after not less than three (3) days' notice to each director.

Section 3. Quorum - A majority of the number 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.

**ARTICLE VII - POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. Powers - The Board of Directors shall have power to:

(a) adopt, amend and publish rules and regulations governing the use of the Permanent Common Open Space and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use the future recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations ;

(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 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 from three (3) consecutive regular meetings of the Board of directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties - It shall be the duty 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 to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

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(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;

(4) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the board for issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(5) as deemed necessary to procure and maintain adequate liability and hazard insurance on property owned by the Association;

(6) cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate;

(7) cause the Permanent Common Open Space to be maintained;

(8) pay ad valorem taxes and public assessments levied against the common areas.

**ARTICLE VIII - OFFICERS AND THEIR DUTIES**

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

Section 2. Election of Officers - The election of officers shall take place at the first meeting of the board of directors following each annual meeting of the members. In case of a tie vote, the presiding president will be a non-voting member.

Section 3. Term - The officers of the 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.

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Section 4. Special Appointments - The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal - Any officer of the association may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, President or the Secretary. Such resignation shall take effect on the date of the 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 6. Vacancies - 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 office he replaces.

Section 7. Multiple Offices - The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article. In the event where one person occupies both the Secretary and Treasurer office, a fourth director will be either appointed by the Board of Directors or by vote of the general membership at the annual meeting.

Section 8. Duties - The duties of the officers are as follows.

(a) President - The President shall preside at all meetings of the Board of directors; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds and other written instruments.

(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 of him by the Board.

(c) Secretary - The secretary shall record the votes and keep 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; co-sign all checks and promissory notes; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer - The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disperse the funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of accounts; cause an annual audit of the Association books to be made by an independent accountant at the completion of each fiscal year; and shall prepare a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the

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members. The Treasurer shall issue certificates indicating the payment or nonpayment of assessments on specified lots.

**ARTICLE IX - COMMITTEES**

Section 1. The Association may appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

**ARTICLE X - ASSESSMENTS AND MEMBERSHIP**

Section 1. As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property on which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six (6) percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property in the same manner that Deeds of Trust may be foreclosed under Power of Sale under Chapter 45 of the North Carolina General Statutes, or its successors; and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waiver or otherwise escapes liability for the assessments provided herein by nonuse of the Permanent Common Open Space or abandonment of his Lot.

Section 2. Initial membership dues shall be One Hundred and no/100 (\$100.00) Dollars per lot. Up to eighty percent (80%) of membership dues may be used for road assessments. The balance of membership dues not used for assessments shall be held by the Association in reserve for later allocation upon vote of a simple majority of lot owners. Under special circumstances (i.e., lot not approved by the county as a suitable construction site), the Board of Directors reserves the right to reduce or waive the road assessment fee.

Section 3. Road assessments shall be used for road repair and maintenance. Road repair is defined as filling holes and smoothing of road surface by graveling, paving or similar method. Road maintenance shall be defined as keeping clear and open all culverts and ditches appurtenant to the road, clearing and removal of snow and mowing of areas directly appurtenant to the road.

25%

Section 4. Membership dues shall not be increased unless by vote of ~~the majority~~ of lot owners; or in the event of extraordinary circumstances, an increase may be voted by members of the Board. In the event of such an increase vote by the Board, a majority of lot owners may reverse any increase at the next called meeting. Eighty and no/100 (\$80.00) Dollars of each One Hundred and no/100 (\$100.00) Dollars of dues may be used for road assessments. Road assessments may, however, increase up to twenty percent (20%) per year at the discretion of the Board of Directors

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[thus twenty percent (20%) of Eighty and no/100 (\$80.00) Dollars for the second year] and shall be added to the One Hundred and no/100 (\$100.00) Dollars per lot fee accordingly.

Section 5. In the event of an unforeseen economic emergency facing ESHOA, the Board at their discretion can assess each member equally a special assessment to cover costs.

Section 6. A one-time non-refundable Road Impact Fee of \$500.00 per lot will be assessed to all lot owners initiating construction of a home on their lot. This fee will be due within thirty (30) days after construction begins (i.e., site preparation). This fee will be increased to \$1,000.00 effective August 7, 2005.<sup>2</sup> The fee will be applied to the road assessment fee and used for road repairs and maintenance as defined above.

**ARTICLE XI - CORPORATE SEAL**

Section 1. The Association shall have a seal in circular form having within its circumference the words: EVENING SHADOWS HOMEOWNERS' ASSOCIATION, INC.

**ARTICLE XII - AMENDMENTS**

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 3. **Dissolution Provisions (Adopted January 3, 2000):** If the Board of Directors of the Evening Shadows Homeowners' Association declares the Association dissolved for any reason, then all funds remaining in the Association treasury, after all outstanding obligations have been met, shall be distributed equally among all current Association members who are not delinquent in the payment of the current fiscal year assessments, and who have no outstanding liens against them for non-payment of past assessments.

**ARTICLE XIII - MISCELLANEOUS**

Section 1. The fiscal year of the Association shall begin on the first day of July and end on the 30th of June of every year, except that the first fiscal year shall begin on the date of incorporation.

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<sup>2</sup> This sentence was added at the general meeting held on August 7, 2004.

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Section 2. Non-members of the Association seeking to use (i.e., horseback riding, motorized sports vehicles - ATVs, motorcycles, etc.) EVENING SHADOWS HOMEOWNERS' ASSOCIATION, INC. roads or Permanent Common Open Space shall be required to obtain permission of the Board of Directors before onset of activity and agree to the following: 1. To complete a "Liability Waiver Form"; 2. To be responsible for all repairs to damaged property resulting from the activity; and 3. To limit the number of participants as established by the Board. The Board reserves the right to revoke permission at any time.