

**BYLAWS
OF
THE ESSEX ON THE PARK
OWNERS' ASSOCIATION**

**ARTICLE I
Name and Location**

The name of this non-profit corporation is **The Essex on the Park Owners' Association**, hereinafter referred to as the "**Association**". The principal office of the corporation shall be located at 1525 South Fourth Street, Suite 200, Minneapolis, Minnesota 55454.

**ARTICLE II
Definitions**

The terms and phrases used in these Bylaws shall have the meanings set forth in the Declaration of The Essex on the Park, Common Interest Community No. 406 (the "**Declaration**") as filed for record in the Office of the Ramsey County Recorder or Registrar of Titles.

**ARTICLE III
Meetings of Members**

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within ninety (90) days after filing of the Declaration at a time and place to be determined by the Board of Directors of the Association. Subsequent annual meetings shall be held yearly at such time and place as is specified by the Board. Prior to the termination of the Declarant Control Period, annual meetings shall be conducted solely for the purpose of transacting any business then authorized to be transacted by the Members. After the termination of the Declarant Control Period, the annual meeting of Members shall be held at such time and place as is specified by the Board, for the purpose of electing the Board and transacting any other business authorized to be transacted by the Members.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president, or the vice president, or by a director, and must be called by the president upon receipt of written requests from a majority of the Members.

Section 3. Special Meeting upon Termination of the Declarant Control Period. Within forty-five (45) days after the termination of the Declarant Control Period, a special meeting of the Members shall be held upon a call issued by the Declarant. All of the officers and directors of the Association appointed by the Declarant shall resign at the first meeting of the Members and thereafter the Members shall elect successors for said directors.

Section 4. Notice of Annual and Special Meetings. Notice of all meetings of the Members, stating the time and place and the purpose for which the meeting is called shall be given by the secretary of the Association. The secretary shall, at least twenty-one (21) days but no more than

thirty (30) days in advance of any annual meeting or regularly scheduled meeting, and at least seven (7) days but no more than thirty (30) days in advance of any special meeting, send to each Member a notice containing the time, place and complete agenda of the meeting. The notice shall be sent by United States mail, postage-prepaid, or hand delivered to all Members of record at the address of their respective Units, or to other addresses as may have been designated to the secretary.

Section 5. Quorum. Members holding at least fifty percent (50%) of the total voting power of the Association must be present, in person or by proxy, to constitute a quorum for the transaction of business at any annual or special meeting. When such quorum is not present or represented by proxy, the meeting shall be adjourned and a second meeting scheduled. No notice, other than the announcement of the second meeting at the time the first meeting is adjourned, shall be necessary. Additional meetings shall continue to be scheduled in this manner until a quorum as aforesaid shall be present or represented by proxy. When a quorum is present at an annual or special meeting but certain Members have withdrawn from the meeting so that less than a quorum remains, the then remaining Members may continue to transact business.

Section 6. Proxies. At all meetings of the Members, each voting Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary of the Association five (5) days before any meeting. Every proxy shall be revocable and shall automatically cease upon adjournment of the annual or special meeting for which such proxy was given. Every notice of an annual or special meeting shall set forth procedures for the appointment of proxies.

Section 7. Voting.

a. The Owners of each Unit shall be allocated the percentage vote indicated on Exhibit B to the Declaration for each Unit owned. Where the record Owner is comprised of more than one person or entity, such persons or entity or entities shall, at the time ownership is acquired, designate in writing to the Board of Directors of the Association, the person entitled to vote on behalf of said persons or entity or entities. Such designation shall remain in effect until a written change, signed by each and every person or entity comprising the record Owner, is delivered to the Board of Directors;

b. The Association is not entitled to a vote during any time when a Unit is owned by the Association; and

c. The entire vote on any single issue, including the election of Directors, may be by mailed ballots if so stated in the notice required by Article III, Section 4 above. Such a vote shall have the same force and effect of a vote taken at a regular or special meeting, provided that at least fifty percent (50%) of the voting power of the Association is cast in such vote.

d. There shall be no cumulative voting.

Section 8. Telephone Conference Meetings.

a. A conference among Members, or among the members of any committee designated by the Members, by any means of communications through which the participants may

simultaneously hear each other constitutes a meeting of the Members, or the committee, provided the same notice is given of such a telephone conference as would be required for a meeting, and provided the number of persons participating in the telephone conference would be sufficient to constitute a quorum at the meeting. Participation in a telephone conference meeting constitutes personal presence at the meeting.

b. A Member may participate in a meeting of the Membership, or any committee designated by the Membership, not described in paragraph (a) by any means of communication through which the participants may simultaneously hear each other during the telephone conference, and such communication shall constitute personal presence at the meeting if the same notice is given as would be required for a meeting, and if the number of members participating in the telephone conference are sufficient to constitute a quorum.

Section 9. Order of Business. The order of business at the annual meetings of the Members and as far as is practical at all other meetings of Members shall be:

- a. Election of chairman of the meeting;
- b. Calling of the roll and certifying of proxies;
- c. Proof of notice of meeting;
- d. Reading and disposal of any unapproved minutes;
- e. Reports of officers;
- f. Reports of committees;
- g. Election of inspectors of election;
- h. Nomination and election of Directors;
- i. Unfinished business;
- j. New business; and
- k. Adjournment.

Conduct of each meeting shall be governed by Robert's Rules of Order Revised.

ARTICLE IV
Board of Directors—Selection—Term of Office

Section 1. Number/Term. The affairs of the Association shall be managed by a Board of Directors. The first Board shall consist of the sole director named in the Articles of Incorporation. Declarant, as defined in the Declaration, shall have the sole right to appoint and remove members of the Board of Directors until the earlier of five (5) years after the date of the first conveyance of a Unit to an Owner other than the Declarant or sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than the Declarant (the “***Termination of Declarant Control***”); provided, however, not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not fewer than two (2) of the members of the Board of Directors shall be elected by Owners other than Declarant at a special meeting of the Owners to be held for such purposes. For the purposes of this Article, the percentage of the Units which have been conveyed shall be computed by including all Units which the Declarant has reserved the right to build in the Declaration including the Units that the Declarant may build on the Additional Property pursuant to Article VIII of the Declaration. Upon Termination of Declarant Control, at a meeting of the Owners called by the secretary of the Association, the Owners shall elect a Board of Directors of not fewer than five (5) members or the number of directors set forth herein as amended from time to time.

At the special meeting of Owners after conveyance of fifty percent (50%) of the Units, the Owners other than Declarant shall elect two directors, each for an initial term of one year, and the Declarant shall appoint the remaining three directors. Thereafter, at the expiration of the term of office of each director, a successor shall be elected to serve for a term of three (3) years. The directors shall hold office until their respective successors have been elected and installed.

Section 2. Nominations. After termination of the Declarant Control Period, and prior thereto only with respect to directors elected by the Members other than the Declarant, nominations for all available directorships shall be taken before voting. Only one vote shall be taken, and those nominees receiving the most number of votes shall be elected.

Section 3. Removal. After termination of the Declarant Control Period, and prior thereto only with respect to directors elected by the Members other than the Declarant, any director may be removed with cause by the Board as specified in Article VI, Section 1(n) and without cause by a sixty percent (60%) vote of the voting Members actually present at a special meeting called for that purpose and for which notice pursuant to Section 4 of Article III has been given. In the event of removal of a director, other than a director appointed by the Declarant, a successor shall be selected by the remaining Board members, or if the removal occurs prior to the Termination of Declarant Control, by the Owners other than Declarant.

Section 4. Compensation. No director shall receive compensation for any service rendered to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of duties.

Section 5. Voting. Each director as above defined shall be entitled to one vote.

Section 6. Vacancy. After Termination of Declarant Control, a vacancy in the Board may be filled by appointment by the Board. Until Termination of Declarant Control, a vacancy caused by the removal or resignation of a director appointed by Declarant shall be filled by Declarant and a vacancy caused by the removal or resignation of a director elected by the owners other than Declarant shall be filled by an election by the Owners other than Declarant. The Member appointed to such vacancy shall serve for the remainder of the term of the Member being replaced.

ARTICLE V

Meeting of Directors

Section 1. Regular Meetings. Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by the notice of such meeting of the Board. Should said meeting 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 shall be held when called by the president of the Association, or by a director after not less than three (3) days notice to the other directors.

Section 3. Notice. To the extent practicable, the Board shall give reasonable notice to Owners of the date, time and place of a Board meeting. If the date, time, and place of meeting is announced at a previous Board meeting, is posted in a location accessible to Owners and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required. Meetings shall be open to Owners, but may be closed to discuss the following:

- a. personnel matters;
- b. pending or potential litigation, arbitration or other potentially adversarial proceedings, between Owners, between the Board or Association and Owners, or other matters in which any Owner may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the Board or Association or the privacy of an Owner or occupant of a Unit; or
- c. criminal activity arising within the Condominium if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize investigation of the activity.

Section 4. Quorum. Every act or decision done or made by the sole Director of the first Board shall be regarded as an act of the Board. After election of the second Board pursuant to Article IV, Section 1, three (3) directors shall constitute a quorum for the transaction of business. Every act or decision done or made by the directors at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

Section 5. Presiding Officer. The presiding officer of the meeting of the second and subsequent Board shall be the president.

Section 6. Meetings by Conference Call.

a. A conference among directors, or among members of any committee designated by the Board, by any means of communication through which the participants may simultaneously hear each other during the conference, constitutes a meeting of the Board, or the committee, provided the same notice is given of the telephone conference as would be required for a meeting, and provided the number of persons participating in the telephone conference are sufficient to constitute a quorum at the meeting. Participation in a telephone conference meeting constitutes personal presence at the meeting.

b. A director may participate in a meeting of the Board, or any committee designated by the Board, not described in paragraph (a) by any means of communication through which he, other persons so participating, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a telephone conference meeting constitutes personal presence at the meeting.

Section 7. Board Action Without a Meeting.

a. Any action required or permitted to be taken at a meeting of the Board, other than an action requiring Membership approval, may be taken by written action signed by the sole director, in the case of the first Board, and by three (3) directors in the case of the second and subsequent Board, provided all directors are notified of the text of the written action prior to the signing by the directors.

b. The written action is effective when signed by the sole director, in the case of the first Board, and by three (3) directors in the case of the second and subsequent Boards, unless a different effective time is provided in the written action. All directors shall be notified immediately of its effective date. Failure to provide the notice does not invalidate the written action.

ARTICLE VI
Powers and Duties of the Board of Directors

Section 1. Powers. All of the powers of the Association shall be exercised by the Board, including those existing under common law, statutes, the Articles of Incorporation and those powers designated for the Association by the Rules and Regulations. Such powers shall include, but shall not be limited to, the power to:

a. Adopt, amend and publish rules and regulations governing the use of the Units, yards and other landscaped areas, garages and parking spaces, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

b. Adopt and amend budgets for revenues, expenditures and reserves;

- c. Approve or disapprove Members' requests to use Units for home occupations, as long as such home occupations do not cause a nuisance or annoyance to other Members;
- d. Exercise for the Association all powers, duties and authority vested 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;
- e. Cause the exterior of the Units and garages to be maintained;
- f. Elect annually the officers of the Board of Directors;
- g. Make and collect assessments to defray costs and expenses, and use the proceeds of assessments in the exercise of its powers and duties;
- h. Expend money of the Association to maintain, repair, and replace Units and Common Elements as authorized by the Declaration;
- i. Enforce by legal means the provisions of the Declaration, the Articles of Incorporation, the Bylaws of the Association and the Rules and Regulations for the use of the Common Elements and Units, and to levy fines for any violation thereof. Fines may be levied as special assessments;
- j. Employ and terminate such independent contractors or employees as the Board deems necessary to maintain the Condominium and to delegate to such persons powers and duties of the Association except such powers and duties as require approval of the Board or the membership of the Association;
- k. Purchase such policies of insurance as allowed and required by the Declaration, or any other insurance deemed appropriate to protect the Association or the Unit Owners;
- l. Increase the annual assessment during the annual assessment period in an amount not to exceed the prime interest rate being charged by the depository of the Association designated in Article VIII, Section 2 hereof at the time the increase is approved, except that a greater increase may be approved by a majority vote of the Members;
- m. Establish the reserve fund described in Section 3 below;
- n. After termination of the Declarant Control Period, fill vacancies in the Board by a vote of a majority of the remaining Directors at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the Directors present at such meeting may constitute less than a quorum. Each person so elected shall be a Director for the remainder of the term of the Director replaced; and
- o. Declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board without sufficient reason and proper prior notification.

Section 2. Duties. It shall be the duty of the Board to:

a. Cause to be kept a complete record of all of 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 members holding twenty percent (20%) of the total voting power of the Association;

b. Make and file all elections and documents required in order to exempt from taxation, insofar as possible, the income of the Association consisting of assessments paid by Owners;

c. Supervise all officers, agents and employees of this Association, and see that their duties are properly performed;

d. Prepare and distribute to the Members at or before the annual meeting an Annual Report, which shall contain, at a minimum, the following:

(i) a statement of any capital expenditures in excess of two percent (2%) of the current budget or \$5,000, whichever is greater, which capital expenditure is approved by the Association for the current fiscal year or succeeding two fiscal years;

(ii) a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board;

(iii) a statement of revenues and expenses for the Association's last fiscal year and a balance sheet as of the end of said fiscal year;

(iv) a statement of the status of any pending litigation or judgments to which the Association is a party;

(v) a detailed description of the insurance coverage provided by the Association, including a statement as to which of the items referred to in Minn. Stat. § 515B.3-113(b) are insured by the association; and

(vi) a statement of the total past due assessments on all units, which statement shall be current as of not more than 60 days prior to the annual meeting.

e. As more fully provided in the Declaration, to:

(i) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period in accordance with Article VII, Paragraph I, of the Declaration;

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

(iii) foreclose the lien against the 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;

f. Issue, or 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 the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

g. Procure and maintain adequate liability and hazard insurance on property owned by the Association; and

h. Cause the exterior of all Units and garages, exclusive of glass surfaces, and all Yards to be maintained.

Section 3. Reserve Fund. After consideration of the future requirements for exterior maintenance, the Board of Directors shall have the power and authority to levy as part of the annual assessment or as a special assessment such sums of money as they shall determine necessary to provide for the payment of maintenance and replacement of all Common Elements and Limited Common Elements that the Association is obligated to maintain, repair or replace. Such monies shall be credited to an appropriate account on the books of the Association with the designation "*Reserve Funds*".

Section 4. Investment of Reserve Fund. The Board shall determine, on a quarterly basis, what portion of the maintenance fee receivables to set aside for the reserve fund, and, at such time, shall cause those funds to be invested in certificates of deposit, savings accounts, U.S. government bonds or state or municipal bonds. No other investments of reserve funds shall be allowed.

Section 5. Use of Reserve Fund. Notwithstanding any provision to the contrary, "*maintenance*" as used in this Article with reference to Section 3, shall include the following:

a. Repainting, restaining and replacement of exterior trim on Units and Common Elements and tuckpointing of the building containing the Units;

b. Re-roofing of the buildings containing the Units;

c. Repair or replacement of sidewalks and of exterior doors and windows;

d. Resurfacing or replacement of roads, parking spaces and driveways; and

e. Replacement of trees, grass, shrubs, and other landscaping of Landscaped Areas, if applicable.

Any replacement or repairs required by the negligent action of the Owner or resident shall be the sole financial responsibility of such Owner.

ARTICLE VII Officers

Section 1. Enumeration of Officers. The officers of this Association shall be a president, a vice president, and a secretary-treasurer, who shall at all times be Members of the Board. Any person may hold two or more offices, except that the offices of president and vice president and the offices of president and secretary-treasurer shall be held by different persons. The Board shall, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

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

Section 4. Resignation and Removal. Any officer may be removed from office with 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, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

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

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

a. President. The President shall be the chief executive officer of the Association. The President shall have all of the powers and duties which are usually vested in the office of the President of a corporation, including, but not limited to, the duty to preside at all meetings of Directors and Members, and the general supervision over other officers and the affairs of the Association. The President shall execute all contracts, agreements and obligations of the Association except as such authority may be otherwise delegated by resolution of the Board of Directors.

b. Vice President. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President also shall assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

c. Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of all proceedings of the Directors and the Members and attend to the giving and serving of all notices to the Members and Directors and other notices required by law. The Secretary-Treasurer shall keep

the records of the Association, and shall perform all other duties incident to the office of a secretary or treasurer of a corporation and as may be required by the Directors or the President.

The Secretary-Treasurer shall have custody of all intangible property of the Association, including funds, securities and evidences of indebtedness, and shall give bond in such sum and with such sureties as the Directors may require; and shall keep the assessment rolls and accounts of the Members, shall keep the books of the Association in accordance with good accounting practices and shall submit them together with all vouchers, receipts, records and other papers to the Directors for their examination and approval as often as they may require. The Secretary-Treasurer shall deposit all monies and other valuable effects in the name of or to the credit of the Association in such depositories as may be designated by the Board of Directors, shall disburse the funds of the Association as ordered by the Board, and shall perform all other duties incident to the office of a treasurer of a corporation. If a managing agent or manager be employed, the Board of Directors may designate some or all of the foregoing functions to be entrusted to said agent or manager, subject to bonding and subject to oversight and control by the Secretary-Treasurer.

ARTICLE VIII **Fiscal Management**

Section 1. Property Held for Members' Benefit. All funds and the titles of all properties acquired by the Association, and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of the Members for the purposes stated in the Declaration and herein.

Section 2. Depository. The depository of the Association shall be such financial institutions as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by instruments signed by such persons as are authorized by the Directors.

ARTICLE IX **Assessments**

Unless otherwise specified, the term "*Assessments*" includes annual and special assessments, which are secured by a continuing lien upon the property against which the assessment is made and are the personal obligation of the Owner of the Unit. All assessments shall be levied and collected in accordance with the Declaration.

ARTICLE X **Maintenance and Alterations by the Member**

Members shall perform their responsibilities in such manner as not to disturb other Owners; shall not impair any easement affecting the Condominium; shall comply with the Rules and Regulations, Bylaws and Declaration; shall promptly report to the Association any defect or need for repairs to the exterior of the Unit.

ARTICLE XI
Limitation on Contract Duration

No contract, lease, management contract or employment contract, which is directly or indirectly made by or on behalf of the Association, shall be entered into for a period exceeding two (2) years. Any contract providing for services by any Declarant, or builder, shall provide for termination by either party without cause or payment of a termination fee, on ninety (90) days or less prior written notice.

ARTICLE XII
Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be available for inspection by any Member or to any mortgagee, insurer or guarantor upon request to the Secretary of the Association.

ARTICLE XIII
Corporate Seal

The Association shall not have a corporate seal.

ARTICLE XIV
Amendments

The Board shall have the right to propose an amendment to the Bylaws by a resolution setting forth the proposed amendment or amendments. Such amendment(s) shall be submitted for adoption at a meeting of the Members. Notice of the meeting of the Members shall be given to all Members and shall state the purpose of the meeting and give details of the proposed amendment(s). The amendment(s) shall be approved and adopted by a vote of Unit Owners holding at least 50% of the total voting power of the Association. In the case of any conflict between the Declaration and these Bylaws or Articles of Incorporation, the Declaration or Articles of Incorporation shall control.


ARTICLE XV
Fiscal Year

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December in each year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XVI
Severability

Invalidation of any one of these Bylaws by judgment of court order shall in no way affect any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the sole Director of The Essex on the Park Owners' Association, has hereunto set his hand as of the 6 day of October, 2000.



George Sherman