

REVISED 5-5-99

**AMENDED AND RESTATED**

**BYLAWS**

**OF**

**SUN COUNTRY MEADOWS IMPROVEMENT  
ASSOCIATION, INC.**

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**ARTICLE 1 -- INTRODUCTION AND PURPOSE**

These are the Amended and Restated Bylaws of **SUN COUNTRY MEADOWS IMPROVEMENT ASSOCIATION, INC.**, which Association operates under the Colorado Nonprofit Corporation Act, as amended, and applicable portions of the Colorado Common Interest Ownership Act, as amended (the "Act").

The purpose for which the Association is formed is to operate and govern the residential community known as Sun Country Meadows.

**ARTICLE 2 -- DEFINITIONS**

The definitions set forth herein shall have the same meanings as provided in the Amended and Restated Declaration of Sun Country Meadows Filing Nos. 1, 2, 3, 4 and 5

**ACT** means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 et seq., as amended, applicable to communities created prior to July 1, 1992 and as otherwise set forth herein.

**ASSOCIATION** means the Sun Country Meadows Improvement Association.

**COMMUNITY, PLANNED COMMUNITY OR COMMON INTEREST COMMUNITY** means the Sun Country Meadows Community consisting of Filings 1 through 5, as further defined in the Declarations.

**DECLARATIONS** shall mean the Amended and Restated Declaration of Protective Covenants for Sun Country Meadows Filing Nos. 1, 2, and 3 recorded in the real property records of Elbert County, Colorado at Book 412, Page 274, Reception No. 272478; the Declaration of Protective Covenants for Sun Country Meadows, Filing No. 4, recorded in the real property records of Elbert County, Colorado at Book 427, Page 402, on June 15, 1989; and the Declaration of Protective Covenants for Sun Country Meadows, Filing No. 5, recorded in the real property records of Elbert County, Colorado at Reception NO. 316265, Book 486, Page 397.

**GOVERNING DOCUMENTS** means the Articles of Incorporation, the Bylaws, the Declarations, rules and regulations, and Design Guidelines collectively.

**LOT** means a physical portion of the Community, designated for separate ownership, shown as a lot on the recorded plat or map for the Community.

**UNITY OWNER OR OWNER** means any other person or entity that owns a Lot.

**ARTICLE 3 -- MEMBERSHIP**

Section 3.1 Membership. Every person or entity who is a owner of record Lot which is subject to the Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

Section 3.2 Rights of Members/Delegation of Rights. Each member shall be entitled to the use and enjoyment of the common elements as provided in the Declaration. Any member may delegate his rights of enjoyment of the common elements to is tenants or contract purchasers, who reside on the property. Such member shall notify the Board in writing of the name of any such delegate. The rights and privileges of such delegates are subject to suspension to the same extent as those of the member.

#### ARTICLE 4 -- MEETINGS OF MEMBERS

Section 4.1 Annual Meetings. An annual meeting of the members shall be held during each of the Association's fiscal years, at such time of the year and date as determined by the Board and set forth in the notice. At these meetings, the Directors shall be elected by ballot of the members, in accordance with the provisions of these Bylaws, the Declaration and Articles of Incorporation. The members may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not work a forfeiture or dissolution of the Association.

Section 4.2 Special Meetings. Special meetings of the Association may be called by the president, by a majority of the members of the Board of Directors or by a petition signed by Owners comprising twenty-five percent (25%) of the votes in the Association.

Section 4.3 Notice of Meetings. Written notice of each meeting of 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, postage prepaid, at least fifteen (15) days before, but not more than fifty (50) days before such meeting, to each member entitled to vote, 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. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

Section 4.4 Place of Meetings. Meetings of the members shall be held in the Sun Country Meadows Community, or in Elbert County, State of Colorado, and may be adjourned to a suitable place convenient to the members, as may be designated by the Board or the President.

Section 4.5 Quorum of Members. The presence at the meeting of members, in person or by proxy, entitled to cast twenty percent (20%) of all the votes shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, and these Bylaws. If the required quorum is not present, the members who are present shall have power to adjourn the meeting to a time not more than sixty (60) days following that date, without notice other than announcement at the meeting.

Section 4.6 Voting. At all meetings of members, each member may vote in person or by proxy. If only one of several Owners of a Lot is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to the Lot. If more than one of the Owners is present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority of those Owners. Majority agreement exists if any one of the Owners casts the vote allocated to the Lot without protest being made

promptly to the person presiding over the meeting by another Owner of the Lot. The vote of a corporation or business trust may be cast by any Officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Board of Directors or Bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Owner is qualified to vote. Votes allocated to Lots owned by the Association may not be cast.

Section 4.7 Proxies. The vote allocated to a Lot may be cast under a proxy duly executed by an Owner. All proxies shall be in writing and filed with the Secretary or designee of the Association. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of the vote by the other Owners of the Lot through a duly executed proxy. An Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless it specifies a shorter term or a specific purpose, or upon sale of the Lot for which the proxy was issued.

Section 4.8 Majority Vote. Votes totaling more than fifty percent (50%) of the total number of Lots present in person or by proxy at a meeting at which at least a quorum is present shall constitute a majority vote and shall be binding upon all Owners for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws, the Articles of Incorporation or by law.

Section 4.9 Order of Business and Rules at Meeting. The Board may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Board and Owners.

Section 4.10 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing, and the waiver shall be deemed equivalent to the receipt of notice. Attendance at the meeting shall constitute a waiver of notice unless attendance is for the express purpose of objecting to the sufficiency of the notice.

Section 4.11 Voting by Mail. The Board of Directors may decide that voting of the Members on any matter required or permitted by the statutes of Colorado, the Declarations, the Articles of Incorporation, or these Bylaws shall be by mail in lieu of a meeting of the Members. In case of a vote by mail, the Secretary shall mail written notice to all members at the Member's address as it appears in the records of the Association. The notice shall include: (i) a proposed written resolution setting forth a description of the proposed action, (ii) a statement that Members are entitled to vote by mail for or against such proposal, and (iii) a date at least thirty (30) days after the date such notice shall have been given on or before which all votes must be received at the office of the Association at the address designated in the notice. In any case where written ballots are mailed to Members pursuant to this Section, any Members' failure to respond, in writing, on or before the date by which all votes must be received shall be deemed an affirmative vote on all issues contained in such ballot. All ballots shall be mailed directly to and counted by an independent third party. Voting by mail shall be acceptable in all instances in the Declarations, Articles or these Bylaws requiring the vote of Members at a meeting.

In the case of election of Directors by mail, the Board of Directors or the Nominating Committee, if a Nominating Committee has been appointed, shall notify the Secretary in writing of the names of proposed Directors sufficient to constitute a full Board of Directors and of a date at least forty-five (45) days after such notification is given by which all votes are to be received. The Secretary within five (5) days after such notification is given shall give written notice of the number of Directors to be elected and of

the names of the nominees to all Members. The notice shall state that any such Member may Nominate and additional candidate or candidates, not to exceed the number of Directors to be elected by notice in writing to the Secretary at the specified address to be received on or before specified date fifteen (15) day from the date the notice is given by the Secretary. Within five (5) days after such specified date the Secretary shall mail written notice to all Members, stating the number of Directors to be elected, stating the names of all persons nominated by the Nominating Committee and by the Members on or before said specified date, stating that each Owner may cast a vote by mail and stating the date established by the Board of Directors by which such votes must be received by the Secretary at the address specified in the notice. Votes received after that date shall not be effective. All persons elected as Directors pursuant to such an election by mail by receipt of the number of votes required by applicable law shall take office effective on the date specified in the notice for receipt of such votes.

For the purpose of voting by mail, an action requiring approval of at least a majority of a quorum of the Members at a meeting shall be approved if the Association receives votes constituting at least a quorum of the Members, of which votes a majority are in favor of the proposed action. If the minimum number of votes required to approve an action is higher than a quorum (e.g. 75% of all Members) pursuant to the Articles, Declarations or these Bylaws, votes approving the action equaling the number of affirmative votes required at a meeting shall be sufficient to approve the action.

## ARTICLES 5 -- BOARD

Section 5.1 Number and Qualification. The affairs of the Sun Country Meadows Community and the Association shall be governed by a Board of Directors which shall consist of no less than 3 members and no more than 9 members, who shall be Lot Owners, elected or appointed as provided below (the "Board"). Only Lot Owners, eligible to vote and current in the payment of their assessments, may be elected to, or appointed to fill a vacancy on, the Board. In the case where through removal or resignation, the total number of Board members is less than three (3), the Board will be considered properly constituted until such vacancies are filled. The number of members of the Board may be increased or decreased by amendment of these Bylaws. If any Lot is owned by a partnership or corporation, any officer, partner or employee of that member shall be eligible to serve as a Director and shall be deemed to be a member for the purpose of these Bylaws.

Section 5.2 Election. The Board of Directors shall be elected by the members at the Annual Meeting, for staggered terms. The members may adopt specific procedures which are not inconsistent with these Bylaws or the Act for conducting the elections by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 5.3 Term of Office for Directors. The terms of office of Directors shall be three (3) years or until such time as a successor is elected. The terms of the Directors shall be staggered.

Section 5.4 Removal of Directors. Directors or the entire Board of Directors may be removed at any properly constituted meeting of the members, with or without cause, by a vote of two-thirds (2/3) of the members present in person or by proxy. The members, by majority vote, shall then elect such new members of the Board to replace those members removed and designate the unexpired term to which each new member is elected. Directors sought to be removed at such meeting and shall be given the opportunity to speak to the members prior to a vote to remove being taken.

Section 5.5 Vacancies. Vacancies in the Board caused by any reason (other than removal) may be filled by the Board at any time after the occurrence of the vacancy, even though the Directors

present at that meeting may constitute less than a quorum. Each person so appointed shall be a Director until the next annual meeting of the Members. At said annual meeting, the Members shall elect a successor who shall serve for the remainder of the unexpired term.

Section 5.6 Compensation. No Director shall receive compensation for any service he may render as a Director to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his Association duties.

## ARTICLE 6 -- MEETINGS OF DIRECTORS

Section 6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times, place and hour as may be fixed by the Board, without notice. The Board may set a schedule of regular meetings by resolution, and no further notice is necessary to constitute regular meetings. All meetings of the Board shall be held within the Sun Country Meadows Community or Elizabeth.

Section 6.2 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 three (3) days notice to each Director. The notice shall be hand-delivered, mailed, or sent via an electronic device with transmission confirmation received, and shall state the time, place and purpose of the meeting.

Section 6.3 Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the directors are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

Section 6.4 Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, unless there are less than three Directors, in which case, all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are less than three (3) Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board. If, at any meeting there shall be less than a quorum present, a majority of those present may adjourn the meeting.

Section 6.5 Consent to Corporate Action. 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. The secretary shall file these consents with the minutes of the meetings of the Board of Directors.

Section 6.6 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

Section 6.7 Proxies. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that proposal, a Director may execute, in writing a proxy, to be held by another Director. The proxy shall specify either a yes, no or

abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no or abstain vote shall not be counted for the purpose of having a quorum present nor as a vote on the particular proposal before the Board.

Section 6.8 Fidelity Bonds. The Board of Directors may purchase fidelity bonds for all officers and employees of the Association handling or responsible for Association funds.

## ARTICLE 7 -- POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers and Duties. The Board may act in all instances on behalf of the Association, except as provided in the Declaration and these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Declaration, and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Sun Country Meadows Community, including the following powers and duties:

- (a) Adopt and amend rules and regulations, including penalties for infraction thereof:
- (b) Adopt and amend budgets for revenues, expenditures and reserves:
- (c) Collect assessments as provided by the Declaration and Colorado Common Interest Act:
- (d) Suspend the voting rights of a Lot Owner during any period in which such member is in default in the payment of any assessment levied by the Association, or, after notice and a hearing, during any time in which a Lot Owner is in violation of another provision of the Declaration, Articles of Incorporation, Bylaws or Rules and Regulations of the Association:
- (e) Employ an independent contractor, or such other employees as they deem necessary, and to prescribe their duties:
- (f) Supervise all Officers, agents and employees of this Association, and to see that their duties are properly performed:
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration, Bylaws, Articles of Incorporation, or Rules and Regulations, and, in the Association's name, on behalf of the Association or two or more Owners, on matters affecting the Sun Country Meadows Community:
- (h) Make contracts and incur liabilities:
- (i) Regulate the use, maintenance, repair, replacement and modification of Common area as provided in the Declaration:
- (j) Cause additional improvements to be made as a part of the Common area:
- (k) Procure and maintain liability, casualty and other insurance as required in the Declaration:
- (l) Acquire, hold, and convey, in the Association's name and in the ordinary course of business, any right, title or interest to real estate or personal property:

(m) Borrow funds and secure such loans with pledges of future assessments or encumbrance of Common area upon receipt of approval from fifty-one percent (51%) of the members present at a meeting in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary and give security therefor.

(n) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Elements:

(o) Impose and receive a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Elements:

(p) Impose a reasonable charge for late payment of assessments and, after notice and hearing, levy reasonable fines for a violation of the Declaration, Bylaws, Articles or Incorporation or Rules and Regulations of the Association;

(q) Impose a reasonable charge for the preparation and recording of amendments to the Declaration liens, or statements of unpaid assessments:

(r) Provide for limitation of liability to maximum extent permitted by law and the indemnification of the Association's Officers and the Board and maintain Directors' and officers' liability insurance:

(s) Procure and maintain adequate liability and hazard insurance on property owned by the Association and as further set forth in the Declaration:

(t) Cause all Directors, Officers, Employees or agents having fiscal responsibilities to be bonded or insured, as it may deem appropriate and in such amounts as it may deem appropriate:

(u) 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:

(v) Exercise for the Association all powers, duties, rights and obligations in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration or the Act.

(w) As a part of the adoption of the regular budget the Board shall include an amount which, in its reasonable business judgment, will establish and maintain a reserve fund for the replacement of those improvements that it is obligated to maintain, based upon age, remaining life, and the quantity and replacement cost of major Common area improvements.

Section 7.2 No Waiver. The omission or failure of the Association or Owner to enforce the covenants, conditions, easements, uses, limitations, obligations, or other provisions of the Declaration, the Bylaws, or rules and regulations shall not constitute or be deemed a waiver, modification, or release thereof, and the Board shall have the right to enforce the same at any time.

## ARTICLE 8 -- OFFICERS AND THEIR DUTIES



Section 8.1 Enumeration of Offices. 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 create by resolution who shall also be members of the Board of Directors. 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 except in the case of special offices created pursuant to authority in these Bylaws, and that the offices of the Secretary and Treasurer may be held by the same person.

Section 8.2 Election of Officers. The officers shall be elected for a one (1) year term at the first meeting of the Board of Directors following each annual meeting of the members.

Section 8.3 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 8.4 Resignation and Removal. Any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

Section 8.5 Vacancies. A vacancy in any office may be filled by appointment by the Board by majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 8.6 Duties. The Duties of the Officers are as follows:

(a) President. The President shall have all of the general powers and duties which are incident to the office of president of a Colorado non-profit corporation including, but not limited to, the following: preside at all meetings of the board of Directors; shall see that orders and Resolutions of the Board are carried out; sign all leases, mortgages, deeds and other written instruments and co-sign checks and promissory notes

(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 maintain the minutes of all meetings and proceedings of the Board and of the members; 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 perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate financial records. The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by Resolution of the Board of Directors; keep proper books of account; shall sign checks and promissory notes of the Association; and shall prepare and annual budget and 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 members present at such annual meeting; prepare, certify and execute statements of unpaid assessments in accordance with Section 316 of the Act and charge, for the Association, a reasonable fee for the preparation of such statement as established by resolution of the Board.

Section 8.7 Delegation. The duties of any officer may be delegated to another Board Member. Provided, however, the officer shall not be relieved of any responsibility under this Section or under Colorado Law.

## ARTICLE 9 – COMMITTEES

Section 9.1 Designated Committees. The Association shall appoint a Design Review Committee, as provided in the Declaration, and a Hearing or Mediation Committee, as may be provided in rules and regulations. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes. Committees shall have authority to act only to the extent designated in the Governing Documents or delegated by the Board.

## ARTICLE 10 – BOOKS AND RECORDS

Section 10.1 Records. The Association, shall keep the following records, if any.

(a) An account for each Lot, which shall designate the name and address of each Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Lot, the amount of each common expense assessment, the dates on which each assessment comes due, any other fees payable by the Owner, the amounts paid on the account and the balance due:

(b) An account for each Owner showing any other fees payable by the Owner:

(c) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association:

(d) The current operating budget:

(e) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant:

(f) A record of insurance coverage provided for the benefit of Owners and the Association:

(g) Tax returns for state and federal income taxation:

(h) Minutes of proceedings of meetings of the Owners, Directors, committees of Directors and waivers of notice; and

(i) A copy of the most current versions of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations of the Board, along with their exhibit and schedules.

Section 10.2 Examination. The books, records and papers of the Association shall at all times, after reasonable notice, be subject to inspection and copying by any member, at their expense, for any proper purpose, as defined in the rules and regulations of the Association. The Board of Directors shall determine reasonable fees for copying.

## ARTICLE 11 -- AMENDMENTS

Section 11.1 Bylaw Amendments. These Bylaws may be amended by the vote of the majority of the Board of Directors present, in person or by proxy, at a meeting at which a quorum has been obtained, called for that purpose. Any changes made in the Bylaws membership will be notified at the earliest, but not later than 90 days.

## ARTICLE 12 -- INDEMNIFICATION

Section 12.1 Actions Other Than By or In the Right of the Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suite or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director or Officer of the Association, who is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner which such individual reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his conduct was unlawful.

Section 12.2 Actions By or In The Right of The Association. The Association shall indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such person is or was a Director or Officer of the Association or is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner which he or she reasonably believed to be in the best interests of the Association; but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his or her duty in the Association unless, and to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.