

**BYLAWS  
OF  
EMERSON POINT CONDOMINIUMS ASSOCIATION, INC.**

**ARTICLE 1. NAME AND LOCATION**

The name of the corporation is Emerson Point Condominiums Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be 1660 Race St, Denver CO 80206, but meetings of Members and directors may be held at such places within the State of Colorado as may from time to time be designated by the Board of Directors of the Association ("Board of Directors" or "Board").

**ARTICLE 2. PURPOSE**

The purpose for which the Association is formed is to govern the Community, exercise the rights, power and authority, and fulfill the duties of the Association, as provided in that certain Condominium Declaration of Emerson Point Condominiums, and all amendments, clarifications and supplements thereto, recorded or to be recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado ("Declaration") (terms which are defined in the Declaration shall have the same meanings herein Unless otherwise defined), and those certain Articles of Incorporation of Emerson Point Condominiums Association (a.k.a. Emerson Point Condominiums), and any amendments thereto, filed in the office of the Secretary of State of the State of Colorado ("Articles of Incorporation"). All present and future Owners, tenants, occupants, and any other person who may use any Unit, the Common Elements, or any portion thereof, or any facilities or appurtenances thereto or thereon, in any manner, shall be subject in all respects to the covenants, conditions, restrictions, reservations, easements, regulations, and all other terms and provisions set forth in the Declaration, Articles of Incorporation and these Bylaws. The mere acquisition, rental or occupancy of any Unit, or any portion thereof, shall signify that all terms and provisions of the Declaration, Articles of Incorporation and these Bylaws are accepted, ratified and shall be complied with.

**ARTICLE 3. MEETINGS OF MEMBERS**

Section 3.1. 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. The directors shall be elected by the Members at the annual meeting, in accordance with the provisions of these Bylaws. The Members may transact other business as may properly come before them at the annual meeting. Failure to hold an annual meeting shall not be considered a forfeiture or dissolution of the Association.

Section 3.2. Special Meetings. Special meetings of the Members may be called at any time by the President or by a majority of the Board of Directors or by Owners having at least twenty percent (20%) of the votes of the Association.

Section 3.3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary of the Association or person authorized to call the meeting. Not less than ten (10) nor more than fifty (50) days in advance of such meeting, the person giving such notice shall cause notice of the meeting to be hand delivered or sent prepaid by United States first class mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration

or Bylaws, any budget changes, and any proposal to remove an officer or director.

Section 3.4. Quorum and Voting Requirements.

3.4.1. A quorum is deemed present throughout any meeting of the Association if persons entitled to cast fifty percent (50%) of the votes that may be cast on a matter are present, in person or by proxy, at the beginning of the meeting.

3.4.2. Unless otherwise specifically provided by the Declaration, the Articles of Incorporation, these Bylaws or by statute, action on all matters, except election of the Board of Directors, coming before a meeting of Members at which a proper quorum is in attendance, in person or by proxy, is approved if the votes cast favoring such action exceed the votes cast opposing such action.

Section 3.5. Proxies.

3.5.1. If only one of the multiple Owners of a Unit is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Unit. If more than one of the multiple Owners of a Unit are present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Owners, unless the Declaration expressly provides otherwise. There is majority agreement if anyone of the multiple Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

3.5.2. The vote allocated to a Unit may be cast pursuant to a proxy duly executed by an Owner. If a Unit is owned by more than one person, any Owner of such Unit may register protest to the casting of a vote by any other Owner of such Unit through a duly executed proxy; but each Unit shall only have one vote allocated to it, as provided in the Declaration. An Owner may not revoke a proxy given pursuant to this Section except 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 (11) months after its date unless it provides otherwise.

Section 3.6. Action by Written Ballot. Any action that may be taken at any annual, regular, or special meeting of the Members may be taken without a meeting if the Association delivers (by mail or otherwise) a written ballot to every Member entitled to vote on the matter which sets forth each proposed action and provides an opportunity to vote for or against each proposed action. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Solicitations for vote by written ballot must be accompanied by written information sufficient to permit a Member to reach an informed decision on the matter and must specify:

3.6.1. the number of responses needed to meet the quorum requirements;

3.6.2. the percentage of approvals necessary to approve each matter other than election of the directors; and

3.6.3. the time by which a ballot must be received in order to be counted.

Section 3.7. Voting Procedures/Secret Balloting.

(a) Secret ballots, if required by law, must be used in contested Board member elections and in any other matter as required or allowed by law.

(b) All other voting may be by voice, by show of hands, by consent, by mail, by electronic means, by proxy, by written ballot, or as otherwise determined by the Board of Directors prior to the meeting or by a majority of the Members present at a meeting.

**ARTICLE 4. BOARD OF DIRECTORS - SELECTION - TERM OF OFFICE**

Section 4.1. Number. The affairs of this Association shall be managed by a Board of Directors of three (3) directors.. Directors shall be Members which, in the case of any Members who are not natural persons, may include the officers, directors, partners, members, employees or authorized agents of each such Member. Notwithstanding the foregoing, the number of directors may be changed from time to time by a vote of the Board of Directors; provided, however that, except as provided above, the number of directors may not be greater than seven (7) nor less than three (3).

Section 4.2. Term of Office. The term of office of directors shall be two years. The terms of the directors shall be staggered. The terms of at least 1/3 of the directors shall expire annually.

Section 4.3. Removal. The Members may remove any director with or without cause if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors. Notice of a Special Meeting of the Members to remove directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member of the Association, including the directors sought to be removed, as provided in these Bylaws. Directors sought to be removed shall have the right to be present at this meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken. In the event of removal of one or more directors, a successor shall be elected by the Members at the meeting to serve for the unexpired term of his or her predecessor.

Section 4.4. Compensation. No director shall receive compensation for any service rendered to the Association as a director. However any director may be reimbursed for actual expenses incurred in the performance of the director's duties.

**ARTICLE 5. NOMINATION AND ELECTION OF DIRECTORS**

Section 5.1. Nomination. Nomination for election to the Board of Directors may be made by a nominating committee if such a committee is appointed, from time to time, by the Board of Directors. Nominations may also be made from the floor at any Member meeting.

Section 5.2. Election. The Association may conduct elections of directors by mail or electronic means, in its sole discretion, and pursuant to procedures adopted by it; provided however, that any procedures adopted shall provide for notice to Members of the opportunity to run for a vacant position and/or nominate any Member of the Association for a vacant position, subject to the nominated Member's consent. In an election of directors, the Members receiving the largest number of votes shall be elected.

**ARTICLE 6. MEETINGS OF THE BOARD OF DIRECTORS**

Section 6.1. Regular Meetings. Regular meetings of the Board of Directors shall be held not less often than quarterly, without notice, at such place and hour as may be fixed from time to time by the Board. Should said meeting fall upon a legal holiday (a legal holiday being any weekday, other than Saturdays or Sundays, when national banks are closed), then that meeting shall be held at the same time on the next day which is not a legal holiday.

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.

Section 6.3. Quorum; Actions of Board of Directors. A quorum at any meeting of the Board of Directors is present if directors entitled to cast at least fifty-one percent (51 %) of the votes on the Board of Directors are present. Each director has one vote, and every act or decision done or made by a majority of a quorum of the directors present, in person or by proxy granted to another director (as more specifically set forth below), at a duly held meeting shall be regarded as the act of the Board of Directors.

Section 6.4. Consent to Corporate Action. The directors shall have the right to take any action, except the adopting of a rule or regulation, in the absence of a meeting, which they could otherwise have taken at a meeting, by:

(a) Obtaining the unanimous verbal vote of all directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at that time; or

(b) Providing written notice to each director of a proposed action to be taken. Such notice shall include the date and time by which the directors must respond to the proposed action and shall state that failure to respond by the time stated in the notice will have the same effect as abstaining in writing to a proposed action and failing to demand in writing that action not be taken without a meeting. Upon receiving written notice of a proposed action, each director, by the date and time provided for in such notice, may: (i) vote in writing for such action; (ii) vote in writing against such action; (iii) abstain in writing from voting; (iv) fail to respond or vote; or (v) demand in writing that action not be taken without a meeting.

(1) In the event a sufficient number of affirmative votes for the proposed action, pursuant to these Bylaws, are cast in writing and not revoked by the time stated in the notice for such proposed action, the Board may take such action unless one or more directors demands that the action not be taken without a meeting. In the event action is taken pursuant to this provision, the action shall be noted in the minutes of the next meeting of the Board and ratified at that time.

(2) Any director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Section may revoke such vote, abstention, or demand in writing; provided such revocation is received by the Association by the time and date stated in the notice for such proposed action. A director's right to demand that action not be taken without a meeting shall be deemed to have been waived unless the Association receives such demand from the director in writing by the time stated in the notice for such proposed action and such demand has not been revoked.

(c) Any action taken under subsections (a) and (b)(1) above shall have the same effect as though taken at a meeting of the directors and shall be effective at the end of the time stated in the notice for such proposed action.

Section 6.5. Proxies. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be deemed to be present and to vote if the director has granted a signed written proxy to another director who is present at the meeting, authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section and in Section 6.4 hereof, directors may not vote or otherwise act by proxy.

## **ARTICLE 7. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 7.1. Limitation on Powers. The Board of Directors may not act on behalf of the Association to amend the Declaration, to terminate this Community, or to elect directors or determine the qualifications, powers and duties, or terms of office of directors, but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

Section 7.2. Powers. The Board of Directors shall have power to:

7.2.1. adopt and publish rules and regulations governing the use of the Units, the Common Elements, the Community, or any portion thereof, and any facilities thereon and the personal conduct of the Members, their guests and other persons thereon, and to establish penalties for the infraction thereof;

7.2.2. suspend the voting rights of any Member during any period in which such Member shall be in default in the payment of any Assessment or for such period( s) as any Member, or any person for whom such Member is legally responsible, is in violation of the Declaration, the Articles of Incorporation, these Bylaws or the published Association rules and regulations;

7.2.3. enter into, make, perform or enforce contracts, licenses, leases and agreements of every kind and description;

7.2.4. borrow money;

7.2.5. provide for direct payment of Assessments to the Association from Owners' checking, credit or other accounts;

7.2.6. 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;

7.2.7. declare the office of a director to be vacant in the event such director shall be absent from two (2) regular meetings of the Board of Directors during anyone year period;

7.2.8. employ a manager, an independent contractor(s), or such other employees as they deem necessary and prescribe their duties; cooperate with any other community association and/or any district, as provided in the Declaration; and

7.2.9. exercise any and all powers granted by the Colorado Revised Non-Profit Corporation Act or by CCIOA.

Section 7.3. Duties. It shall be the duty of the Board of Directors to:

7.3.1. cause to be kept a complete record of all its acts and corporate affairs and 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 Owners entitled to cast at least 20% votes at such meeting;

7.3.2. supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;

7.3.3. as more fully provided in the Declaration, to:

7.3.3.1 determine the amount of the annual Assessment against each Unit, from time to time, in accordance with the Association budget, and revise the amount of the annual Assessment if such budget is vetoed by the Owners; and

7.3.3.2 foreclose the lien against any Unit for which Assessments are not paid within such time as may be determined by the Board of Directors from time to time, or bring an action at law against the Owner personally obligated to pay the same;

7.3.4. issue, or cause an appropriate officer or authorized agent 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 that an Assessment has been paid, such certificate shall be conclusive evidence of such payment as to all persons who rely thereon in good faith;

7.3.5. procure and maintain insurance, as more fully provided in the Declaration;

7.3.6. provide for maintenance, repair and/or replacement of the Common Elements, other property, and Improvements, as more fully provided in the Declaration; and

7.3.7. keep financial records sufficiently detailed to enable the Association to comply with the requirement that it prove statements of unpaid Assessments. All financial and other records shall be made reasonably available for examination by any Owner and such Owner's authorized agents .

Any of the aforesaid duties, but not the responsibility therefor, may be delegated by the Board of Directors to any other person(s) or to the Association's managing agent.

## **ARTICLE 8. RIGHTS OF THE ASSOCIATION**

The Association may exercise any and all rights or privileges given to it under the Declaration, the Articles of Incorporation or these Bylaws, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied therefrom or reasonably necessary to effectuate any such right or privilege.

## **ARTICLE 9. OFFICERS AND THEIR DUTIES**

Section 9.1. Enumeration of Offices. The officers of this Association shall be a president, a secretary, a treasurer, and such other offices as the Board may from time to time by resolution create.

Section 9.2. 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.

Section 9.3. Term. The officers of this Association shall be elected annually by the Board of Directors and each officer shall hold office for one (1) year or until such officer's duly-elected successor takes office, whichever occurs later; except that any officer may at any time resign, be removed, or otherwise be disqualified to serve.

Section 9.4. Special Appointments. The Board of Directors 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 9.5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, 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 9.6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 9.7. Multiple Offices. The same individual may simultaneously hold two or more offices, subject to any applicable requirements or limitations contained in the Declaration, Articles of Incorporation, these Bylaws or applicable law.

Section 9.8. Duties. The duties of the president, vice president, secretary and treasurer, which are delegable to other persons or the managing agent, are as follows:

9.8.1. President: The president shall preside at all meetings of the Board of Directors and Members; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and, shall co-sign or authorize a designated agent to co-sign promissory notes and checks of the Association.

9.8.2. Vice-President: The vice-president, if any, shall act in the place and stead of the president in the event of the president's absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of the vice president by the Board of Directors.

9.8.3. Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the names of the Members together with their addresses; shall prepare, execute, certify and record amendments to the Declaration on behalf of the Association; shall keep a record of the names and addresses of Security Interest Holders furnished to the Association by the Members; and shall perform such other duties as required by the Board.

9.8.4. Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign or authorize a designated agent to sign promissory notes and checks of the Association; shall keep proper books of account; shall cause an annual compilation report of the Association books to be made after the completion of each fiscal year or, at the option of the Board of Directors, an annual review or audited financial statement may be done; and shall prepare an annual budget to be presented to the membership, and give a copy or summary thereof to the Members (as provided in the Declaration).

The president, vice president, secretary or treasurer of the Association may prepare, execute, certify, file and/or record amendments to the Declaration, the Articles of Incorporation or these Bylaws, on behalf of the Association, except that the Board of Directors may authorize other officers to do so.

## **ARTICLE 10. COMMITTEES**

The Board of Directors may appoint such committee(s), and give them such responsibility, as the Board deems appropriate, from time to time, in carrying out any of its purposes.

## **ARTICLE 11. BOOKS AND RECORDS**

The Association shall make available to Owners current copies of the Declaration, Articles of Incorporation, these Bylaws, the rules and regulations, books, records and financial statements of the Association, except that: the Board of Directors may at any time(s) determine that items are confidential and should not be made available; and the Owners conducting such inspections shall pay all costs associated therewith. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

## **ARTICLE 12. INDEMNIFICATION**

### **Section 12.1 Obligation to Indemnify.**

(a) 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, suit or proceeding, whether civil, criminal, administrative or investigative; by reason of the fact that the person is or was a director, officer or committee member of the Association; provided the person is or was serving at the request of the Association in such capacity; and provided that the person:

- (i) acted in good faith, and;
- (ii) in a manner that the person reasonably believed to be in the best interests of the Association, and;
- (iii) with respect to any claimed criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

The 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 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 the conduct was unlawful.

(b) Notwithstanding anything in subsection (a) above, unless a court of competent jurisdiction determines that, in view of all circumstances of the case, the person is fairly and reasonably entitled to expenses, no indemnification shall be made:

- (i) In connection with a proceeding by or in the right of the Association, where the person has been adjudged to be liable to the Association; or
- (ii) In connection with any other proceeding charging that the person received an improper personal benefit, whether or not involving action in an official capacity, the person has been adjudged liable on the basis the person received an improper personal benefit.

(c) To the extent that the person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, the person shall be indemnified against actual and reasonable expenses (including expert witness fees, attorney fees and costs) incurred in connection with the action, suit or proceeding.



## Section 12.2 Determination Required.

(a) The Board of Directors shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. The determination shall be made by the Board of Directors by a majority vote of a quorum consisting of those members of the Board of Directors who were not parties to the action suit or proceeding.

(b) If a quorum cannot be obtained as contemplated above or if a quorum has been obtained and the Board so directs, a determination may be made, at the discretion of the Board, by:

(i) independent legal counsel selected by a majority of the full Board; or

(ii) by the voting members, but voting members who are also at the same time seeking indemnification may not vote on the determination.

Section 12.3 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the person requesting indemnification provides the Board of Directors with:

(a) A written affirmation of that person's good faith belief that he or she has met the standard of conduct described above and;

(b) A written statement that the person shall repay the advance if it is ultimately determined that he or she did not meet the standard of conduct described above.

Section 12.4 No Limitation of Rights. The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to C.R.S. § 38-33.3-101, et seq., and the Colorado Revised Nonprofit Corporation Act, as those statutes may be amended from time to time.

Section 12.5 Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, the manager, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against the person by virtue of the person's actions on behalf of the Association or at the direction of the Board, whether or not the Association would have the power to indemnify the person against liability under provisions of this Article.

## **ARTICLE 13. AMENDMENTS**

These Bylaws may be amended by the Board of Directors provided, however, no amendment shall be made to the quorum requirement, to the qualifications, powers and duties of the Board, or to the terms of Directors without the affirmative vote of a majority of the Members present, in person or by proxy, at a regular or special meeting of the Members at which a quorum, as set forth in these Bylaws, is present;. These Bylaws may also be amended by the Members as long as, prior to any meeting of Members at which an amendment will be voted on: the Association gives notice to each Member entitled to vote on the amendment; such notice states that one of the purposes of the meeting is to consider the amendment; such notice is accompanied by a copy or summary of the amendment; and, at such regular or special meeting of the Members at which a quorum is present in person or by proxy, the votes that are cast in favor of said amendment exceed the votes that are cast against such amendment. In addition, these Bylaws may be amended by a vote of Members by written ballot as

provided in these Bylaws.

**ARTICLE 14. CONFLICTS OF PROVISIONS**

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the case of any conflict between the Articles of Incorporation and the Declaration, the Declaration shall control.

**ARTICLE 15. FISCAL YEAR**

The fiscal year of the Association shall begin on the first day of January and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation,

IN WITNESS WHEREOF, we, being all of the directors of EMERSON POINT CONDOMINIUMS ASSOCIATION have hereunto set our hands this \_\_ day of \_\_\_\_\_, 2011,

DIRECTORS:

Vicky Baker

Susan Noe

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of EMERSON POINT CONDOMINIUMS ASSOCIATION a Colorado non-profit corporation, and

That the foregoing Bylaws constitute the Bylaws of said Association as duly adopted at a meeting of the Board of Directors thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2011,

In Witness Whereof, I have hereunto subscribed my name this \_\_ day of \_\_\_\_\_, 2011,

\_\_\_\_\_  
Secretary