

2009 AMENDED AND RESTATED
BYLAWS OF
SUMMERCREEK HOMEOWNERS ASSOCIATION
A California Nonprofit Mutual Benefit Corporation

NOTICE
(Gov't. Code §12956.1)

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2009 AMENDED AND RESTATED

BYLAWS OF

SUMMERCREEK HOMEOWNERS ASSOCIATION

ARTICLE 1 - NAME; LOCATION AND APPLICABILITY

1.1 ***Name; Nonprofit Mutual Benefit Corporation.*** The name of the corporation is Summercreek Homeowners Association ("Association"). The Association has been formed pursuant to the California Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8970) as a nonprofit mutual benefit corporation.

1.2 ***Principal Office.*** The principal office of the Association is located in San Diego County, California. The Board shall have the full power and authority to change the principal office of the Association from one location to another in San Diego County, California. Any such change shall be adopted by a resolution of the Board and noted in the meeting minutes.

1.3 ***Applicability.*** These Restated Bylaws are applicable to the Association and all Owners, residents, tenants, employees, and other persons who use the facilities of the residential planned development known as Summercreek ("Community"), consisting of two hundred eleven (211) residential Lots or Separate Interests, located in the City of Escondido, County of San Diego, State of California

1.4 ***Documents Being Replaced; Approvals.*** These Restated Bylaws amend and restate, in their entirety, the Bylaws of Summercreek Homeowners Association, approved February 7, 1986 ("Original Bylaws").

1.5 ***Definitions.*** Unless otherwise defined herein, capitalized terms or words used in these Bylaws shall have the same definitions as those found in the Association's Declaration ("Declaration") as recorded in the Official Records of the County Recorder of San Diego County, or as defined or used in the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*) or in the Nonprofit Mutual Benefit Corporation Law (California Corp. Code Section 7110 *et seq.*). Words not defined in the Declaration or these Bylaws or in the Civil Code or Corporations Code shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in these Bylaws are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. When used in these Bylaws, the term "Separate Interest" shall have the same meaning as "Lot."

1.6 ***Membership Rights.*** The qualifications for membership are set forth in the Declaration and are hereby incorporated by reference.

1.7 ***Limitation on Membership Rights.*** No Member shall have the right, without the prior approval of the Board, to exercise any of the powers or to perform any of the acts delegated to the Board by the Governing Documents. Furthermore, Members may be disciplined by limiting or suspending the Member's rights, as provided in Section 3.15 hereof.

1.8 ***Continuity of Life of Association.*** If the Association should be involuntarily dissolved as a corporation, an unincorporated association immediately and without further action or notice shall be deemed to exist and shall succeed to all rights and duties of the Association. The affairs of such unincorporated association shall be governed by the laws of the State of California and the Governing Documents.

1.9 ***References to Statutes and Administrative Regulations.*** Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in these Bylaws show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents of the Association shall be controlled by relevant provisions of the Corporations Code and by judicial interpretations of it, whether the Association is incorporated or not.

1.10 ***Conflicts.*** If there is any conflict between the Articles and these Bylaws, the Articles shall control; and if there is any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 2 - MEETINGS OF MEMBERS

2.1 ***Place of Meetings; Conduct.*** [Corp. Code §§7510(a) & 7511; DRE Reg. 2792.17(b)] All meetings of the Members shall be held at a place designated by the Board. This meeting place shall be within the Community or as close to it as reasonably possible. If no meeting place is designated, the meetings shall be held at the principal office of the Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of San Diego County, California. [Civil Code §1363] Meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Board may adopt by resolution.

[Civil Code §1363] At Membership meetings, no substantive matter may properly be presented for a vote of the Members, either by the Board or by any Member, unless the notice of the meeting has stated the general nature of each issue on which a vote will be taken at the Membership meeting. By way of example and not limitation, substantive matters include votes to elect or remove Directors, to approve amendments to the Governing Documents, and to increase or impose assessments which require a vote of the Membership. Non-substantive matters include votes concerning meeting procedures, such as closing or limiting debate, amending motions, nominating candidates not previously nominated, adjournment, and other matters affecting meeting procedures.

2.2 ***Annual Meetings.*** [Corp. Code §7510(a) & (b)] The annual meeting of the Members shall be held in the month of February on a date and time established by the Board, provided that adjournments of such meeting for lack of quorum or otherwise may be held as soon thereafter as practical.

2.3 ***Special Meetings.*** [Corp. Code §§7511(e), 7510(e); 7511(a); DRE Reg. 2792.17(c)] Special meetings of the Members may be called for any lawful purpose by a majority of a quorum of the Board, the President of the Association, or by a written request signed by Members representing at least five percent of the Voting Power. If the special meeting is requested by the Members, it shall be held not less than thirty-five nor more than ninety days after receipt of the request by an Officer of the Association. Only that business stated in the notice of meeting given pursuant to Section 2.4 of these Restated Bylaws shall be transacted at the special meeting.

2.4 ***Notice of Meetings.*** [Corp. Code §§ 7511(a) & (b); DRE Reg. 2792.17(d)] The Secretary of the Association shall give written notice of any Members' meeting to each Member of record in accordance with the following:

- 2.4.1 [Corp. Code §7511(b)] Except as otherwise provided in this Article, the notice shall be given at least ten but not more than ninety days before the meeting, by first class mail, by personal delivery or Electronic Transmission.
- 2.4.2 [Corp. Code §7511(b)] The notice shall be addressed to the Member at the address appearing on the books of the Association, or the address supplied by the Member to the Association for this purpose. If there is no such address, the Member's address shall be deemed to be the property address of the Member's Separate Interest.
- 2.4.3 [Civil Code §1363] The notice shall state the place, date, and time of the meeting and the means, if any, by which a Member may participate by Electronic Transmission or electronic video screen. If Directors are to be elected at the meeting, the ballot shall include the names of all those who are nominees at the time the notice is given. The notice or ballot shall also state those matters that the Board, or anyone else, at the time the notice is given, intends to present for action by the Members.
- 2.4.4 [Corp. Code §7510(e)] In the case of a special meeting which is called by Members, pursuant to Section 2.3 of these Restated Bylaws, the notice shall be given within twenty days after receipt of the request for the meeting. If that twenty day requirement is not satisfied, the Members who called the meeting may give the notice.
- 2.4.5 [Corp. Code §7511(f)] Any approval of the Members required for those items listed in Section 2.5.1, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the

matter to be voted upon was stated in the notice of meeting or any written waiver of notice.

- 2.4.6 [Corp. Code §7511(b)] An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, and if so executed, shall be filed with the corporate records or made a part of the minutes of the meeting. Such affidavit shall constitute prima facie evidence of the giving of notice.

2.5 ***Special Notice and Voting Requirements.*** [Corp. Code §7511 & 7613] Certain matters on which the Members may vote require special notice of those matters that must appear in the notice of meeting, or in a proxy that is used to vote on such matters.

- 2.5.1 As provided in Corporations Code Section 7511(f), any of the following matters may be approved only by the unanimous approval of those Members entitled to vote unless the general nature of the proposal was stated in the notice of the meeting or in a written waiver of notice for the meeting:

- (a) Member votes to remove a Director without cause as provided in Corporations Code Section 7222;
- (b) Member votes to fill a Director vacancy after a Director has been removed or when the Board has not filled a vacancy the Board is entitled to fill as provided in Corporations Code Section 7224;
- (c) Member votes to enter into or to approve a contract or transaction between the Association and one (1) or more of the Directors, or between the Association and any entity in which one or more of the Directors has a material financial interest, except as allowed by Corporations Code §7233;
- (d) Member votes to amend the Articles in accordance with Corporations Code §7812;
- (e) Member votes to dissolve the Association, by approval of a majority of all Members or by approval of both the Board and Members as provided in Corporations Code §8610; or
- (f) Member votes as required to approve a plan to distribute the Association's assets on dissolution as provided in Corporations Code §8719(a).

- 2.5.2 As provided in Corporations Code Section 7613(g), a revocable proxy may not be used for any of the following purposes, unless the proxy sets forth the general nature of the matter to be voted upon:

- (a) Any of the matters listed in Section 2.5.1 above;
- (b) Member votes to amend the Articles or these Bylaws to repeal, restrict, create, or expand proxy rights as required by Corporations Code §7613(f)(1);
- (c) Member votes to dispose of assets other than in the usual and regular course of corporate activities pursuant to Corporations Code §7911(a)(2); or
- (d) Member votes to approve agreements for corporate merger, and amendments thereof, in accordance with the provisions of Corporations Code Sections 8012 and 8015(a).

2.6 Waiver of Notice. [Corp. Code §7511(e)] Attendance by a Member or proxyholder for a Member at a meeting or submission of a ballot by a Member shall constitute a waiver of notice of that meeting, except when the Member or proxyholder objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting which are required to be described therein if that objection is expressly made at the meeting.

2.7 Voting Rights. Members shall have the power to exercise their voting rights subject to the following provisions:

- 2.7.1 Each Separate Interest shall be assigned one vote. In an election of Directors, each Separate Interest shall be assigned one vote for each position on the Board to be filled at the election.
- 2.7.2 Fractional votes shall not be allowed. When there is more than one record Owner of a Separate Interest (“co-owners”), all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Separate Interest. Co-owners may designate in writing one of the co-owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Separate Interest's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Separate Interest on a particular matter if a majority of the co-owners present in person, by proxy, or by ballot, cannot agree on a vote.
- 2.7.3 [Corp. Code §5034] Any provision of the Governing Documents that requires the approval of a specified percentage of the Voting Power of the Association shall require the approval of the specified percentage of the Voting Power of the Membership. If no percentage of the Voting Power is specified in the Governing Documents or by

California law for a particular action or decision by the Membership, the approval by a majority of the votes cast when a quorum is established shall be required.

2.7.4 [Corp. Code §5056] For purposes of exercising Membership rights and incurring Membership obligations, if a Member is a corporation, any director, officer, employee or agent authorized by the corporation may exercise the Membership rights attributable to the corporation. If a Member is a trust, any trustee may exercise the Membership rights attributable to the trust or as otherwise authorized in writing by the trustee. If a Member is a partnership, any partner may exercise the Membership rights attributable to the partnership, or as otherwise authorized in writing by the partnership. If a Member is the owner of a property that is subject to a life estate, the life tenant will be the party entitled to exercise Membership rights and also liable for Membership obligations. If a Member is any other entity other than a human being, that entity may authorize one or more human beings to exercise the Membership rights attributable to that entity.

2.7.5 A Member's voting rights may be suspended by the Board after Notice and Hearing as provided in Section 3.15.

2.8 ***Record Dates.*** The Board may fix various record dates as provided in this Section.

2.8.1 [Corp. Code §7611(a)] *Record Date for Notice of Meetings.* The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to notice of any meeting of the Members. Such record date shall not be more than ninety (90) nor less than ten (10) days before the date of the meeting. If no record date is fixed, Members at the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of a meeting of Members. A determination of Members entitled to notice of a meeting of Members shall also apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting.

2.8.2 [Corp. Code §7611(b)] *Record Date for Eligibility to Vote.* The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to vote at a meeting of the Members. Such record date shall not be more than sixty (60) days before the date of the meeting. If no record date is fixed, Members on the day of the meeting who are otherwise eligible to vote at the meeting, or, in the case of an adjourned meeting, Members on the day of the adjourned meeting who are otherwise eligible to vote are entitled to vote at the adjourned meeting.

2.8.3 [Corp. Code §7611(c)] *Record Date for Eligibility to Cast Written Ballot.* The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to cast a written ballot in lieu of holding a meeting of Members. Such record date shall not be more than sixty (60) days before the day on which the first written ballot is mailed or solicited. If no record date is fixed, Members on the day of the first written ballot is mailed or solicited who are otherwise eligible to vote are entitled to cast written ballots.

2.8.4 [Corp. Code §7611(d)] *Record Date for Exercise of Other Rights.* The Board may fix, in advance, a date as the record date for the purpose of determining the Members entitled to exercise any rights in respect to any other lawful action. Such record date shall not be more than sixty (60) days prior to such other action. If no record date is fixed, Members at the close of business on the day the Board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

2.10 ***Quorum.*** [Corp. Code §7512; DRE Reg. 2792.17(e)(1)] At any meeting, Members may be considered present by appearing in person, by proxy, or by ballot. The presence of Members entitled to cast votes equal to at least one-third of the Voting Power shall constitute a quorum for any action except as otherwise provided in the Governing Documents or Applicable Law. At the Board's discretion, Members may, by Electronic Transmission or electronic video screen, participate, be considered present for quorum purposes and vote at a meeting of Members subject to the requirements of Corporations Code Section 7510. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of the Voting Power of Members required to constitute a quorum.

2.11 ***Adjournment for Lack of Quorum.*** [DRE Reg. 2792.17(e)(2)] If a quorum is not present at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five days nor more than thirty days from the meeting date, but no other business may be transacted. Provided that the date, time and place of the adjourned meeting are announced at the original meeting, the adjourned meeting may be held without additional written notice. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in Section 2.4 of these Restated Bylaws. If a quorum is not present at a duly called meeting on the first attempt, the quorum for the reconvened meeting shall be twenty-five percent of the total Voting Power of the Members. As required by Corporations Code Section 7512(b), the only matters that may be voted upon at any meeting are matters the general nature of which was given in the notice of the meeting, if the Members present or represented by proxy constitute less than one-third of the total Voting Power.

2.12 ***Adjustment of Voting Power and Quorum.*** For purposes of establishing a quorum and determining the Voting Power of the Association, if a Member's voting rights are

suspended as provided in the Governing Documents, the Voting Power of the Association shall be reduced for the period of time for which the suspension is in effect by an amount equal to the number of Separate Interests for which Membership voting rights have been suspended.

2.13 ***Voting by Proxy Prohibited.*** [Corp. Code §7613(f)] The use of proxies for voting in this Association shall not be permitted.

2.14 ***Voting by Secret Ballot With or Without a Membership Meeting.*** [Civil Code §1363.03] Votes cast at an annual or special Membership meeting by secret ballot using the double envelope system required by Civil Code Section 1363.03 may be counted to establish a quorum at such meeting. The secret ballot requirements must be used when required by Civil Code Section 1363.03 and may be used for voting on other issues requiring Member approval.

2.15 ***Voting by Signed Written Ballot Without a Membership Meeting.*** [Civil Code §1363.03; Corp. Code §7513; DRE Reg. 2792.17(f)] Except when a secret ballot and double envelope system is required as provided in Civil Code Section 1363.03, any action that may be taken at a meeting of the Members may be taken without a meeting provided the following ballot requirements are satisfied:

- 2.15.1 The Association shall distribute a ballot to every Member entitled to vote on the matter.
- 2.15.2 The ballot shall comply with any Applicable Law.
- 2.15.3 The proposed action shall be considered approved if:
 - (a) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action, and
 - (b) The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots received in response to the ballot solicitation.
- 2.15.4 Once a written ballot is submitted to the Association, the Member submitting the ballot may not revoke it.
- 2.15.5 Any deadline stated for return of the ballots may be extended for successive reasonable periods with the approval of the inspectors of election.
- 2.15.6 The Board shall adopt Rules to comply with the Applicable Laws governing Membership votes.

2.16 ***Inspectors of Election.*** [Civil Code §1363.03; Corp. Code §7614] In advance of any election by Members or meeting of Members, the Board shall appoint inspectors of election, in compliance with the requirements of Civil Code Section 1363.03 and, where applicable,

Corporations Code Section 7614. The inspectors of election shall have the powers and duties as set forth in the statute. The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three inspectors of election, the decision, act or certificate of a majority is effective, in all respects, as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE 3 - BOARD OF DIRECTORS

3.1 ***Number; Qualification.*** The affairs of this Association shall be managed and its duties and obligations performed by an elected Board of Directors, consisting of five persons. Members of the Board must be Members of the Association. If a Member is a corporation, partnership, trust or some other entity that is not a human being, any officer, director, principal or duly authorized agent of such Member shall be qualified to serve as a Director.

3.2 ***Nomination.*** [Corp. Code §7520] There shall be available to the Members reasonable nomination and election procedures given the nature, size and operations of the Association.

3.3 ***Qualifications of Candidates for Election.*** Candidates for election must be Members in good standing. Good standing shall mean that all assessments must be current and the candidate's Membership rights must not have been suspended due to any violations of the Association's Governing Documents.

3.4 ***Election.*** [Civil Code §1363.03; Corp. Code §7615] At each annual meeting of the Association, the Members shall fill, by election, all positions of Directors whose terms are due to expire. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of Members called for that purpose or held by secret ballot pursuant to Section 2.12 herein. Voting for Directors shall be by secret ballot as provided in Civil Code Section 1363.03. However, if the number of candidates equals or is less than the number of positions to be filled at the election, Members may elect the Directors by acclamation. Cumulative voting shall not be permitted in any election. Specifically, each Member, or the Member's proxyholder, may cast only one vote for each candidate and may vote for as many candidates as there are vacancies to be filled. The candidates receiving the highest number of votes, up to the number of vacancies to be filled, shall be elected. In the event of a tie vote between candidates for the last vacant position on the Board, a run-off election may be conducted by written ballot without a Membership meeting pursuant to Section 2.15 herein.

3.5 ***Term.*** [Corp. Code §7220(b)] The term of each Director shall be two years, and each Director shall serve until his or her successor is elected or appointed. The terms of Directors shall be staggered with two Director terms expiring in each odd-numbered year, and three Director terms expiring in each even-numbered year.

Whenever Directors are to be elected to terms of different lengths at the same election, due to vacancies or any similar reason, each candidate elected shall be entitled to select his or her term of office from the terms available, starting with the candidate who receives the greatest number of votes and then to the remaining candidates in descending order of votes received.

There shall be no limit to the number of consecutive terms to which a Director may be reelected. Each Director shall hold office until the election of his or her successor or until the Director's death, resignation, removal, or judicial adjudication of mental incompetence. Directors shall be elected at each annual meeting to fill the vacancies of those Directors whose terms then expire.

3.6 ***Removal.*** [Corp. Code §7221] Directors may be removed as follows:

3.6.1 The Board may declare vacant the office of a Director on the occurrence of any of the following events:

- (a) The Director is declared of unsound mind by a final order of a court.
- (b) The Director is convicted of a felony.
- (c) The Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place;
- (d) The Director ceases to be an Association Member.
- (e) The Director has failed to cure all of such Director's assessment delinquencies within ninety days after the date the Association first notifies the director, in writing, of any such delinquency.

3.6.2 [Corp. Code §7222] One or more Directors may be removed prior to the expiration of their terms, without cause, at an annual or special meeting of the Members, subject to the notice of meeting requirements in Section 2.4. [Corp. Code §§5034 & 7513] In an association with 50 or more Members, any or all Directors may be removed without cause if the removal is approved by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is represented or by written ballot conducted in accordance with Corporations Code Section 7513.

3.6.3 [Corp. Code §7222(f)] By a majority vote, the Board may remove any Director who was appointed by the Board to fill a vacancy on the Board.

3.7 ***Resignation of Directors.*** [Corp. Code §7224] Any Director may resign at any time by giving written notice to the Board, the President, or the Secretary, or by giving verbal notice at a Board meeting. Such resignation shall take effect on the date of receipt of such notice, or at any time later specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.8 ***Return of Association Materials.*** All books, records, papers and other materials provided by or from the Association to Directors or Officers remain property of the Association. Upon resignation, removal or expiration of the Directors' terms, Directors shall return to the Association those Association materials in their possession.

3.9 ***Filling Vacancies.*** [Corp. Code §§7220(b) & 7224] Vacancies on the Board of Directors, caused by reason other than the removal of a Director by a vote of the Members, shall be filled by a vote of a majority of the remaining Directors, even though they may constitute less than a quorum. The Members shall vote to fill any vacancy on the Board created by the removal of a Director by the Members. A successor Director shall serve for the unexpired term of the Director he or she replaced. If the Board accepts the resignation of a Director which is scheduled to take effect at a future date, the Board may appoint a successor to take office when the resignation becomes effective, and the resigning Director may participate in the appointment of a successor.

3.10 ***Compensation.*** [DRE Reg. 2792.21(b)(4)] No Director shall receive any compensation for any service he or she may render to the Association; provided, however, that a Director may be reimbursed for actual out-of-pocket expenses incurred by the Director in the performance of his or her duties. Any expenses for travel outside of San Diego County must have prior approval of the Board.

3.11 ***Powers and Duties.*** [Civil Code §1363; Corp. Code §7140; C.C.P. §383] The Board shall exercise for the Association all powers and duties vested in or delegated to the Board or the Association by the Governing Documents and the California Corporations Code governing nonprofit mutual benefit corporations, and the Davis-Stirling Common Interest Development Act. Said powers and duties shall be subject to the limitations of the Governing Documents, and shall include, but not be limited to, the requirements of Section 3.12 and the following:

- 3.11.1 [Civil Code §1357.100 *et seq.*] Formulating Rules for the use and operation of the Separate Interests, Exclusive Use Common Areas, Common Area, common facilities and facilities owned or controlled by the Association.
- 3.11.2 [Civil Code §1363.03] Formulating Rules relating to elections.
- 3.11.3 Enforcing the applicable provisions of the Governing Documents and any other instruments governing the ownership, management, and control of the Community.
- 3.11.4 [Civil Code §1363.03(d) ; Corp. Code §7614] Appointing inspectors of election for any Membership vote.
- 3.11.5 Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Documents after Notice and Hearing.

- 3.11.6 Suspending the voting rights of a Member and the right to use of any Recreational Facilities during any period in which such Member is in default in the payment of any assessment levied by the Association.
- 3.11.7 Paying taxes and assessments that are, or could become, a lien on all or a portion of the Common Area.
- 3.11.8 Fixing and establishing the fiscal year for the Association, including the power to modify the fiscal year.
- 3.11.9 Contracting for casualty, liability, and other insurance on behalf of the Association.
- 3.11.10 Subject to the limitations set forth in Section 3.12 herein, contracting for goods and services for the Common Area and operation of the Association, and borrowing money, incurring indebtedness and executing promissory notes or other evidences of debt for the Association.
- 3.11.11 [Corp. Code §7212] Creating committees pursuant to resolution adopted by a majority of the Board; provided that if a committee will exercise any power or authority of the Board, it shall consist of two or more Directors, and as many other persons as the Board may designate, to serve at the pleasure of the Board. No Directors need serve on any committee which does not exercise any power or authority of the Board (*e.g.*, social committees). Committee members must be Association Members.
- 3.11.12 [Corp. Code §7210] Delegating the management of the Association's activities to its Officers, employees, committees, or agents, including a community association manager.
- 3.11.13 Employing attorneys, accountants, independent contractors, or such other agents and employees as they deem necessary, and prescribing their duties.
- 3.11.14 Authorizing the withdrawal of monies from the Association's reserve accounts, upon the signatures of two Directors or one Director and one officer who is not a Director. The Board shall take reasonable precautions to ensure that the appropriate signature authorization cards are delivered to the institution or institutions holding the Association's reserve accounts or shall obtain verification from such institution or institutions that the signature authorizations cards on file contain only the signatures of those persons who were authorized to withdraw moneys from the reserve accounts.

- 3.11.15 Entering any Separate Interest to perform necessary construction, maintenance, or emergency repair work for the benefit of the Common Area or the Association.
- 3.11.16 Filling vacancies on the Board, except for a vacancy created by the removal of a Director by Members.
- 3.11.17 Providing any Owner with any documents required by any Applicable Law to be provided to an Owner.
- 3.11.18 Being indemnified and defended by the Association against loss, liability or expense (including attorneys' fees) arising out of the performance of the Board's duties to the maximum extent permitted by law.
- 3.11.19 [Civil Code §1360(a)(2)] Authorizing a modification of the Common Area, as provided by law to facilitate access for persons who are blind, visually handicapped, deaf, or otherwise eligible to receive such an accommodation.

3.12 ***Limitations on Powers.*** [DRE Reg. 2792.21(b)] Notwithstanding the provisions of Section 3.11, the Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the Voting Power of those Members voting, so long as a quorum is present or represented at the meeting:

- 3.12.1 Entering into a contract with a third person under which the third person will furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:
 - (a) A management contract the terms of which have been approved by the Federal Housing Administration or Veterans Administration or which provides that the Association may terminate such contract with or without cause upon thirty days written notice; provided however, that the term of any management contract may be renewable by agreement of the parties for successive one year periods.
 - (b) A contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate.
 - (c) Prepaid casualty and liability insurance of not more than three years duration, provided that the policy provides for short rate cancellation by the insured.

- (d) A contract for a term not exceeding three years that is terminable by the Association after no longer than one year without cause, penalty, or other obligation upon thirty days' written notice of termination to the other party.
- 3.12.2 [DRE Reg. 2792.21(b)(2)] Incurring aggregate expenditures for Capital Improvements to the Common Area in any fiscal year in excess of five percent of the budgeted gross expenses of the Association for that fiscal year. This provision applies to capital improvements only and does not apply to repairs and replacements.
- 3.12.3 [DRE Reg. 2792.21(b)(3)] Selling during any fiscal year real or personal property of the Association having an aggregate fair market value in excess of five percent of the budgeted gross expenses of the Association for that fiscal year, except as part of another transaction to trade-in or replace the property being sold or for a Separate Interest obtained through foreclosure of the Association's lien or purchased to protect the Association's lien rights. This provision does not apply to the sale of any Separate Interest owned by the Association.
- 3.12.4 Borrowing money, pledging the right to exercise its assessment powers in connection with obtaining funds to repay a debt of the Association, incurring indebtedness and executing promissory notes or other evidences of debt for the Association in excess of five percent of the budgeted gross expenses of the Association for that fiscal year.
- 3.12.5 Filling a vacancy on the Board created by the removal of a Director by the Members which shall require a plurality vote of the Members.
- 3.12.6 [DRE Reg. 2792.21(b)(4)] Paying compensation to Directors or Officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.
- 3.12.7 [Civil Code §1365.5(c)] Expending funds designated as reserve funds, except as permitted by Civil Code Section 1365.5(c), as amended from time to time, as more fully described in Section 3.16 below.

3.13 ***General Duties of the Board.***

- 3.13.2 [Civil Code §1365.2; Corp. Code §8320] Cause to be kept a complete record of all its acts and corporate affairs (including adequate and correct books and records of account, minutes of the proceedings of its Members, Board and committees of the Board, a record of the Members giving their names and addresses and the class of Membership held by each), and to present a general statement of its acts and corporate affairs to the Members at the annual meeting of the

Members, or at any special meeting when such statement is requested in writing by one-fourth of the Voting Power of Members.

- 3.13.3 Supervise all Officers, agents and employees of this Association, and to see that their duties are properly performed.
- 3.13.4 [Civil Code §1365.7] Procure and maintain adequate fire, casualty, liability and hazard insurance, as required by the Declaration Governing Documents, in at least the minimum limits established by Civil Code Section 1365.7, and otherwise to insure adequately the property which is owned either by the Association or by its Members in common.
- 3.13.5 Cause all Officers or employees entitled to withdraw funds of the Association to be bonded either through a bond or insurance.
- 3.13.6 Invest reserve funds and any other surplus funds of the Association only in the name of the Association and only in financial obligations of the United States of America or in financial institutions whose deposits are insured by an agency of the United States of America, including, by way of illustration and not limitation, F.D.I.C. and F.S.L.I.C.
- 3.13.7 Maintain, repair and restore those portions of the Development which are required by the Governing Documents.

3.14 ***Financial Documentation; Preparation, Reporting and Review Responsibilities.***
[DRE Reg. 2792.21(b)] With regard to the preparation, reporting and review of the Association's financial documentation, the Board shall have the following responsibilities:

- 3.14.1 [Civil Code §1365(a); DRE Reg. 2792.22] Preparing a pro forma operating budget for each fiscal year, and distributing a copy thereof to each Owner not less than thirty and not more than ninety days prior to the beginning of the fiscal year. The budget shall comply with any Applicable Law.

[Civil Code §1365 (d)] In lieu of the distribution of the pro forma budget, the Board may elect to distribute a summary of the budget to each Owner with a written notice that the budget is available at the business office of the Association or designated location and that copies will be provided upon written request and at the expense of the Association. The Association shall provide the copy to the Owner within five working days of the receipt of the Owner's written request.

- 3.14.2 [Civil Code §1365(c); Corp. Code §8321] Preparing and distributing an annual report, within one hundred twenty days after the close of each fiscal year, consisting of the following:

- (a) A balance sheet as of the end of the fiscal year.
 - (b) An operating (income) statement for the fiscal year.
 - (c) A statement of cash flows for the fiscal year.
 - (d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized Officer of the Association that the statement was prepared without independent review from the books and records of the Association.
- 3.14.3 [Civil Code §1365(e) & 1365.1, DRE Reg. 2792.22] Preparing and distributing to the Owners, between thirty and ninety days before the beginning of each fiscal year, any written notice regarding assessments and foreclosure described in any Applicable Law.
- 3.14.4 [Civil Code §1365.5] Causing to be conducted, at least once every three years, a study of the reserve account requirements of the Community when required by any Applicable Law. The Board shall review this 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. As used herein, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.
- 3.14.5 [Civil Code §1365.5(a); DRE Reg. 2792.22] Reviewing the following on at least a quarterly basis:
- (a) A current reconciliation of the operating and reserve accounts of the Association.
 - (b) The actual reserve revenues and expenses for the current year compared to the budget for the current year.
 - (c) An income and expense statement for the operating and reserve accounts of the Association.
 - (d) The most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

- 3.14.6 [Civil Code §1365.5(e)] Preparing and distributing to all Members a summary of the Association's property, general liability, and earthquake and flood and fidelity insurance policies, notices concerning lapsed, canceled or non-renewed insurance, notices concerning reductions in coverage or limits and any other notices to the extent required by any applicable law.

3.15 *Notice and Hearing Procedures; Disciplinary Actions Against Owners.* [Civil Code §§1363 & 1363.05; Corp. Code §7341; DRE Reg. 2792.26] In connection with the general power of enforcement, the Association may discipline Owners for violation of any of the provisions of the Governing Documents by one or more of the following: (1) suspending the Member's Membership rights, including the Member's voting rights, right to vote and to run for a position on the Board, and right to use any Common Area recreational facilities, (2) imposing monetary fines, and (3) recording of a notice of noncompliance encumbering the Separate Interest of the Owner if allowed by Applicable Law, subject to the following Notice and Hearing Procedures:

- 3.15.1 The accused Owner shall be given at least ten days' prior written notice of the intention of the Board to meet and consider imposition of a suspension, monetary fine, notice of noncompliance or any combination of these, with respect to any alleged violation. The notice shall include (1) the nature of any alleged violation, (2) the specific suspension, monetary fine, and/or other discipline proposed, (3) the date, time, and place of the hearing, and (4) a statement that the Member has a right to attend and address the board at the meeting or to be heard in writing.
- 3.15.2 In any matter relating to the disciplining of a Member, the Board shall meet in executive session if requested by that Member, or upon the Board's own decision. The Member subject to discipline shall be given an opportunity to be heard, orally or in writing, at the Member's discretion during that portion of the executive session.
- 3.15.3 Notwithstanding the foregoing, under circumstances involving conduct or a condition of the Separate Interest that constitutes (a) an immediate and unreasonable infringement of, or threat to, the health, safety or quiet enjoyment of neighboring Owners; (b) a traffic or fire hazard; or (c) a threat of material damage to, or contamination, or destruction of, the Common Area, or other Separate Interests, the Board or its agents may undertake immediate corrective action and conduct a hearing as soon thereafter as reasonably possible, if either (1) requested by the offending Owner within five days following the Association's actions, or (2) on its own initiative.
- 3.15.4 The amount of any monetary penalties shall be established from time to time by the Board, and a schedule thereof shall be distributed to the Members by personal delivery or first class mail. Distribution of

additional schedules is not required unless there are any changes to an existing schedule.

- 3.15.5 If the Board imposes discipline on a Member, the Board shall provide notification of the disciplinary action by either personal delivery or first-class mail to the Member within fifteen days following the action.
- 3.15.6 Any Owner's Membership privileges may be suspended (a) for any violation of the Governing Documents; and (b) during any period of time that the Owner is delinquent in the payment of assessments. Suspension of Membership privileges shall include suspension of the right of a Member to vote at meetings of the Association, and the right to run for a position on the Board.
- 3.15.7 Any disciplinary actions against an Owner may occur before or concurrently with any dispute resolution procedure required by any Applicable Law.
- 3.15.8 Any recorded notice of noncompliance, if allowed by any Applicable Law, shall identify the subject Separate Interest, describe the nonconforming use, and specify the provision of the Governing Documents that is being violated. Upon the elimination of any nonconforming use, the Association shall execute and record an estoppel certificate, which shall reference any previously recorded notice of noncompliance, rescind said notice and confirm that the Separate Interest is in compliance with all applicable Governing Documents provisions referenced in the notice of noncompliance.
- 3.15.9 Except as provided in the Declaration relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Separate Interest.

3.16 ***Expending Reserve Funds.*** [Civil Code §1365.5] The Board may not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established except as allowed by (i) Civil Code Section 1365.5(c), or (ii) any other applicable statute or law.

ARTICLE 4 - MEETINGS OF DIRECTORS

4.1 ***Regular Meetings.*** [Corp. Code §7211(a)(2); DRE Reg. 2792.20] Regular meetings of the Board of Directors shall be held at least bimonthly at a time and place fixed by resolution of the Board. The meeting place shall ordinarily be within the Community unless, in the

judgment of the Board, a larger meeting room is required than exists within the Community. Any larger meeting room selected by the Board shall be as close as possible to the Community.

4.2 ***Special Meetings.*** [Corp. Code §7211(a)(1) & (2); DRE Reg. 2792.20] Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association or by any two Directors other than the President. The meeting notice shall specify the time and place of the meeting and the nature of any special business to be considered.

4.3 ***Meeting Notice to Board Members.*** [Corp. Code §7211(a)(2)] Regular meetings of the Board, described in Section 4.1 above, may be held without notice to Board members if the time and place of the meetings are fixed by the Board. Regular meetings, if the time and place are not fixed by the Board, and special meetings of the Board shall be held upon four days' notice by first-class mail or forty-eight hours' notice delivered personally or by telephone, including a voice messaging system or by Electronic Transmission to Board members. Notice need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

4.4 ***Organizational Meetings.*** Immediately after the annual meeting or the Board election, if there is no annual meeting, or as soon thereafter as reasonably practicable, the Board shall meet to elect the Officers of the Association and conduct any other business of the Association as the Board, in its discretion, shall determine is necessary.

4.5 ***Emergency Meetings.*** [Civil Code §1363.05(g)] An emergency meeting of the Board may be called by the President, or by any two Board members 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 notice as required herein.

4.6 ***Executive Sessions.*** [Civil Code §1363.05] The Board may, with the approval of the Board, adjourn an open Board meeting and reconvene in executive session to meet with its legal counsel, or discuss and vote upon (a) litigation in which the Association is or may become involved, (b) matters that relate to the formation of contracts with third parties, (c) personnel matters, (d) Member disciplinary matters, (e) orders of business of a similar nature, and (f) to meet with a Member upon the Member's request regarding the Member's payment of assessments. Nothing herein contained shall be construed to obligate the Board to first call an open meeting before meeting in executive session. An executive session which does not follow an open meeting may be called and noticed to the Board members in the same manner as a special meeting or as an emergency meeting pursuant to Section 4.5 above if required by the circumstances. Any matter discussed in executive session shall be generally noted in the minutes of the next meeting of the Board of Directors which is not an executive session. The Board shall be entitled to exclude Members from attending Executive Sessions.

4.7 ***Quorum.*** [Corp. Code §7211(a)(7) & (8)] A majority of the number of the Directors then in office, so long as there is more than one such Director, shall constitute a quorum. If a quorum is present, the decision of a majority of the Directors present, shall be the act of the Board. Board members shall be considered present and may participate in a Board

meeting through use of a conference telephone or electronic video screen as long as all Board members participating in the meeting are able to hear one another. Board members shall be considered present and may participate in a meeting through Electronic Transmission, other than conference telephone and electronic video screen, as long as each Board member participating in the meeting can communicate with all the other Board members in attendance concurrently. The Board may continue to transact business at a meeting at which a quorum was present initially, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for such meeting, or such greater number as may be required for the particular action taken.

4.8 ***Adjournment.*** [Corp. Code §7211(a)(4)] A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four hours, notice of the adjournment shall be given, prior to the time of the adjourned meeting, to the Directors who were not present at the time of the adjournment.

4.9 ***Owner Attendance at Board Meetings; Notice.*** [Civil Code §1363.05] Any Member of the Association may attend meetings of the Board except when the Board adjourns to executive session. Members who are not on the Board may speak at any meeting, except executive sessions, subject to reasonable limitations established by the Board of Directors. Notice of the time and place of a Board meeting, except for emergency meetings and executive sessions, shall be communicated to Members not less than four days prior to the meeting. Notice shall be given by posting the notice in a prominent place or places within the Common Area, and may also be given by mail, by delivery to all Separate Interests in the Community, or by newsletter or similar means of communication. The notice shall include any other information required by Applicable Law.

4.10 ***Action Without a Meeting.*** [Corp. Code §7211(b); DRE Reg. 2792.20] Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the meetings of the Board. An explanation of the action taken shall be communicated to the Members by any means the Board deems appropriate.

4.11 ***Meeting Minutes; Availability to Owners.*** [Civil Code §1363.05, Corp. Code §8320] The Board shall keep accurate written minutes of its meetings, and shall retain them in the permanent records of the Association. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any Board meeting, other than executive session, shall be available to Members within thirty days after the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement for the costs in making that distribution. Members shall be notified in writing at the time that the budget is distributed, or at the time of any general mailing to the entire Membership, of their right to have copies of the minutes of meetings of the Board, and how and where those minutes may be obtained.

ARTICLE 5 - OFFICERS

5.1 ***Enumeration of Officers.*** [Corp. Code §7213(a)] The Officers of this Association shall be a President, a Vice-President, a Secretary, and a Chief Financial Officer. The Board may appoint such additional Officers as it may, in its sole discretion, determine necessary or desirable. The offices of Secretary and Chief Financial Officer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created by the Board. The Officers identified in this section must be Board members; additional Officers appointed by the Board need not be Board members.

5.2 ***Appointment and Term; Vacancies.*** The Officers shall be elected annually by the Board. Each shall hold office until the next annual meeting unless he or she shall sooner resign, or be removed, or otherwise become disqualified to serve. Any vacancies shall be filled by the Board. Each Officer shall hold his or her office at the pleasure of the Board.

5.3 ***Duties.*** Unless otherwise delegated by the Board, the duties of each Officer shall be as follows:

5.3.1 The President shall:

- (a) Preside over all meetings of the Members and of the Board.
- (b) Sign as President all deeds, contracts, and other written instruments that have been approved by the Board, unless the Board, by duly adopted resolution, authorizes the signature of a lesser Officer, or other person or entity.
- (c) Call meetings of the Board in accordance with any rules and notice requirements imposed by the Board and the Governing Documents.
- (d) Have, subject to the approval of the Board, general supervision, direction, and control of the affairs of the Association.
- (e) Discharge any other duties required of him or her by the Board.

5.3.2 The Vice-President shall:

- (a) Act in the place and in the stead of the President in the event of the President's absence, inability, or refusal to act.
- (b) Exercise and discharge any other duties required of the Vice President by the Board.

5.3.3 The Secretary shall:

- (a) Keep a written record of all Member and Board meetings.

- (b) Serve all required notices of meetings of the Board and the Members.
- (c) Keep current records showing the names and addresses of all Members.
- (d) Sign as Secretary all deeds, contracts, and other written instruments that have been approved by the Board, if the instruments require a second Association signature and the Board has not passed a resolution authorizing another Officer to sign in the place and stead of the Secretary.

5.3.4 The Chief Financial Officer shall:

- (a) Receive and deposit all of the funds of the Association in any bank or banks selected by the Board.
- (b) Be responsible for and supervise the maintenance of books and records to account for Association funds and other Association assets.
- (c) Disburse and withdraw Association funds in the manner specified by the Board.
- (d) Prepare and distribute the financial statements for the Association required by the Governing Documents.

5.4 ***Delegation.*** With Board approval, an Officer may delegate his or her powers and tasks to any committee, employee or agent of the Association, including, but not limited to, a community association manager.

5.5 ***Resignation and Removal.*** [Corp. Code §7213(b)] The Board may remove any Officer from office either with or without cause. An Officer may resign at any time by giving written notice to the Board, the President or the Secretary or by giving verbal notice at an open or executive session Board meeting such that the resignation is recorded in the minutes of the meeting. The resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation by the Board shall not be necessary to make it effective.

5.6 ***Return of Association Materials.*** Upon resignation, removal or expiration of the Officers' terms, Officers shall return to the Association those Association materials in their possession.

5.7 ***Compensation.*** An Officer shall not receive any compensation for any service he or she may render to the Association; provided, however, that any Officer may be reimbursed for actual out-of-pocket expenses incurred by the Officer in the performance of his or her duties. Any expenses for travel outside of San Diego County must have prior approval of the Board.

5.8 ***Limitation of Powers.*** No Officer may enter into any contract or incur any debt or other obligation for the Association without authorization of the Board of Directors.

ARTICLE 6 - COMMITTEES

6.1 ***Appointment and Term.*** The Board may appoint any committees authorized by the Declaration or the Bylaws. In addition, the Board may appoint such other committees as it deems appropriate to carry out the purposes of the Association. Unless specifically empowered to make decisions on its own, or provided with a budget that the committee is empowered to expend on its own, all committees shall be empowered only to make recommendations to the Board and to obtain funding from the Board for any projects the committee wishes to undertake. Committee members must be Association Members.

6.2 ***Committees Authorized to Exercise Board Powers.*** [Corp. Code §7212] No Directors need to serve on a committee unless it is empowered to exercise the powers of the Board. If any committee is to be empowered to exercise the powers of the Board, such a committee shall be established only when the Board determines either (i) that there is no reasonable and practical way for the Board to act; or (ii) that there is a conflict of interest or litigation or some other substantial problem involving one or more Directors that would preclude those Directors from acting; or (iii) that such a committee is otherwise essential to the proper functioning of the Association. The resolution creating a committee empowered to exercise the powers of the Board shall be adopted by a majority vote of the Board members then in office, and the committee shall consist of at least two Directors, and as many other committee members as the Board may designate. Any resolution that empowers a committee to exercise the powers of the Board shall indicate the extent of or limitations on the Board's powers that the committee may exercise. However, no committee may exercise those powers listed in Corporations Code Section 7212, including:

- 6.2.1 Approving any action requiring a vote of the Members.
- 6.2.2 Filling vacancies on the Board or on any committee that is empowered to exercise the powers of the Board.
- 6.2.3 Establishing compensation for Directors or members of committees.
- 6.2.4 Amending, repealing or adopting new Bylaws.
- 6.2.5 Amending or repealing any resolution of the Board that, by its express terms, is not amendable or repealable.
- 6.2.6 Appointing other committees empowered to exercise the powers of the Board.
- 6.2.7 Expending corporate funds to support a nominee for Director after there are more candidates nominated than can be elected;

- 6.2.8 Approving or taking any other action prohibited by Corporations Code Section 7212, as it may be amended from time to time.

ARTICLE 7 - BOOKS AND RECORDS; INSPECTION RIGHTS

7.1 ***Member Inspection of Association Records.*** [Civil Code §1365.2] “Association Records” and “Enhanced Association Records,” defined in Civil Code Section 1365.2 or any successor statutes, shall be open to inspection upon the written demand on the Association by any Member for a purpose reasonably related to such Member's interests as a Member in accordance with the terms and conditions of Civil Code Section 1365.2 and any successor statutes. Members may not inspect the minutes of executive meetings, information related to disciplinary matters, individual Separate Interest files, or any other records except those specifically allowed herein or as allowed by the Board or by Applicable Law. The Association may withhold or redact information if the release of the information is reasonably likely to lead to fraud in connection with the Association or identity theft or the information is privileged by law, all as more specifically set forth in Civil Code Section 1365.2 and any successor statutes.

7.2 ***Member Inspection of Membership List .*** Subject to Section 7.3 and Applicable Law, Members may obtain copies of the Membership list within ten days upon a written demand to the Association and payment of a reasonable charge. The demand shall state the purpose for which the list is requested.

7.3 ***Denial of Inspection Request for Membership List.*** [Corp. Code §8338] In accordance with Corporations Code Section 8338, the Membership list is a corporate asset. The Association may deny a Member access to the Membership list, including copies thereof, where the Association reasonably believes that the information will be used for a purpose not reasonably related to the Member's interest as a Member, or where the Association provides a reasonable alternative method of achieving the purpose identified in the written demand from the Member in accordance with Corporations Code Section 8330(c).

7.4 ***Director Inspection of All Association Records.*** [Corp. Code §8334] Subject to any limitations imposed by Applicable Law, every Director shall have the right to inspect all Association records and the physical properties owned or controlled by the Association at any reasonable time as provided by Corporations Code Section 8334.

7.5 ***Removal of Records.*** No Member or Director may remove the Association's copies of the Governing Documents, books and records of account, minutes, the Membership register, or other records or documents from the Association's office or designated depository without the prior consent of the Board.

ARTICLE 8 - NONLIABILITY AND INDEMNIFICATION

8.1 ***Limitation on Liability of Association's Directors, Officers and Other Agents.*** [Corp. Code §7237; Civil Code §1365.7] It is the intent of this Article to provide the Association's volunteer Directors, Officers and other Agents with protection from liability to the full extent permitted by any Applicable Law, and to the extent any of these provisions are

inconsistent with Applicable Law, or more restrictive than Applicable Law, the Applicable Law shall prevail. No Directors, Officers, committee members, or agents of the Association (collectively and individually referred to as the "Released Party") shall be responsible to any Owner, any member of an Owner's family, any of the Owner's tenants, guests, servants, employees, licensees, invitees, or any other person for:

8.1.1 Any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required by the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association reserve accounts, repair and maintenance of Common Areas and enforcement of the Governing Documents.

8.1.2 Any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Separate Interest or Exclusive Use Common Area or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Community, or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence.

8.2 ***Indemnification by Association of Directors, Officers, Employees and Other Agents.*** [Corp. Code §7237] To the fullest extent permitted by Applicable Law, the Association shall indemnify its Directors, Officers, committee members, employees, and other agents described in Corporations Code Section 7237, including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in Corporations Code Section 7237 and including an action by or in the right of the Association, by reason of the fact that such person is or was a person described by that section. "Expenses," as used in this Section, shall have the same meaning as in Corporations Code Section 7237(a).

8.3 ***Approval of Indemnity by Board, Association Members or Court.*** [Corp. Code §7237] On written request to the Board by any person seeking indemnification hereunder, the Board shall promptly determine in accordance with Corporations Code Section 7237(e), whether the applicable standard of conduct set forth in Corporations Code Section 7237(b) or Section 7237(c) has been met, and if it has, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to the proceeding, the Board shall promptly call a meeting of

Members. At that meeting, the Members shall determine under Corporations Code Section 7237(e) whether the applicable standard of conduct set forth in Corporations Code Section 7237(b) or Section 7237(c) has been met, and if it has, the Members shall authorize indemnification.

8.4 ***Advancement of Expenses.*** [Corp. Code §7237] To the fullest extent permitted by any Applicable Law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a Director, Officer, employee or agent seeking indemnification under Section 8.2 of this Article in defending any proceeding covered by that Section shall be advanced by the Association before final disposition of the proceeding, on receipt by the Association of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Association for those expenses.

8.5 ***Insurance.*** The Association shall have the power to purchase and maintain insurance on behalf of its Directors, Officers, committee members, employees or other agents against other liability asserted against or incurred by any Director, Officer, employee or agent in such capacity or arising out of the Director's, Officer's, employee's or agent's status as such.

ARTICLE 9 - MISCELLANEOUS

9.1 ***Removal of Records.*** The Association's fiscal year shall be set by the Board. The Board shall have the authority to change the fiscal year for any proper business purpose.

9.2 ***Order of Business.*** The order of business at all meetings of the Members shall be as follows or as otherwise set by the Board:

- 9.2.1 Determination of Quorum
- 9.2.2 Reading (or Waiver of Reading) Minutes of Preceding Meeting.
- 9.2.3 Reports of Officers
- 9.2.4 Chair Appointment of Election Inspectors (if not Appointed before the Meeting)
- 9.2.5 Election of Board (at Annual Meetings Only)
- 9.2.6 Unfinished Business
- 9.2.7 New Business

As provided in Civil Code Section 1363.05(h), there shall be a reasonable time for Members to speak to the Board at any meeting of the Members at a time in the meeting set by the Board.

9.3 ***Resale of Separate Interests; Documents To Be Provided To Prospective Purchasers; Penalties.*** [Civil Code §1368(a)] The Owner of a Separate Interest shall provide to a prospective purchaser the following and such other information as may be required by Civil Code Section 1368, as amended from time to time hereafter:

- 9.3.1 A copy of the Governing Documents.

- 9.3.2 A copy of the most recent financial statement required to be distributed by Civil Code Section 1365.
- 9.3.3 A true statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the Owner's Separate Interest in the Common Interest Development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Separate Interest.
- 9.3.4 Any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date the Association provides the documents required by this section.

The Association shall provide the information within the time frames and subject to the requirements set forth in any Applicable Law.

9.4 ***Severability.*** The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision. If for any reason the Bylaws are declared invalid in their entirety, the former Bylaws shall be deemed to have survived and shall thereafter become effective without any further action.

ARTICLE 10 - AMENDMENTS

10.1 ***Amendment by Members.*** [Civil Code §1363.03; Corp. Code §8724] These Bylaws may be amended using the following procedure or as otherwise provided in the Declaration. First, the vote will be conducted by a secret ballot in accordance with Civil Code §1363.03 and any other requirements of California law. Second, to constitute a quorum for purposes of this section, the total number of ballots returned must come from at least a simple majority (*i.e.*, more than half) of the voting power of the Members. Third, the voting must remain open for at least 30 days after the date the ballots are mailed to the Members, but the initial deadline may be extended periodically after that date, if a quorum of ballots has not been received by the initial deadline, and may be extended automatically for additional periods of time until a quorum of ballots has been returned. Fourth, the amendment must be approved by the affirmative vote of at least two-thirds of the ballots cast, and the total number of affirmative votes cast must also be at least two-thirds of the minimum required quorum. A blank ballot or other action indicating an intention to abstain will be deemed to have a neutral effect, so it will be counted toward the quorum only, but it will not be counted as a ballot cast for purposes of computing the two-thirds approval.

Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of these Bylaws shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

Unless otherwise provided when a Bylaw amendment is approved, a Bylaw amendment becomes effective immediately after approval by the required fraction of the voting power of Members has been given. The Secretary of the Association shall certify any such amendment to the Bylaws, and the Association shall provide copies of any such amendment to the Members. Whenever an amendment or new Bylaw is adopted, it shall be placed in an appropriate location with the official copy of the Bylaws and shall recite the date when the amendment was enacted or the written assents were filed. Approval of Bylaw amendments by "Eligible Lenders" (*i.e.*, lenders who have requested notice and the right to vote on certain amendments) may be required, but only to the extent required under the applicable amendment provisions in the Declaration.

10.2 *Amendment Required by Law.* If the terms of these Bylaws are based on a statute or administrative regulation which is later amended, or if a statute or administrative regulation is enacted which establishes mandatory obligations on the Association, its Members, or the Board, then, after obtaining a legal opinion that an amendment of the Bylaws is required to conform to the requirements of the law, the Board, by majority vote, shall have the authority to amend the Bylaws to make the Bylaws conform to the requirements of the law. The Secretary shall certify any such amendment to the Bylaws, and the Association shall provide copies of any such amendment to the Members. By majority vote, the Board shall also have the authority to amend the Bylaws to correct any factual, printing or grammatical error or omission in the Bylaws without any vote of the Members.

10.3 *Amendment by Any Method Provided by Law.* These Bylaws may also be amended in any manner now or hereafter permitted by law.

10.4 *Dissolution of Association.* [Corp. Code §8724] As provided in Corporations Code Section 8724, so long as there is any lot, parcel, area, apartment or unit for which the Association is obligated to provide management, maintenance, preservation or control, the Association may not transfer all or substantially all its assets or file a certificate of dissolution of the corporation with the Secretary of State without the approval of one hundred percent of the Members.

10.5 *Official Copy of Bylaws.* Whenever an amendment or new Bylaw is adopted, it shall be placed in an appropriate location with the official copy of the Bylaws and shall recite the date of the meeting at which the amendment was enacted or the written assents were filed. If any Bylaw is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted or written assents were filed, shall be stated in said Bylaws.

CERTIFICATE OF SECRETARY
OF
SUMMERCREEK HOMEOWNERS ASSOCIATION
A California Nonprofit Mutual Benefit Corporation

I, the undersigned, do hereby certify the following:

1. I am the Secretary of Summercreek Homeowners Association, a California Nonprofit Mutual Benefit Corporation ("Association").

2. There are currently two hundred eleven (211) residential Lots in the Association, each of which is entitled to one vote, there are no residential Lots whose voting rights have been suspended, thus the Association's Voting Power is 211.

3. That under Article XIII, Section 1 of the Bylaws, as amended in 2007, an amendment to the Bylaws is approved if: (i) a quorum of ballots is returned (at least 106 ballots), (ii) at least two-thirds of the ballots cast are in favor of the amendment, and (iii) that number of affirmative votes cast must also be at least two-thirds of the minimum quorum.

4. At a Board meeting held on December 7, 2009, the Election Inspector opened the ballots and tallied the votes on this Bylaw amendment. The Election Inspectors determined that the foregoing 2009 Amended and Restated Bylaws received one hundred (100) affirmative votes and twelve (12) negative votes.

5. Since there were 112 total ballots cast and 100 affirmative votes cast, the 2009 Amended and Restated Bylaws are approved.

6. The foregoing 2009 Amended and Restated Bylaws of said Association constitute the fully amended and restated Bylaws as approved by the Membership of the Association, which became effective on _____, 2009.

DATED: _____, 2009

Pat Wagner-Rasmussen, Secretary