

# FILE COPY

JANUARY 1, 1993

BY-LAWS

OF

ESMANN ISLAND OWNERS ASSOCIATION

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## ARTICLE I

The name of the Association is "ESMANN ISLAND OWNERS ASSOCIATION" (herein called "Association").

## ARTICLE II

### PRINCIPAL OFFICE

The principal office of the Association is located in care of Esmann Island Owners Association, P.O. Box 676, Guttenberg, Iowa.

## ARTICLE III

### PURPOSES

The Association exists to perform the functions described in the January 1, 1993, Declaration of Covenants, Conditions, and Restrictions for Esmann Island, as amended from time to time (herein called "Declaration"), and to provide an entity to own, convey, operate and maintain Esmann Island, and any portion thereof; and to engage in any and all lawful acts. All of the provisions of the Declaration are hereby incorporated in these By-Laws by this reference as if fully set forth herein.

## ARTICLE IV

### MEMBERS AND VOTING RIGHTS

1. An owner of record of a lot within Esmann Island shall be recognized as a member without further action for so long as he or she owns an ownership interest. If ownership is acquired but not of record, or if acquired other than by way of conveyance or other formal instrument of transfer (such as death, judicial act or dissolution), the person acquiring or succeeding to ownership shall present to the Association evidence satisfactory to it of facts evidencing lawful ownership status prior to the exercise of any

rights as a member of the Association. Failure to provide such evidence shall not, however, relieve any owner of his membership obligations. A fiduciary or other official acting in a representative capacity shall exercise all membership rights and privileges of the owner which he or she represents.

2. If more than one person is an owner of the same lot, or several lots, all such owners shall be members and remain jointly and severally liable for all membership obligations. In such cases, or if more than one fiduciary or other official is acting in the premises, the vote entitled to be cast by such common owners shall be cast by the person named for the purpose on a certificate signed by all such owners or fiduciaries or other officials and filed with the Association, and such person shall be deemed to hold the vote appurtenant to such ownership for the purposes of voting. Such certificate shall determine the representation of such ownership at any meeting or for purposes otherwise provided herein. If such certificate is not executed and filed with the Association, such membership shall not be in good standing and the vote appurtenant to that ownership shall not be considered in determining a quorum or any vote for any other purpose until this Bylaw is complied with. Such certificate shall continue in force until revoked in writing and filed with the Association's secretary.

3. No person shall be entitled to more than one vote, even though such person may own more than one lot.

## ARTICLE V

### MEETINGS OF MEMBERS

*added  
6/97*  
1. Annual Meetings. An annual meeting of the members of the Association shall be held on the first Saturday of June in each year, at the hour of 10:00 A.M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

2. Regular Meetings. In addition to the annual meetings, regular meetings of the members may be held at such time as shall be determined by the Board of Directors.

3. Special Meetings. It shall be the duty of the President to call a special meeting of the members as directed by resolution of the Board of Directors or upon a petition signed by not less than ten (10) members. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the

members present, either in person or by proxy.

4. Place of Meetings. Meetings of the Association shall be held at such place convenient to Esmann Island as may be designated by the Board of Directors.

5. The Secretary or Secretary Designate shall give written notice to each member of the annual meeting. The person or persons calling a special meeting pursuant to paragraph 2 shall give like written notice of such special meeting. All notices shall set forth the time and place and purpose or purposes for which the meeting will be held. No action shall be taken at a special meeting which is not directly related to the purpose or purposes stated in the notice of meeting for which such meeting is held.

6. Notice of a members' meeting shall be given by mailing or delivering the same not less than ten (10), nor more than fifty (50), days prior to the date of the meeting. Notice shall be deemed duly given if mailed by first class mail to the member at such member's Esmann Island address, unless at the time of giving such notice, the member has given written direction, delivered to an officer or member of the Board of Directors, specifying a different mailing address to be carried on the rolls of the Association. If more than one person is an owner of a lot or if more than one fiduciary or other official is acting in the premises, notice shall be deemed given when given in accordance with this paragraph to the person named in the certificate filed with the Association in accordance with paragraph 2 of Article IV. Notice of any meeting may be waived in writing by the person entitled thereto. Notice given pursuant hereto shall be sufficient if given to all such owners of record with the Association Secretary as of the date of mailing.

7. A quorum at a members' meeting shall consist of the presence of members or by proxy, entitled to cast sixty percent (60%) of the votes outstanding. The acts carried or approved by a vote of a majority of votes represented at a meeting at which a quorum is present shall constitute the acts of the members unless a different rule is provided herein or by the Articles of Incorporation, or other agreement to which the Association is a party. The President, or, in the President's absence or disability, the Vice President, shall preside at each members' meeting; if neither the President nor the Vice President is available to preside, a chairperson shall be elected by the members present at such meeting. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements herein and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided such subsequent meeting shall be held within sixty (60) days following such preceding meeting.

*ended  
4/97*

8. At any membership meeting, the presence of an owner and the exercise of the voting rights of an owner or person entitled to cast votes, by proxy shall be permitted and recognized, provided such proxy must be in writing and signed by the person holding the voting right and shall set forth the legal description of the property(ies) with respect to which such rights are appurtenant and the period for which the proxy is to be in force and effect. The decision of the Board of Directors as to the sufficiency of any proxy for recognition shall be final and not subject to appeal to the members.

9. Order of Business. The order of business at the annual meeting of the members shall be as follows:

- A. Roll call
- B. Proof of notice of meeting or waiver of notice
- C. Reading of Minutes of preceding meeting
- D. Reports of officers
- E. Reports of committees
- F. Election of Directors
- G. Unfinished business
- H. New business

## ARTICLE VI

### BOARD OF DIRECTORS

1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors composed of seven (7) persons, all of whom must be members of the Association.

2. Powers and Duties. The Board of Directors shall have the powers and duties set forth at Article VII of these Bylaws.

3. Election and Term of Office. At the first annual meeting of this Association on the 25th day of May, 1991, Directors were elected and have since then and shall hereafter serve the following terms of office. The term of office of two (2) Directors shall be fixed at one (1) year; the term of office of two (2) Directors shall be fixed at two (2) years; and the term of office of three (3) Directors shall be fixed at three (3) years. At the expiration of the initial term of office of each respective Director, the successor Director shall be elected to a term of three (3) years. The Directors shall hold office until their successors have been elected and hold their first meeting.

4. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the

remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next meeting of the Association.

5. Removal of Directors. At any annual, regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the members and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting.

6. Organizational Meeting. The first meeting of the newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but actual notice of the meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone, or telegraph, at least three (3) days prior to the date named for such meeting.

8. Special Meeting. Special meetings of the Board of Directors may be called by the President on three days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President in like manner and on like notice on the written request of at least three Directors.

9. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance of a Director at any meeting of the Board shall be a waiver of notice by such Director of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

10. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of at least a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the

majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the Association shall be exercised by the Board of Directors including those existing under the common law and statutes and the Articles of Incorporation. Such powers and duties of the Directors shall include in addition to those elsewhere provided for but shall not be limited to the following:

1. To enforce the terms of and carry out the obligations set forth in the Declaration.
2. To make and collect assessments.
3. To use the proceeds of assessments in the exercise of its powers and duties.
4. The maintenance, repair, replacement and operation of the Common Areas and improvements located thereon and making or providing for payment for all such work and approving or delegating to the officers authority to approve vouchers therefor.
5. The reconstruction, repair, restoration, or rebuilding of the Common Areas after casualty; the construction of new improvements or alterations if authorized; to make and amend rules and regulations respecting the use and occupancy of the Common Areas and to permit or forbid an action or conduct within the discretion committed to them in these Bylaws, and Resolutions of the members.
6. To enforce by legal means the provisions of the Articles of Incorporation, the ByLaws of the Association, the Declaration and the rules and regulations for the use of the Common Areas; and to take legal action in the name of the Association and on behalf of its members, including the imposition of penalties and fines against members for violations thereof.
7. To employ, designate and remove personnel to perform the services required for proper operation of the Common Areas.
8. To carry insurance upon the Common Areas and insurance for the protection of Lot owners, occupants and the Association.

9. To pay the cost of all power, water, sewer, and other utility or other services rendered to the Common Areas.

10. To conduct all votes and determinations by members other than at a membership meeting.

11. To do such other acts as are necessary and proper to effect the purpose of the Association as stated in these ByLaws, the Articles of Incorporation, and the Declaration; provided such acts are not otherwise prohibited.

12. LIMITATION ON BOARD EXPENDITURES. In no event shall the Directors make any expenditure in excess of \$5,000.00, without approval by the membership at the annual meeting or a regular or special meeting.

## ARTICLE VIII

### OFFICERS

1. Designation. The principal officers of the Association shall be the President, Vice President, Secretary and Treasurer.

2. Election of President and Vice President. The President and Vice President of the Association shall be elected annually from the membership of the Board of Directors by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

3. Appointment of Secretary and Treasurer. The Secretary and Treasurer of the Association shall be appointed annually, from the membership of the Association, by the Board of Directors at the organizational meeting of each new board and shall hold office at the pleasure of the Board. The Secretary and Treasurer shall be reasonably compensated for the performance of their duties.

4. Removal of Officers. Upon an affirmative vote by a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purposes.

5. President. The President shall be the Chief Executive Officer of the Association. The President shall preside at all membership meetings and meetings of the Board of Directors and shall have power to appoint committees from among the members to assist in the conduct of the affairs of the Association.

6. Vice President. The Vice President shall preside over

membership meetings in the absence or disability of the President, and shall otherwise exercise the powers and duties of the President in the event of the absence or disability of the President, and shall generally assist the President and exercise such other powers and duties as are prescribed by the Directors.

7. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association and shall have charge of such books and papers as the Board of Directors may direct; and shall in general perform all of the duties incident to the office of Secretary.

8. Treasurer. The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association.

## ARTICLE IX

### FISCAL MANAGEMENT

1. The Board of Directors shall adopt a budget for each calendar year (which shall be the Association's fiscal year for income tax purposes) which shall include the estimated funds required to defray the common expenses and to provide and maintain funds for the following accounting categories according to good accounting practices.

A. Current expenses which shall include all funds and expenditures to be made within the year for which the funds are budgeted, including a reasonable allowance for the contingencies and working funds, except expenditures chargeable to reserves or to additional improvements. The balance of this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year.

B. Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.

C. Reserve for replacement which shall include funds for repair or replacement required because of damage, destruction, depreciation or obsolescence.

2. The Board of Directors shall assess against each lot, and the owners thereof only shall be liable for a proportionate share of the items in the budget adopted pursuant to Paragraph 1, which proportionate share shall be in accordance with the provisions of



the Declaration. The rate of assessment shall be in accordance with the provisions of the Declaration. Such proportionate share shall be assessed for the fiscal year for which the budget was prepared annually in advance and notice of such assessments shall be mailed or delivered not less than thirty (30) days prior to the first day of such fiscal year. Such assessment shall be due and payable from the respective property owner or owners annually, each installment being due and payable within sixty (60) days of the date of Notice of Assessment. In the event the annual assessment proves to be insufficient, the budget and assessments therefor, may be amended at any time by the Board of Directors. The additional amount so budgeted shall be assessed to each owner in the same manner as assessments for the annual budget and shall be due within ninety (90) days of giving notice thereof.

3. Special assessments shall be made only in accordance with the provisions of Article IV, Section 3, of the Declaration, as amended from time to time.

4. The holder of a first mortgage on any property, upon its filing written request with the Association, shall be given written notice from the Association of any default by the mortgagor in the performance of the mortgagor's obligations under these ByLaws.

5. All sums assessed but unpaid including, but not limited to, interest shall constitute a lien on such real property prior to all other liens except all sums unpaid on a first mortgage of record. Such lien may be foreclosed by the Association in the manner provided for the foreclosure of mortgages contained in the Code of Iowa in which event the lot owner shall be required to pay a reasonable rental for the unit. The Association may sue for money judgment for unpaid assessment and interest or sums due without foreclosing or waiving any lien which it holds.

6. If a mortgagee or purchaser of a property obtains possession as a result of foreclosure of a first mortgage, or deed in lieu of foreclosure, such mortgagee or purchaser, his successors and assigns, shall not be liable for the assessments chargeable to such property due prior to the acquisition of possession and such unpaid assessments shall thereafter be deemed to be common expenses collectible from all owners including the mortgagee or purchaser, their successors and assigns, all without prejudice to the right of the Association to collect the same from the defaulting lot owner personally. The owner pursuant to a voluntary conveyance or by inheritance or devise shall be jointly and severally liable with the grantor or prior owner for all unpaid assessment against the grantor or prior owner but without the prejudice to the right of such grantee or devisee to recover from grantor the amounts paid therefor. The grantee or other successor interest of an individual subject to a levy of assessment on account of default shall be

liable for any such special assessment.

7. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

8. An accounting of the Association's books shall be made annually and a copy of the report shall be made available for inspection by each member not later than ninety (90) days after the close of the fiscal year for which the report is made.

## ARTICLE X

### RULES AND REGULATIONS

The Board of Directors shall adopt such rules and regulations as may be necessary or appropriate for the accomplishment of the purposes of the Association.

## ARTICLE XI

### AMENDMENT

1. These ByLaws may be amended, altered, repealed or new ByLaws adopted by the members at the annual meeting or at a regular or special meeting of the members upon the affirmative vote of two-thirds of the votes outstanding.

2. No amendment may be adopted at such membership meeting if not included in the notice thereof, except if notice of the proposed amendment has been given, a different amendment relative to the same subject matter may be adopted by those present, in person or by proxy and possessing the requisite percentage of membership and votes, provided further no vote by proxy may be counted unless the proxy expressly provides for such contingency. Notice referred to herein shall be given in the manner prescribed in Article II, Section 3 of these ByLaws and shall be given to the persons described in Article II, Section 4, and the holder of any first mortgage of record which has notified the Association of his interest. More than one proposed amendment may be included in the notice of a meeting.

3. No modification or amendment of these ByLaws shall be effective if the same results in an amendment, modification or change in the terms of the Declaration, unless the Declaration are properly amended in accordance with its terms.

4. No modification or amendment of these ByLaws shall be effective unless set forth in an amendment executed and recorded in the office of the Recorder of Clayton County, Iowa. Upon such recording, the amendment shall be effective against all persons regardless of whether such person had an ownership interest at the time the amendment was adopted.

## ARTICLE XII

### EXECUTION OF LEGAL DOCUMENTS

All contracts, notes, deeds, mortgages or other instruments of this corporation shall be valid and binding when executed in the name of the corporation by the President and Secretary of the corporation; or by such other two (2) officers of the corporation, as the Board may from time to time designate for that purpose.

## ARTICLE XIII

### GENERAL PROVISIONS

1. The invalidity of any portion or provision of these ByLaws shall not affect the validity of the remaining provisions or portions hereof.

2. The Association shall not have a corporate seal.

3. The Board of Directors may require fidelity bonds from all directors, officers or agents handling or responsible for Association funds and the expense of such bonds shall be a common expense of the Association.

4. The Association shall at all times maintain complete and accurate written records of each lot and owner and the address of each, and setting forth the status of all assessments, accounts and funds pertinent to that lot and owner. Any person may rely on a certificate made from such records by an officer or agent of the Association as to the status of all assessments and accounts.

5. Each member shall have the obligations as such member as are imposed upon him by the recorded documents as an owner, and no member shall have any power or authority to incur a mechanic's lien or other lien effective against the Common Areas.

6. The Board of Directors may in its discretion issue written evidence of membership but the same shall be evidence thereof only and shall in no manner be transferrable or negotiable, and the share of the member in the assets of the Association cannot be

assigned, hypothecated, or transferred in any manner except as an appurtenance to such assignment, hypothecation, or transfer of the property.

7. The January 1st, 1993, Declaration of Covenants, Conditions and Restrictions for Esmann Island. as amended from time to time, are by this reference incorporated herein as though fully set forth.

These ByLaws shall become effective from and after January 23rd, 1993.

ESMANN ISLAND OWNERS ASSOCIATION

by: Wayne Jensen  
Wayne Jensen, President

by: Anne Hawker  
Anne Hawker, Secretary

STATE OF IOWA, COUNTY OF CLAYTON, ss:

On this 5<sup>th</sup> day of JUNE, 199<sup>3</sup>, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared WAYNE JENSEN and ANNE HAWKER, to me personally known, who being by me duly sworn, did say that they are the President and Secretary respectively, of the corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Wayne Jensen, President, and Anne Hawker, Secretary, as officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

[Signature]  
Notary Public