

# BALLOT PACKAGE

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## SECOND AMENDED AND RESTATED BYLAWS OF SHADOW BROOK SWIM CLUB

### NOTICE

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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**TABLE OF CONTENTS TO  
SECOND AMENDED AND RESTATED BYLAWS OF  
SHADOW BROOK SWIM CLUB**

Page Number

---

ARTICLE 1	ORGANIZATION.....	1
1.1	Name; Location; Purpose .....	1
ARTICLE 2	DEFINITIONS .....	1
2.1	Articles of Incorporation .....	1
2.2	Assessments .....	1
2.3	Associate Member / Associate Memberships .....	1
2.4	Association .....	1
2.5	Board of Directors .....	1
2.6	Bylaws .....	1
2.7	Civil Code .....	1
2.8	Common Area.....	2
2.9	Corporations Code.....	2
2.10	Declaration.....	2
2.11	Development.....	2
2.12	Executive Committee of the Board .....	2
2.13	General Delivery / General Notice .....	2
2.14	Governing Documents .....	3
2.15	Individual Delivery / Individual Notice.....	3
2.16	Lot .....	3
2.17	Majority of a Quorum .....	3
2.18	Member.....	3
2.19	Member in Good Standing .....	3
2.20	Owner .....	4
2.21	Pool Facility .....	4
2.22	Proprietary Member .....	4
2.23	Resident.....	4
2.24	Rules.....	4
2.25	Shadow Brook Swim Club .....	4
2.26	Total Voting Power .....	4
ARTICLE 3	MEMBERSHIP AND VOTING RIGHTS .....	4
3.1	Membership Appurtenant to Lot Ownership.....	4
3.2	Updating Member Addresses, Other Information.....	5

3.2.1	Member Duty to Provide Preferred Address .....	5
3.2.2	Association Duty to Solicit.....	5
3.2.3	Member Failure to Provide Preferred Address.....	5
3.2.4	Invalid Email Addresses .....	6
3.2.5	Owner Responsibility to Notify Association of Address Change .....	6
3.3	Notice of Transfer of Title.....	6
3.4	Proof of Membership.....	6
3.5	Voting Rights; Joint Owners.....	6
3.5.1	One Vote Per Lot .....	6
3.5.2	Joint Owners .....	6
3.5.3	Trusts, Corporations, Other Entities.....	7
3.5.4	Conservator, Guardian, Parent of Minor, Executor, Attorney-in-Fact .....	7
3.6	Record Date for Voting .....	7
ARTICLE 4	VOTING BY MEMBERS .....	7
4.1	Procedures for Conducting Membership Votes .....	7
4.2	Proxies Are Prohibited .....	7
4.3	Inspector(s) of Election .....	8
4.4	Election Rules.....	8
4.5	Quorum Requirements.....	8
4.5.1	Assessment Votes .....	8
4.5.2	All Other Member Votes .....	8
4.6	Act of Members Requires Majority of a Quorum .....	8
4.7	Meetings to Count Ballots .....	8
4.8	Results of Membership Votes .....	8
4.9	Meetings of Members .....	9
4.10	Location of Member Meetings; Videoconference or Teleconference Meetings.....	9
4.11	Special Meetings of Members.....	9
4.12	Notice of Member Meetings .....	9
4.13	Open Forums.....	10
ARTICLE 5	BOARD OF DIRECTORS: NOMINATION, SELECTION, TERM OF OFFICE, REMOVAL .....	10
5.1	Number of Directors.....	10
5.2	Election and Term of Office .....	10
5.3	Time of Election of Directors.....	10
5.4	Qualification of Directors.....	10
5.5	Nomination Procedures .....	10

5.6	Setting the Deadline for Nominations .....	11
5.7	Publication of Deadline for Nominations .....	11
5.8	Election by Acclamation.....	11
5.9	Voting for Directors; No Cumulative Voting Permitted; No Write-ins.....	11
5.10	Tied Votes.....	11
5.11	Removal of Directors by the Members.....	11
5.12	Reduction of Number of Directors.....	11
5.13	Vacancies, Resignation, Disqualification of Directors .....	11
	5.13.1    Resignation.....	11
	5.13.2    Disqualification of a Director .....	12
	5.13.3    Failure to Perform Duties.....	12
5.14	Filling Vacancies.....	12
	5.14.1    Removal by Members.....	12
	5.14.2    Other Vacancies .....	12
5.15	Removal of Entire Board; Replacement Directors .....	12
5.16	No Compensation of Directors.....	13
5.17	Directors' Conflict of Interest.....	13
5.18	Directors' Standard of Care .....	13
5.19	Limitation of Liability of Officers and Directors .....	13
ARTICLE 6	MEETINGS OF DIRECTORS .....	13
6.1	Definition of Meeting of the Board.....	13
6.2	Videoconference and Teleconference Board Meetings .....	14
6.3	Organizational Meeting .....	14
6.4	Regular Meetings of the Board .....	14
6.5	Special Meetings of the Board .....	14
6.6	Emergency Meetings of the Board.....	14
6.7	Notice to Directors .....	14
6.8	Notice to Members; Agenda .....	15
	6.8.1    Timing of Notice to Members .....	15
	6.8.2    Delivery of Notice to Members.....	15
6.9	Open Meeting .....	15
6.10	Executive Session .....	15
6.11	Board's Action by Unanimous Written Consent .....	15
6.12	Quorum for Board's Action.....	16
6.13	Voting by Directors .....	16
6.14	Minutes of Meetings of Directors .....	16

ARTICLE 7	DUTIES OF THE BOARD OF DIRECTORS .....	16
7.1	Supervision .....	16
7.2	Records and Minutes .....	16
7.3	Maintain Insurance .....	17
7.4	Enforcement of Governing Documents .....	17
7.5	Monthly Review of Accounts .....	17
7.6	Annual Disclosures .....	17
7.6.1	Annual Budget Report .....	17
7.6.2	Annual Policy Statement.....	17
7.6.3	Delivery, Summary .....	17
7.7	Annual Solicitation of Owners' Address for Notice; Other Information.....	17
7.8	Annual Review of Financial Statement .....	17
7.9	Biennial Notice to Secretary of State .....	18
7.10	Three-year Reserve Study and Annual Review .....	18
7.11	Notice of Certain Changes in Insurance .....	18
7.12	Documents Provided to Prospective Purchasers.....	18
ARTICLE 8	POWERS OF THE BOARD OF DIRECTORS .....	18
8.1	Make Contracts.....	18
8.2	Consult Professional Advisors .....	18
8.3	Hire a Manager and Others .....	19
8.4	Adopt and Enforce Rules .....	19
8.5	Collect Assessments.....	19
8.6	Impose Sanctions .....	19
8.7	Pay Property Taxes .....	19
8.8	Deal with Association's Property.....	19
8.9	Open Bank Accounts; Borrow .....	19
8.10	Pledge Assessments As Security .....	19
8.11	Prudent Management of Reserve Funds .....	20
8.12	Indemnify Agents .....	20
8.13	Appoint Committees.....	20
8.14	Other Powers and Duties.....	21
ARTICLE 9	OFFICERS AND THEIR DUTIES.....	21
9.1	Appointment of Principal Officers.....	21
9.2	Term of Principal Officers .....	21
9.3	Enumeration of Principal Officers .....	21
9.4	Special Appointments .....	21
9.5	Resignation and Removal.....	21
9.6	Vacancies .....	21
9.7	Multiple Offices .....	22

9.8	Authority to Bind Association .....	22
9.9	President.....	22
9.10	Vice President – Social .....	22
9.11	Vice President – Pool.....	22
9.12	Recording Secretary .....	22
9.13	Financial Secretary .....	22
9.14	Treasurer .....	22
9.15	No Compensation of Officers.....	22
ARTICLE 10	MINUTES; BOOKS AND RECORDS; FUNDS .....	23
10.1	Minutes of Meetings.....	23
10.2	Members’ Access to Minutes, Books, and Records .....	23
10.3	Directors’ Inspection Rights .....	23
10.4	Checks, Drafts, and Evidences of Indebtedness .....	23
10.5	Funds and Deposits.....	23
10.6	Fiscal Year.....	23
ARTICLE 11	POOL FACILITY; ASSOCIATE MEMBERS .....	24
11.1	Pool Facility .....	24
11.2	Assignment by Owner of Pool Facility Privileges to Tenant.....	24
11.3	Associate Memberships; Process.....	24
11.3.1	Associate Member Defined.....	24
11.3.2	Grants of Associate Membership.....	24
11.3.3	Residency of Associate Member .....	25
11.3.4	Associate Member Contract.....	25
11.3.5	Fees for Associate Membership .....	25
11.3.6	Non-Transferrable.....	25
11.3.7	Pool Facility Privileges .....	25
11.3.8	Termination of Associate Memberships .....	25
ARTICLE 12	AMENDMENTS.....	25
12.1	Amendments Generally .....	25
12.2	Record of Amendments .....	26
ARTICLE 13	MISCELLANEOUS.....	26
13.1	Amendments to Referenced Statutes; Time for Performance.....	26
13.2	Delivery, When Effective.....	26
13.3	Successor Entity .....	26

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## SECOND AMENDED AND RESTATED BYLAWS OF SHADOW BROOK SWIM CLUB

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### ARTICLE 1            ORGANIZATION

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- 1.1    Name; Location; Purpose. The name of the corporation is Shadow Brook Swim Club, which is hereinafter referred to as the “Association.” The principal office of the Association shall be located in Santa Clara County, State of California, or at such other place reasonably convenient to the Development as the Board of Directors may from time to time establish. The purpose of the Association shall be as set forth in its Articles of Incorporation.

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### ARTICLE 2            DEFINITIONS

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- Any capitalized terms that are not defined below shall have the meaning set forth in Article 1 of the Declaration (“Definitions”).
- 2.1    Articles of Incorporation. “Articles of Incorporation” shall mean the Articles of Incorporation of Shadow Brook Swim Club, as they may be restated or amended from time to time, and as filed with the Office of the Secretary of State of California.
- 2.2    Assessments. “Assessments,” “Regular Assessments,” “Special Assessments,” “Reimbursement Assessments,” and “Enforcement Assessments” shall have the meanings defined for those terms in the Declaration.
- 2.3    Associate Member / Associate Memberships. “Associate Member” or “Associate Membership” shall mean a person or persons to whom the Association has granted the right to use the Pool Facility, as provided in Article 11 (“Pool Facility; Associate Members”). Associate Members are not Members of the Association as defined in Section 2.18 (“Member”).
- 2.4    Association. “Association” shall mean Shadow Brook Swim Club, a California nonprofit mutual benefit corporation, its successors and assigns.
- 2.5    Board of Directors. “Board of Directors” or “Board” shall mean the governing body of the Association.
- 2.6    Bylaws. “Bylaws” shall mean this Second Amended and Restated Bylaws of the Association duly adopted by the Board of Directors and the Members, as such Bylaws may be restated or amended from time to time.
- 2.7    Civil Code. “Civil Code” shall mean the California *Civil Code* as amended from time to time.

- 2.8 Common Area. “Common Area” shall mean all real property owned by the Association and the improvements thereon. The Common Area of the Development is the Pool Facility (see Section 2.21 (“Pool Facility”). The legal description of the Common Area/Pool Facility real property is as follows: All of Lots 45, 46, 47, 51, 52, and 53, as shown on that certain map entitled “Tract No. 4404” which map was filed for record on January 29, 1968, in Book 232 of Maps, pages 51 through 53, inclusive, Santa Clara County Official Records, State of California, and granted to the Association in the Grant Deed dated April 24, 1968, and recorded on May 2, 1968, In Book 8109, Page 244, as Document No. 2409521, Santa Clara County Official Records, State of California.
- 2.9 Corporations Code. “*Corporations Code*” shall mean the California *Corporations Code* as amended from time to time.
- 2.10 Declaration. “Declaration” shall mean the Declaration of Covenants, Conditions and Restrictions of Shadow Brook Swim Club, as it may be restated or amended from time to time, as recorded in the Office of the County Recorder of Santa Clara County, State of California.
- 2.11 Development. “Development” shall mean all the real property described in the Declaration as comprising the Shadow Brook planned development and any additional real property as may hereafter be brought within the jurisdiction of the Association.
- 2.12 Executive Committee of the Board. “Executive Committee of the Board” shall mean a committee consisting only of directors as described in *Corporations Code* section 7212.
- 2.13 General Delivery / General Notice. “General Delivery” or “General Notice” shall mean delivery to a Member or Members by one (1) or more of the following methods, as provided in *Civil Code* section 4045:
- (a) By any method provided for delivery of an Individual Notice pursuant to *Civil Code* section 4040 which includes but is not limited to first-class mail or express mail or by overnight delivery by an express service carrier;
  - (b) By inclusion in a billing statement, newsletter, or other document that is delivered by General Delivery;
  - (c) By posting a printed document in a prominent location that is accessible to all Members, if the location has been designated for the posting of General Notices by the Association in the annual policy statement (see Section 7.6.2 (“Annual Policy Statement”));



- (d) If the Association broadcasts television programming for the purpose of distributing information on Association business to its Members, by inclusion in the Association broadcast television programming;
- (e) If the Association maintains an internet website for the purpose of distributing information on Association business to the Members, by posting the notice on the Association's website in a prominent location that is accessible to all Members, but only if the website is designated as a location for posting general notices in the annual policy statement (see Section 7.6.2 ("Annual Policy Statement")).

Notwithstanding the foregoing, if a Member has requested to receive General Notices by Individual Delivery, then all "General Notices" to that Member shall be delivered by "Individual Delivery."

- 2.14 Governing Documents. "Governing Documents" shall mean the Articles of Incorporation, Bylaws, Declaration, and Rules.
- 2.15 Individual Delivery / Individual Notice. "Individual Delivery" or "Individual Notice" shall mean delivery to a Member or Members by the "preferred delivery method" specified by the Member as further detailed at Section 3.2 ("Updating Member Addresses, Other Information"), which shall include either or both the Member's mailing address or the Member's email address. If a Member has not provided a valid preferred delivery method pursuant to Section 3.2, the Association shall deliver the document to the Member at the address last shown on the books of the Association by either first-class mail, registered or certified mail, express mail, or overnight delivery by an express service carrier.
- 2.16 Lot. "Lot" shall mean any of the lots within the Development as defined in the Declaration excluding the Common Area. There are three hundred eighteen (318) Lots in the Development.
- 2.17 Majority of a Quorum. "Majority of a Quorum" shall mean a majority of the votes cast in any lawful vote or election by the Members in which the number of ballots cast equals or exceeds the number required to establish a quorum as provided in Section 4.5 ("Quorum Requirements").
- 2.18 Member. "Member" (also referred to as "Proprietary Member") shall mean an Owner of a Lot. Associate Members (defined in Section 2.3) are not Members.
- 2.19 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Regular Assessments and Special Assessments imposed in accordance with the Governing Documents. A Member shall be deemed to be in good standing unless, after notice and an opportunity for hearing, pursuant to Article 13 of the Declaration ("Enforcement; Notice; Hearings"), the Board has found the Member to be not in good standing and has so notified the Member in accordance with *Civil Code* section 5855.

- 2.20 Owner. “Owner” shall mean the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, excluding those persons having such interest merely as security for the performance of an obligation.
- 2.21 Pool Facility. “Pool Facility” shall refer to the swimming pool, recreational, and related facilities within the Development. The Pool Facility is the Common Area of the Development as further described in Section 2.8 (“Common Area”).
- 2.22 Proprietary Member. “Proprietary Member” shall have the same meaning as the term Member as set forth in Section 2.18 (“Member”).
- 2.23 Resident. “Resident” shall mean any person who resides on a Lot within the Development.
- 2.24 Rules. “Rules” shall mean the policies, rules, and regulations governing the Association and the Development, including the administration, management, operation, use, and occupancy of the same. Rules may include, but are not limited to, regulation, restrictions, and prohibitions concerning the following topics: the use and rights to use the Common Area Pool Facility, the use and the rental or lease of Lots, exterior alterations to Lots, the conduct of Owners, Residents, Associate Members, members of their household, animals, tenants, invitees, and guests within the Development, enforcement of the Governing Documents, and any other matter that is within the jurisdiction of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 4340 and following.
- 2.25 Shadow Brook Swim Club. “Shadow Brook Swim Club” shall have the same meaning as the term Association as set forth in Section 2.4 (“Association”).
- 2.26 Total Voting Power. “Total Voting Power” shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one (1) vote for each Lot. The Total Voting Power is three hundred eighteen (318).

### **ARTICLE 3                    MEMBERSHIP AND VOTING RIGHTS**

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- 3.1 Membership Appurtenant to Lot Ownership. Membership in the Association shall include, and shall be limited to, all Owners of any Lot located within the Development. Ownership of a Lot is the sole qualification to be a Member. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon becoming the Owner of a Lot, each Owner shall automatically be a Member of the Association and shall remain a Member until such time as his or her or its Lot ownership ceases for any reason. Membership in the Association shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer of the Lot to which it is appurtenant and then only to

the transferee of such Lot. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Lot, including a transfer upon the death of an Owner, membership in the Association shall pass automatically to the transferee.

### 3.2 Updating Member Addresses, Other Information.

3.2.1 Member Duty to Provide Preferred Address. As required by *Civil Code* section 4041, each Member shall annually provide written notice to the Association of all of the following:

- (i) the Member's preferred delivery method for receiving notices from the Association, which shall include either a mailing address, a valid email address, or both,
- (ii) an alternative or secondary delivery method, if any, to which notices from the Association are to be delivered, including either a mailing address, a valid email address, or both,
- (iii) the name, mailing address and valid email address (if available) of the Owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the Member's extended absence from the Lot, and
- (iv) whether the Lot is Owner-occupied, is rented out, or if the Lot is vacant.

3.2.2 Association Duty to Solicit. The Association shall annually solicit from each Owner the information as set forth above. The Association shall include in its annual solicitation of Owners both of the following:

- (i) that Members do not have to provide an email address to the Association, and
- (ii) a simple method for Members to inform the Association in writing if a Member wishes to change their preferred delivery method for receiving notices from the Association. The information obtained from each Owner shall be entered into the books and records of the Association at least thirty (30) days prior to sending its annual budget report pursuant to *Civil Code* section 5300.

3.2.3 Member Failure to Provide Preferred Address. If a Member fails to provide notice to the Association of the information set forth in Section 3.2.1 ("Member Duty to Provide Preferred Address"), the last mailing address provided in writing by the Member or, if none, the Lot property address, is deemed to be the address to which the Association shall deliver notices.

- 3.2.4 Invalid Email Addresses. For purposes of Section 3.2 (“Process for Updating Member Addresses, Other Information”), a “valid email address” is one that, after a notice is sent, does not result a bounce back or other error notification indicating failure of the message to be delivered. If the Association delivers a notice to a Member’s email address and finds that the email address provided is not valid, the Association shall resend the notice by Individual Delivery to a mailing or other email address provided by the Member.
- 3.2.5 Owner Responsibility to Notify Association of Address Change. It shall be each Owner’s responsibility to notify the Association in writing of any change in the Owner’s address for the purpose of receiving notices from the Association. The fact that a different address appears on correspondence to the Association from an Owner shall not constitute such written notice, unless it is expressly stated in writing that such address is a change of address for the purpose of receiving notice from the Association.
- 3.3 Notice of Transfer of Title. Upon transfer of title to a Lot, the transferee shall be responsible for notifying the Association of such transfer. The notification shall set forth the address of the Lot, the names of the transferee and the transferor, and the date of sale or other transfer. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association or the Board to the Lot Owner shall be deemed to be duly made and given to the transferee if duly and timely made and given to the person shown as the Owner of the Lot and at the address in the Association’s records.
- 3.4 Proof of Membership. No person shall exercise the rights of a Member until satisfactory proof of membership has been furnished to the Association. Such proof may consist of either a copy of a duly-executed and acknowledged grant deed or a copy of a title insurance policy showing that the person is an Owner as defined in Section 2.20 (“Owner”). Such deed or policy shall be deemed conclusive proof of ownership in the absence of a conflicting claim based on a later deed or policy.
- 3.5 Voting Rights; Joint Owners.
- 3.5.1 One Vote Per Lot. Only Members shall be entitled to vote on any issue or matter presented to the Members for approval or membership vote. Members shall be entitled to cast one (1) vote for each Lot owned.
- 3.5.2 Joint Owners. In the event more than one (1) person owns a given Lot, the vote for such Lot shall be exercised as the Owners among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If the joint Owners of a Lot are unable to agree among themselves as to how their vote is to be cast, they shall lose their right to vote on the matter in question. If any joint Owner of a

Lot casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of the other Owners of that Lot.

3.5.3 Trusts, Corporations, Other Entities. In the case of an Owner that is not a natural person (such as a corporate trustee, corporation or other entity), the vote of such Owner may be cast by any authorized representative of the Owner designated by notice in writing to the Association.

3.5.4 Conservator, Guardian, Parent of Minor, Executor, Attorney-in-Fact. The power to cast a particular Member's vote may be exercised by (i) the Member's conservator, (ii) the guardian of the Member's estate, (iii) the parent(s) entitled to custody of a Member if the Member is a minor, (iv) the executor or administrator of a deceased Member's estate if the Member's interest in the Lot is subject to administration in his or her estate, or (v) a person with a general power of attorney for a Member.

3.6 Record Date for Voting. Consistent with *Corporations Code* section 7611(c), the Board may fix a date not more than sixty (60) days before the date of any mailing or delivery of ballots as the record date for determining Members entitled to vote and only Members as shown in the records of the Association as of the record date for voting shall be entitled to vote in such vote or election. If no record date for voting is set by the Board, Members on the day of the mailing or delivery of ballots who are otherwise eligible to vote shall be entitled to vote in such vote or election.

## **ARTICLE 4                    VOTING BY MEMBERS**

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4.1 Procedures for Conducting Membership Votes. As required by *Civil Code* section 5100(a), certain membership votes specified in *Civil Code* section 5100(a) shall be by the "secret ballot" procedures set forth in *Civil Code* sections 5100 through 5145 and in the Rules described in Section 4.4 ("Election Rules"). At the time these Bylaws were adopted, such secret ballot procedures must be used in the following membership votes: (a) election and removal of directors, (b) amendments to the Governing Documents, (c) elections regarding Assessments legally requiring a vote, or (d) the grant of exclusive use of Common Area pursuant to *Civil Code* section 4600. The deadline for returning a secret ballot shall be at least thirty (30) days from the date of mailing. A membership vote on any other matter may be by secret ballot, written ballot (as described in *Corporations Code* section 7513), or by any other lawful means, and the deadline for returning a ballot in such a membership vote shall be a reasonable time, which may be less than thirty (30) days.

4.2 Proxies Are Prohibited. Use of proxies in connection with membership votes or membership meetings is expressly prohibited. "Proxy" shall mean a written

authorization signed by a Member or a Member's attorney-in-fact giving another person or persons power to vote for such Member, as defined in *Corporations Code* section 5069, other than (i) a designated authorized representative casting a vote pursuant to Section 3.5.3 ("Trusts, Corporations, Other Entities"), or (ii) a person casting a vote pursuant to Section 3.5.4 ("Conservator, Guardian, Parent of Minor, Executor, Attorney-in-Fact").

- 4.3 Inspector(s) of Election. To the extent required pursuant to *Civil Code* section 5110, prior to any election or vote by the Members, the Board shall appoint one (1) or three (3) inspectors of election, whose powers and duties shall be as set forth in such statute and in the Rules described in Section 4.4 ("Election Rules").
- 4.4 Election Rules. The Board shall adopt Rules governing membership voting and elections of directors in conformity with *Civil Code* section 5105.
- 4.5 Quorum Requirements. The number of ballots that must be cast in order to establish a quorum shall be as follows:
  - 4.5.1 Assessment Votes. To the extent required by *Civil Code* section 5605, notwithstanding any other provision in the Governing Documents, for purposes of voting on a Special Assessment or an increase in the Regular Assessment that by law must be approved by the Members, a quorum shall mean more than fifty percent (50%) of the Total Voting Power, or such other quorum requirement as may be specified by law.
  - 4.5.2 All Other Member Votes. Other than the votes described in Section 4.5.1 ("Assessment Votes), votes or elections by the Members, a quorum shall mean twenty-five percent (25%) of the Total Voting Power, unless the Governing Documents expressly provide otherwise for a particular vote.
- 4.6 Act of Members Requires Majority of a Quorum. For any action that may be taken by the Members, the affirmative vote of a Majority of a Quorum of the Members shall constitute the action of the Members, except where the Governing Documents expressly specify a different approval of the Members.
- 4.7 Meetings to Count Ballots. There shall be no quorum requirement for Member attendance at any meeting of the Members held for the purpose of tabulating secret or written ballots, as the number of valid ballots received by the deadline shall determine whether quorum is met.
- 4.8 Results of Membership Votes. To the extent required by *Civil Code* section 5120(b), the Board shall within fifteen (15) days of an election give General Notice of the tabulated results to all the Members. To the extent required by *Corporations Code* section 8325, for a period of sixty (60) days following the conclusion of any membership vote (or, if applicable, an annual, regular, or special meeting of Members), a Member shall, upon written request, be informed forthwith of the

result of any particular vote of the Members, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the Association shall report the number of votes cast for each nominee for director.

- 4.9 Meetings of Members. To the extent any vote or election by the Members is permitted or required by law to be conducted at a meeting of the Members, the provisions of the *Corporations Code*, including *Corporations Code* sections 7510 and 7511, that would otherwise apply shall apply; any such meeting of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt; and to the extent required pursuant to *Civil Code* sections 4925(b) and 5000(b), a reasonable time limit for all Members to speak at a meeting of the Members shall be established by the Board.
- 4.10 Location of Member Meetings; Videoconference or Teleconference Meetings. Meetings of the Members shall be held at a location within the Development, or the Board may designate by resolution a convenient place located as close as reasonably practicable to the Development. Alternatively, the Association may conduct a Member meeting entirely by teleconference or videoconference without any physical location designated for attendance, provided that the requirements of either *Civil Code* section 4926 and/or *Civil Code* section 5450 are met. If ballots for a membership vote under *Civil Code* section 5120 are being counted and tabulated during the meeting, notice of the videoconference meeting shall identify at least one (1) physical location so that Members of the Association may attend and observe, and at least one (1) director or a person designated by the Board shall be present at the location, unless there is a state of emergency or disaster and the other requirements of *Civil Code* section 5450 are met.
- 4.11 Special Meetings of Members. Special meetings of the Members shall be called by the Board and held in response to a request by the Board President, or by vote of a majority of the Board, or upon written request of Members representing five percent (5%) of the Total Voting Power of the Members.
- 4.12 Notice of Member Meetings. Written notice of Member meetings shall be given to each Member by Individual Delivery at least ten (10) days but not more than ninety (90) days before such meeting; *except that*, in the case of a special meeting called pursuant to written request of Members, notice of such special meeting shall be given to Members by Individual Delivery within twenty (20) days after receipt of a written request by the Board, and the date for such special meeting shall be not less than thirty-five (35) days nor later than ninety (90) days after the date of the Board's receipt of the written request. The notice shall state the date, time and place of the meeting, and in the case of a special meeting, shall state the purpose for the meeting.

- 4.13 Open Forums. Notwithstanding the provisions of Section 4.1 (“Procedures for Conducting Membership Votes”), the Board shall be entitled to call informal meetings of the Members, to be known as “open forums” for the purpose of discussing issues common to Members residing in one particular area within the Development or issues common to all Members. The Members may discuss at an open forum any topic that has been noticed, but no formal action of the Members may be taken, such action being reserved to Member votes conducted pursuant to Section 4.1; however, reports and other informational presentations may be made.

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**ARTICLE 5                      BOARD OF DIRECTORS: NOMINATION, SELECTION, TERM OF OFFICE, REMOVAL**

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- 5.1 Number of Directors. The affairs of this Association shall be managed by or under the direction of, and the corporate powers shall be exercised by, a Board of Directors. The authorized number of directors shall be six (6).
- 5.2 Election and Term of Office. In the biennial election of directors, the Members shall elect six (6) directors for terms of two (2) years each. Each director shall serve until the expiration of his or her term and thereafter until a successor is elected, or until the earlier disqualification, death, resignation, or removal of such director.
- 5.3 Time of Election of Directors. Directors shall be elected biennially (every two (2) years) in the months of October or November, or as soon thereafter as is practical.
- 5.4 Qualification of Directors. Only persons who satisfy all of the following qualifications shall be eligible to be elected to or serve on the Board: (i) is a Member in Good Standing or in the case of a Member in Good Standing that is not a natural person (such as a corporation or other entity), an officer, director, principal, or authorized representative of the entity, and (ii) does not have a criminal conviction that would, if elected, prevent the Association from purchasing the fidelity bond coverage required by *Civil Code* section 5806 or terminate the Association’s existing insurance coverage required by *Civil Code* section 5806 as to that person should the person be elected. Co-Owners of one (1) or more Lots may not be nominated for or serve on the Board at the same time.
- 5.5 Nomination Procedures. Any Member who satisfies the qualifications set forth in Section 5.4 (“Qualification of Directors”) may place his or her name in nomination for election to the Board by giving written notice to the President or Secretary of the Association. Notice of self-nomination must be received prior to the deadline for nominations. Nominations of candidates for election to the Board of Directors may also be made by a nominating committee if one is appointed by the Board, so long as the candidate has consented to the nomination.



- 5.6 Setting the Deadline for Nominations. The deadline for nominations shall be set by the Board and shall be not less than thirty (30) days prior to the date of the mailing or delivery of ballots for any election of directors.
- 5.7 Publication of Deadline for Nominations. The date and time of the deadline for nominations and the procedure for submitting a nomination shall be provided to the Members by General Delivery (and by Individual Delivery if so requested by a Member) at least thirty (30) days in advance of the nomination deadline.
- 5.8 Election by Acclamation. Notwithstanding the secret balloting requirements of Section 4.1 (“Voting by Members; Members’ Request for Vote”) or anything to the contrary in the Governing Documents, if, as of the published deadline for nominations, the number of people nominated is not more than the number of directors to be elected, as determined by the inspector(s) of elections, then the persons nominated and qualified to be elected may be declared elected by acclamation if all of the conditions of any applicable statute (which at the time these Bylaws were adopted is *Civil Code* section 5103) have been met.
- 5.9 Voting for Directors; No Cumulative Voting Permitted; No Write-ins. In all elections of directors, Members may cast, in respect to each position on the Board to be filled, one (1) vote for each Lot owned. The persons receiving the largest number of votes shall be elected. Cumulative voting (i.e., giving more than one vote to any candidate) shall not be permitted. Voting for write-in candidates (that is, voting for any person not nominated prior to the deadline for nominations) is not permitted.
- 5.10 Tied Votes. In the case of a tied vote for one (1) or more positions on the Board, the candidates shall draw lots to determine the winner or winners.
- 5.11 Removal of Directors by the Members. Consistent with *Corporations Code* section 7222, any director may be removed from the Board, with or without cause, by the vote of a Majority of a Quorum of the Members.
- 5.12 Reduction of Number of Directors. Any reduction of the authorized number of directors shall be subject to the provisions of *Corporations Code* section 7222(c).
- 5.13 Vacancies, Resignation, Disqualification of Directors. A vacancy shall exist on the Board (i) in the event of the death, resignation, or removal (by the Members) of any director, (ii) in the event of a declaration of a vacancy by the Board as provided below in this Section 5.13, (iii) if the authorized number of directors is increased, or (iv) if the Members fail to elect the full authorized number of directors.
- 5.13.1 Resignation. Any director may resign by giving written notice to the Board. The resignation shall be effective on the date specified in the notice. Unless otherwise provided in the notice, the acceptance of a resignation shall not be necessary to make it effective.

- 5.13.2 Disqualification of a Director. As provided in *Corporations Code* section 7221(b), the Board of Directors, by a majority vote of the directors who meet all of the qualifications for directors as set forth in Section 5.4 (“Qualification of Directors”), may declare vacant the office of any director who fails or ceases to meet any required qualification that was in effect at the beginning of that director’s current term of office.
- 5.13.3 Failure to Perform Duties. Pursuant to *Corporations Code* section 7221(a), the Board, by vote of a majority of a quorum, may declare vacant the office of any director who: (i) fails within sixty (60) days after receiving notice of election to accept office, either in writing or by attending a meeting of the Board as a director, (ii) is absent from three (3) consecutive meetings of the Board, or (iii) fails to make available any and all information the Association is legally obligated to provide to a governmental agency for Association compliance with federal or state law requirements, including, without limitation, the requirements of the federal Corporate Transparency Act.
- 5.14 Filling Vacancies.
- 5.14.1 Removal by Members. Pursuant to *Corporations Code* section 7224, vacancies on the Board created by the removal of a director by the Members shall be filled by approval of the Members. A director elected by the Members to fill such a vacancy shall serve the remainder of the term of office of the director whom he or she replaces.
- 5.14.2 Other Vacancies. Any vacancy occurring on the Board of Directors, except a vacancy created by the removal of a director by the Members, may be filled (i) by approval of the Board of Directors; or (ii) by a sole remaining director. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board, including the resigning director, may choose or, if the Board fails to act, the Members may elect, a successor to take office when the resignation becomes effective. The Members may elect a director at any time to fill any vacancy not filled by the directors. A director chosen by the Board in accordance with this Section 5.14.2 to fill a vacancy shall serve the remainder of the term of office of the director whom he or she replaces.
- 5.15 Removal of Entire Board; Replacement Directors. In the case of a vote by the Members to remove the entire Board of Directors, the incumbent directors shall not be removed from office unless and until one (1) or more replacement directors have been elected by the Members. If, in such election, the Members fail to elect the full number of replacement directors, the vacancies then existing on the Board may be filled by the elected replacement directors pursuant to clause (i) or clause (ii) of Section 5.14.2 (“Other Vacancies”). All of the directors replacing those removed by the Members shall serve until the next election of directors.

- 5.16 No Compensation of Directors. No director shall receive compensation for any service he or she may render to the Association as a director. However, upon approval by the Board, any director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.
- 5.17 Directors' Conflict of Interest. As provided in *Civil Code* section 5350, no director or member of a committee shall be permitted to vote on matters of (i) discipline of the director or committee member, (ii) an Assessment against the director or committee member for damage to the Common Area or facilities, (iii) a request, by the director or committee member, for a payment plan for overdue Assessments, (iv) a decision whether to foreclose on a lien on the separate interest of the director or committee member, (v) review of a proposed physical change to the separate interest of the director or committee member, (vi) a grant of exclusive use of Common Area to the director or committee member, and (vii) as provided in *Corporations Code* section 7233, any contract or other transaction in which a director or committee member has a material financial interest. As provided in *Corporations Code* section 7234, the interested director or committee member may be counted in determining the presence of a quorum at a meeting of the Board or of a committee.
- 5.18 Directors' Standard of Care. As provided in *Corporations Code* section 7231, a director shall perform the duties of a director, including duties as a member of any Executive Committee of the Board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.
- 5.19 Limitation of Liability of Officers and Directors. As provided in *Corporations Code* section 7231, no director, officer, committee member, employee, or other agent of the Association shall be liable to any Owner or any other person or entity, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

## **ARTICLE 6                      MEETINGS OF DIRECTORS**

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- 6.1 Definition of Meeting of the Board. As defined in *Civil Code* section 4090, a "meeting" of the Board shall mean either: (a) a congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the Board, to hear, discuss, or deliberate upon any item of business that is within the authority of the Board or (b) a videoconference or teleconference, where a sufficient number of directors to establish a quorum of the Board, in different locations, are connected by electronic means, through audio or video or both. The foregoing includes executive session meetings of the Board.

6.2 Videoconference and Teleconference Board Meetings.

- (a) Except as set forth in Section 6.2(b), the Association may conduct a Board meeting entirely by teleconference or videoconference without any physical location designated for attendance, provided that (1) the requirements of either *Civil Code* section 4926 and/or *Civil Code* section 5450 are met for an open Board meeting, or (2) the Board meeting will be held solely in executive session.
- (b) If ballots for a membership vote under *Civil Code* section 5120 are being counted and tabulated at the meeting, the notice of the videoconference or teleconference meeting shall identify at least one (1) physical location so that Members of the Association may attend, and at least one (1) director or a person designated by the Board shall be present at the location, unless there is a state of emergency or disaster and the other requirements of *Civil Code* section 5450 are met.

6.3 Organizational Meeting. As soon as possible, but in any event within sixty (60) days after each election of directors, the Board of Directors shall hold a meeting for the purpose of organization, appointment of officers, and transaction of other business, as appropriate.

6.4 Regular Meetings of the Board. Regular meetings of the Board shall be held monthly upon proper notice which conforms to the provisions of Section 6.7 ("Notice to Directors") and Section 6.8 ("Notice to Members; Agenda"), at the place, day, and time set forth in such notice. In the event the Board should determine that the business to be transacted by the Board does not reasonably justify monthly meetings, then regular meetings of the Board shall be held at such intervals as the Board may determine, but not less frequently than once every three (3) months.

6.5 Special Meetings of the Board. Special meetings of the Board shall be held when called by the President of the Association or by any two (2) directors.

6.6 Emergency Meetings of the Board. As provided in *Civil Code* section 4923, emergency meetings of the Board may be called by the President or by any two (2) directors other than the President, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide the notice required by *Civil Code* section 4920.

6.7 Notice to Directors. Regular meetings of the Board may be held, without further notice to the Board, at a place within or reasonably convenient to the Development and on a day and time fixed by resolution of the Board. If not fixed by resolution of the Board, notice of each meeting of the Board shall be communicated to the directors not less than four (4) days prior to a regular meeting, and not less than forty-eight (48) hours prior to a special meeting; provided that shorter notice may

be given in the case of a bona fide emergency; and *provided, further*, that notice of a meeting need not be given to any director who signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting.

6.8 Notice to Members; Agenda. To the extent required pursuant to *Civil Code* section 4920, except for bona fide emergency meetings (whether open meeting or executive session), prior written notice of the day, time, and place of each meeting of the Board of Directors shall be given to all Members. The notice shall contain the agenda for the meeting, subject to the provisions of *Civil Code* section 4930.

6.8.1 Timing of Notice to Members. Notice of open Board meetings shall be given at least four (4) days before the meeting. Notice of a Board meeting that is held exclusively in executive session shall be given at least two (2) days before the meeting.

6.8.2 Delivery of Notice to Members. The notice to the Members shall be given by General Delivery in accordance with *Civil Code* section 4045.

6.9 Open Meeting. To the extent required pursuant to *Civil Code* section 4925(a), regular and special meetings of the Board of Directors shall be open to all Members of the Association, except when the Board meets in executive session. Pursuant to *Civil Code* section 4925(b), a reasonable time limit for all Members to speak to the Board shall be established by the Board; however, the right to speak to the Board shall not entitle any Member to participate in the Board's deliberations on any matters unless requested to do so by the Board.

6.10 Executive Session. To the fullest extent permitted by law, including *Civil Code* section 4935, the Board may meet in executive session to confer with legal counsel or to discuss and/or vote upon personnel matters, Member discipline, litigation in which the Association is or may become involved, matters that relate to the formation of contracts between the Association and others, and for the purpose of meeting with a Member, upon such Member's request, regarding the Member's payment of Assessments. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested to do so by that Member, and that Member and any other person(s) whose participation is, in the judgment of the Board, necessary or appropriate, shall be entitled to attend the executive session; *provided, however*, that (a) to the extent required by *Civil Code* section 5673, a decision by the Board to record a lien for delinquent Assessments shall be made at an open meeting of the Board, and (b) to the extent required by *Civil Code* section 5705(c), a vote of the Board to initiate foreclosure of a lien for delinquent Assessment shall be taken in executive session but shall be recorded in the minutes of the next following open meeting of the Board. There shall be no requirement that the Board convene an open meeting in order to meet in executive session.

6.11 Board's Action by Unanimous Written Consent. To the extent provided in *Civil Code* section 4910, the Board may not take action by unanimous written consent

without a meeting except in case of emergency and then only by electronic transmission, including email as provided in *Civil Code* section 4910(b)(2). Any such written consents shall be filed with the minutes of the proceedings of the Board.

- 6.12 Quorum for Board's Action. A majority of the number of directors then in office (but not less than two) shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by a majority of the required quorum for that meeting.
- 6.13 Voting by Directors. Pursuant to *Corporations Code* section 7211(c), each director shall be entitled to one (1) vote and a director may not vote by proxy or otherwise delegate his or her right to vote on any matter before the Board.
- 6.14 Minutes of Meetings of Directors. To the extent required by *Civil Code* section 4950(a), within thirty (30) days after the date of any meeting of the Board, the Board shall make available to the Members either (a) the minutes of that meeting as adopted by the Board, (b) if the minutes have not yet been adopted by the Board, the minutes as proposed for adoption which shall be marked to indicate draft status, or (c) a summary of the minutes. To the extent required by *Civil Code* section 4935(e), any matter discussed in an executive session shall be generally noted in the minutes of the Board and minutes of executive sessions shall not otherwise be required. Copies of the minutes, proposed minutes, or summary of minutes shall be provided to any Member of the Association upon request and upon reimbursement of the Association's costs in providing such copies.

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## **ARTICLE 7                    DUTIES OF THE BOARD OF DIRECTORS**

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The Board shall be ultimately responsible for the management and conduct of the affairs of the Association. Without limiting the generality of the foregoing, the specific duties of the Board shall include the following:

- 7.1 Supervision. The Board shall supervise all officers, agents, and employees of the Association, if any, and see that their duties are properly performed.
- 7.2 Records and Minutes. The Board shall cause to be kept a complete record of all its acts and the corporate affairs, including a membership list described in *Civil Code* section 5200(a)(9), adequate and correct books and records of account, and minutes of the proceedings of the Members, the Board, Committees of the Board, and any other committee appointed by the Board having decision-making authority.

- 7.3 Maintain Insurance. The Board shall procure and maintain adequate casualty, liability and other insurance, as the Board shall determine consistent with the provisions of Article 10 of the Declaration (“Insurance”).
- 7.4 Enforcement of Governing Documents. The Board shall enforce the Governing Documents on its own initiative or upon receipt of written complaint from an Owner or a Resident, in accordance with the procedures set forth in Article 13 of the Declaration (“Enforcement; Notice; Hearings”).
- 7.5 Monthly Review of Accounts. The Board shall ensure the Association’s operating and reserve accounts are reviewed at least monthly in accordance with the minimum requirements set forth in *Civil Code* sections 5500 and 5501.
- 7.6 Annual Disclosures.
- 7.6.1 Annual Budget Report. In accordance with *Civil Code* section 5300(a), the Association shall distribute an annual budget report not less than thirty (30) days and not more than ninety (90) days prior to the end of the Association’s fiscal year. The annual budget report shall conform to the requirements of *Civil Code* section 5300(b) and (e) and section 5550.
- 7.6.2 Annual Policy Statement. In accordance with *Civil Code* section 5310(a), the Board shall distribute an annual policy statement with information about the Association’s policies not less than thirty (30) days and not more than ninety (90) days before the end of the fiscal year. The annual budget report shall conform to the requirements of *Civil Code* section 5310(a)(1) through (12).
- 7.6.3 Delivery, Summary. In accordance with *Civil Code* section 5320, the Association shall deliver either the full annual budget report and annual policy statement, or a summary of the same, in compliance with the requirements of *Civil Code* section 5320.
- 7.7 Annual Solicitation of Owners’ Address for Notice; Other Information. As required by *Civil Code* section 4041, the Association shall annually solicit from each Owner the information as set forth in Section 3.2 (“Updating Member Addresses, Other Information”).
- 7.8 Annual Review of Financial Statement. To the extent required pursuant to *Civil Code* section 5305, for any fiscal year in which the gross income to the Association exceeds Seventy-five Thousand Dollars (\$75,000), the Board shall obtain a review of the financial statements of the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy and shall distribute it to all Members of the Association within one hundred twenty (120) days after the close of such fiscal year by Individual Delivery.

- 7.9 Biennial Notice to Secretary of State. The Board shall file with the Secretary of State the biennial (every two years) statement of names of officers and of agent for service of process required pursuant to *Corporations Code* section 8210 and the statement required by *Civil Code* section 5405(a).
- 7.10 Three-year Reserve Study and Annual Review. In accordance with *Civil Code* section 5550, at least once every three (3) years, the Board shall cause a study of the reserve account requirements of the Development to be conducted, which study shall include the minimum requirements specified in *Civil Code* section 5550(b) or successor statute. The Board shall review the reserve study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.
- 7.11 Notice of Certain Changes in Insurance. In accordance with *Civil Code* section 5810, as soon as reasonably practicable, the Association shall provide Individual Notice to all Members if any of the Association's policies described in the Association's annual budget report have lapsed or been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible for any of those policies. If the Association receives any notice of non-renewal of an Association's policy described in the Association's annual budget report and replacement coverage will not be in effect by the date the existing coverage will lapse, the Association shall immediately provide Individual Notice thereof to the Members.
- 7.12 Documents Provided to Prospective Purchasers. To the extent required by *Civil Code* section 4530(a), the Board shall provide or cause to be provided to a requesting Owner, within ten (10) days of a written request therefor, the items specified in *Civil Code* section 4525(a), or any of them.

## **ARTICLE 8                      POWERS OF THE BOARD OF DIRECTORS**

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The Board of Directors shall have such powers as may be provided by law or expressly set forth in the Governing Documents. Without limiting the generality of the foregoing, the Board shall have the powers specified in this Article 8, subject to any limitations or conditions as may be set forth in the Articles of Incorporation, the Bylaws, or the Declaration.

- 8.1 Make Contracts. The Board shall have the power to authorize any officer or officers to enter into any contract in the name of, or on behalf of, the Association.
- 8.2 Consult Professional Advisors. The Board shall have the power to consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals in carrying out the Board's authority and responsibility under the Governing Documents and the law, and to pay for such professional services.



- 8.3 Hire a Manager and Others. The Board shall have the power to engage the services of a manager or management company as either an employee or an independent contractor, and engage such other employees or independent contractors as the Board may deem necessary, and to prescribe their duties.
- 8.4 Adopt and Enforce Rules. Subject to applicable law, including *Civil Code* sections 4340 through 4370 (regarding procedures for adopting or changing certain rules), the Board shall have the power to adopt, publish, amend, repeal, and enforce Rules.
- 8.5 Collect Assessments. As addressed in the Declaration, the Board shall have the power to collect Assessments levied by the Association by foreclosing the lien against any property for which Assessments are not paid as required by the Declaration and/or by bringing an action at law against the Owner personally obligated to pay the same.
- 8.6 Impose Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing conducted in accordance with Article 13 of the Declaration (“Enforcement; Notice; Hearings”), the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or other charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of Common Area use privileges, and/or monetary penalties (fines), as described in Section 13.8 of the Declaration (“Imposing Sanctions”).
- 8.7 Pay Property Taxes. The Board shall have the power to pay all real property taxes and assessments levied upon any property within the Development to the extent not separately assessed to the Owners. Provided that any such taxes are paid or that a bond insuring the payment is posted, such taxes and assessments may be contested or compromised by the Association prior to the sale or other disposition of any property to satisfy the payment of such taxes.
- 8.8 Deal with Association’s Property. The Board shall have the power to acquire and deal with real and personal property of the Association, subject to any applicable limitations set forth in the Governing Documents.
- 8.9 Open Bank Accounts; Borrow. The Board shall have the power to open bank accounts, designate signatories upon such bank accounts (subject to the requirements of Section 10.4 (“Checks, Drafts, and Evidences of Indebtedness”) concerning withdrawal of reserve account funds), and borrow money on behalf of the Association.
- 8.10 Pledge Assessments As Security. The Board shall have the power to assign or pledge Assessments of the Association as security for a loan, provided that such assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law to the extent required by *Civil Code* section

5735; and *provided, further*, that approval of the Members shall be required if such assignment or pledge is in conjunction with an increase in the Regular Assessment or the imposition of a Special Assessment that by law requires approval of the Members, and such Members' approval shall be the same as the Members' approval required for such increase in the Regular Assessment or imposition of a Special Assessment.

- 8.11 Prudent Management of Reserve Funds. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, to the extent restricted by *Civil Code* section 5510(b), shall not expend funds designated as reserve funds for any purpose other than the maintenance, restoration, repair, or replacement of, or litigation involving the maintenance, restoration, repair, or replacement of, major components for which the Association is responsible and for which the reserve fund was established; *provided, however*, that the Board may authorize a temporary transfer of money from a reserve fund to the Association's general operating fund for the purposes and subject to the procedural requirements specified in *Civil Code* section 5520.

The Board shall have the power to invest the Association's reserve funds in prudent investments, provided it does so in a prudent manner designed to achieve the primary objective of preserving principal while realizing a reasonable return and to assure the availability of funds as they are needed based upon the Board's most recent review of the reserve fund study obtained by the Board as required in Section 7.10 ("Three-year Reserve Study and Annual Review") and applicable law. For purposes of the foregoing, investments in stocks and mutual funds shall not be considered prudent investments, as they do not meet the primary objective of preserving principal.

- 8.12 Indemnify Agents. To the extent provided in *Corporations Code* section 7237, the Board on behalf of the Association shall have the power to and shall indemnify and hold harmless, to the maximum extent permitted by California law, each person who is or at any time was a director, officer, employee, or agent of the Association, or member of any committee appointed by the Board from and against any and all claims, liabilities, expenses, judgments, fines, settlements, and other amounts, as those terms are defined by California law, actually and reasonably incurred by any such person, and to which any such person shall become subject by reason of his or her being a director, officer, employee, or agent of the Association, or member of any committee appointed by the Board.

- 8.13 Appoint Committees. The Board shall appoint an Architectural Control Committee, as provided in the Declaration, and may appoint such other committees as it deems appropriate, except that the Board may not delegate its authority to hold hearings or impose sanctions. Any "Executive Committee of the Board" (as defined in Section 2.12) shall consist of at least two (2) directors and shall have such powers and duties as the Board shall determine, subject to the limitations of *Corporations Code* section 7212. As provided in *Corporations Code* section 7212(b), a committee exercising the authority of the Board shall not include as

members any persons who are not directors. All committees and committee members shall serve at the pleasure of the Board.

- 8.14 Other Powers and Duties. The Board shall have the power to exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of the Governing Documents, and undertake any action on behalf of the Association as the Board shall deem necessary or proper in furtherance of the purposes and powers of the Association and/or the interests of the Association and its Members.

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

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- 9.1 Appointment of Principal Officers. The appointment of the principal officers shall take place at the first meeting of the Board following each election of directors.
- 9.2 Term of Principal Officers. The principal officers of this Association shall be appointed biennially by the Board, and each shall hold office for two (2) years, unless he or she shall sooner resign, be removed by the Board, or otherwise be disqualified to serve.
- 9.3 Enumeration of Principal Officers. The principal officers of this Association shall be a President, a Vice-President-Social, a Vice-President-Pool, a Recording Secretary, a Financial Secretary, and a Treasurer, who shall at all times be members of the Board of Directors. The Board may, from time to time, by resolution appoint other officers as the Board may determine, as provided in Section 9.4 ("Special Appointments").
- 9.4 Special Appointments. The Board may appoint 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. Officers appointed pursuant to this Section 9.4 need not be members of the Board or Members of the Association.
- 9.5 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 Recording 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.
- 9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces, subject to the Board's right to remove an officer.

- 9.7 Multiple Offices. One (1) person may hold two (2) or more offices except that neither the Recording Secretary nor the Treasurer may serve concurrently as President. This provision is intended to prohibit a single individual from having apparent authority to bind the Association by virtue of holding both offices, pursuant to *Corporations Code* section 7214.
- 9.8 Authority to Bind Association. Unless expressly authorized by the Board, no officer shall have any power or authority to bind the Association or to render the Association liable for any purpose or on any account.
- 9.9 President. The President shall preside over all meetings of the membership and the Board of Directors, shall have the general powers and duties of management usually vested in the office of the President of an association, and shall have such other powers and duties as may be prescribed by the Board of Directors and the Bylaws, subject, however, to any limitations contained in the Declaration.
- 9.10 Vice President – Social. All duties of the President shall, in his absence, inability or refusal to act, be performed by the Vice-President-Social. In addition, the Vice President – Social shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.
- 9.11 Vice President – Pool. If both the President and the Vice President – Social are absent or unable or refuse to act, then the Vice President – Pool shall perform the duties of the President. The Vice President – Pool shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.
- 9.12 Recording Secretary. It shall be the duty of the Recording Secretary to record and file the minutes of all meetings, and such other powers and perform such other duties as may be prescribed by the Board of Directors.
- 9.13 Financial Secretary. The Financial Secretary shall have the powers and perform such duties as may be prescribed by the Board of Directors.
- 9.14 Treasurer. The Treasurer shall be responsible for financial reporting and have such other powers and perform such other duties as may be prescribed by the Board of Directors.
- 9.15 No Compensation of Officers. No officer shall receive compensation for any service he or she may render to the Association as an officer. However, upon approval by the Board, any officer may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

## ARTICLE 10 MINUTES; BOOKS AND RECORDS; FUNDS

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- 10.1 Minutes of Meetings. To the extent required by *Corporations Code* section 8320(a)(2), the Association shall keep minutes of meetings and proceedings of the Members (including membership votes), meetings of the Board and Committees of the Board, and meetings of any other committee appointed by the Board that has decision-making authority. As provided in Section 6.14 (“Minutes of Meetings of Directors”), any matter discussed in executive session shall be generally noted in the minutes of the next following open meeting of the Board, and minutes of executive sessions shall not otherwise be required.
- 10.2 Members’ Access to Minutes, Books, and Records. The Association shall make available for inspection and copying by any Member “Association records” (as defined in *Civil Code* section 5200) maintained by the Association, to the extent required by *Civil Code* sections 5200 through 5230, inclusive and subject to a requesting Member’s compliance with all applicable prerequisites and any applicable limitations (including but not limited to *Corporations Code* section 8332 concerning protection of constitutional rights of other Members, *Corporations Code* section 8338 concerning use of memberships lists, and *Civil Code* section 5215 concerning withholding or redacting certain records). This provision does not require the Association to create or maintain any records not otherwise required by law to be maintained.
- 10.3 Directors’ Inspection Rights. As provided in *Corporations Code* section 8334, and subject to any limitations established by law, every director shall have the right at any reasonable time to inspect and copy all books, records, and documents and to inspect the physical properties of the Association.
- 10.4 Checks, Drafts, and Evidences of Indebtedness. For operational expenditures, all checks, drafts, or other orders for payment of money, or notes or other evidences of indebtedness issued in the name of the Association shall be signed in the manner specified by the Board of Directors. Notwithstanding the forgoing, withdrawal of funds from the Association’s reserve account shall require the signatures of at least two (2) persons who shall be members of the Board of Directors.
- 10.5 Funds and Deposits. Any funds of the Association shall be deposited to the credit of the Association in such banks or other depositories as the Board of Directors shall, from time to time, determine.
- 10.6 Fiscal Year. The fiscal year of the Association shall be as determined by the Board.

## ARTICLE 11 POOL FACILITY; ASSOCIATE MEMBERS

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- 11.1 Pool Facility. Except as provided in Section 11.2 (“Assignment by Owner of Pool Facility Privileges to Tenant”) the Pool Facility (as defined in Section 2.21) is for the exclusive use of Members and authorized guests as provided in the Declaration.
- 11.2 Assignment by Owner of Pool Facility Privileges to Tenant. A Member may temporarily grant or license (hereinafter referred to as “assign”) such Member’s nonexclusive pool use privilege to a tenant residing in the primary Dwelling erected upon said Member’s Lot. Such assignment shall be effective upon filing with the Board of Directors a written notice thereof and a copy of the assignment agreement signed by the Member and the tenant in such form as the Board shall from time to time prescribe; provided, however, that such assigning member and his Lot shall remain liable for payment of the Assessments on each Lot in the same manner as if such assignment has not occurred.
- 11.3 Associate Memberships; Process.
- 11.3.1 Associate Member Defined. “Associate Member” or “Associate Membership” shall mean a person or persons to whom the Association has granted the right to use the Pool Facility. Associate Members are not Members of the Association as defined in Section 2.18 (“Member”) and do not have any Member rights, privileges, or obligations.
- 11.3.2 Grants of Associate Membership.
- (i) On an annual basis, the Association, through the Board of Directors, shall be authorized and have the discretion to issue temporary “Associate Memberships” providing Pool Facility use privileges to non-Owners. Each recipient of a such use privileges shall be identified as an “Associate Member.”
  - (ii) On an annual basis, the Association, through the Board of Directors, shall be authorized and have the discretion to determine the number of Associate Memberships to be offered in any given year prior to that year’s Application Opening date, but in no event shall the number of Associate Members exceed 125 households in any one year.
  - (iii) The Board shall thereafter issue temporary Associate Memberships providing Pool Facility use privileges for the use of the Pool Facility. Each recipient of a such use privileges shall be identified as an Associate Member.

- 11.3.3 Residency of Associate Member. Associate Members shall be a resident residing, or those with a mailing address, within Zip Code 95120, and shall be approved by the Board of Directors on a first come, first served basis.
- 11.3.4 Associate Member Contract. Upon approval by the Board, Associate Members shall be deemed Associate Members upon signing a contract with the Association and paying, in full, the required fees.
- 11.3.5 Fees for Associate Membership. The fee to be charged to each Associate Member shall be as established each year by the Board of Directors. Fees shall be paid in full upon contract acceptance.
- 11.3.6 Non-Transferrable. Associate Memberships are not transferable.
- 11.3.7 Pool Facility Privileges. Associate Members have the following privileges, obligations and restrictions:
- (i) Associate Members have no voting rights and no participation in decisions of the Association.
  - (ii) The Shadow Brook Swim Club Rules, including the Rules and regulations related to the Pool Facility, apply to the Associate Members in full force. However, the Declaration does not bind Associate Members (except to the extent that they are Residents of the Development and/or guests, or invitees of the Shadow Brook Swim Club).
- 11.3.8 Termination of Associate Memberships. The Associate Membership shall be terminated, upon the first to occur of the following: (i) term ending date as set forth on the Associate Membership contract; (ii) with pro-rated reimbursement, at the discretion of the Board of Directors, or (iii) without reimbursement, for good cause, including failure to comply with the Rules and regulations related to the Pool Facility or Shadow Brook Swim Club.

## **ARTICLE 12            AMENDMENTS**

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- 12.1 Amendments Generally. These Bylaws may be amended by approval of the Board and the affirmative vote of a majority of the Total Voting Power of the Association; *provided, however,* that, upon advice of legal counsel licensed to practice law in the State of California, including the drafting by legal counsel of appropriate amendatory provisions, the Board shall have the authority without the requirement of Member approval to amend any provision of the Bylaws: (a) to resolve any conflict between the Bylaws and applicable law which may arise due to the

enactment or amendment of a statute or due to a development in applicable case law or (b) to conform the provisions of the Bylaws to changes in applicable statutory law that impose requirements that are non-discretionary.

- 12.2 Record of Amendments. When an amendment or a new Bylaw provision is adopted, it shall be placed in the Association's records together with a certificate signed by the Secretary stating the date on which it was approved by the Members or, if approved by the Board pursuant to subsection (a) or (b) of Section 12.1, the date approved by the Board.

## **ARTICLE 13 MISCELLANEOUS**

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- 13.1 Amendments to Referenced Statutes; Time for Performance. References in the Bylaws to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever these Bylaws state a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.
- 13.2 Delivery, When Effective. As set forth in *Civil Code* section 4050: (a) if notice is sent by United States mail, such notice shall be deemed delivered upon deposit in the United States mail, postage prepaid; (b) if such notice is sent by electronic means, delivery is complete at the time of the transmission.
- 13.3 Successor Entity. In the event the Association as a corporate entity is dissolved, a nonprofit unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association. The affairs of such unincorporated association will be governed by the laws of the State of California, and to the extent consistent therewith, by the Declaration, the Articles of Incorporation, and these Bylaws as if they were created for the purpose of governing the affairs of an unincorporated association.