

**Proposed  
2023**

**SECOND AMENDED AND RESTATED BYLAWS  
OF  
MERRY MOUNTAIN OWNERS' ASSOCIATION, INC.**

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**TABLE OF CONTENTS**  
**SECOND AMENDED AND RESTATED BYLAWS**  
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|                                                                    | <b>Page Number</b> |
|--------------------------------------------------------------------|--------------------|
| ARTICLE 1 NAME AND LOCATION .....                                  | 1                  |
| ARTICLE 2 DEFINITIONS .....                                        | 1                  |
| 2.1 Declaration.....                                               | 1                  |
| 2.2 Other Definitions Incorporated by Reference.....               | 1                  |
| ARTICLE 3 MEMBERSHIP AND VOTING .....                              | 1                  |
| 3.1 Membership. ....                                               | 1                  |
| 3.2 Voting. ....                                                   | 1                  |
| 3.3 Vote of Joint Owners. ....                                     | 1                  |
| 3.4 Assignment of Membership Rights. ....                          | 2                  |
| 3.5 Cumulative Voting.....                                         | 2                  |
| 3.6 Adoption of Election Rules. ....                               | 2                  |
| 3.7 Record Dates.....                                              | 2                  |
| ARTICLE 4 MEETINGS OF MEMBERS .....                                | 2                  |
| 4.1 Annual Membership Meeting. ....                                | 2                  |
| 4.2 Special Membership Meetings. ....                              | 2                  |
| 4.3 Notice of Membership Meetings. ....                            | 2                  |
| 4.4 Conduct of Membership Meetings. ....                           | 3                  |
| 4.5 Place of Membership Meetings. ....                             | 3                  |
| 4.6 Quorum. ....                                                   | 3                  |
| 4.7 Proxies. ....                                                  | 3                  |
| 4.8 Form of Proxy.....                                             | 4                  |
| 4.9 Vote of the Members. ....                                      | 4                  |
| 4.10 Disclosure of Voting Results. ....                            | 4                  |
| 4.11 Adjournment. ....                                             | 4                  |
| 4.12 Voting by Secret Ballot. ....                                 | 4                  |
| 4.13 Voting by Written Ballot. ....                                | 5                  |
| ARTICLE 5 BOARD OF DIRECTORS; QUALIFICATIONS; TERM OF OFFICE ..... | 5                  |
| 5.1 Number of Directors. ....                                      | 5                  |
| 5.2 Qualification and Disqualification of Directors. ....          | 5                  |
| 5.3 Election and Term of Office. ....                              | 5                  |
| 5.4 Removal. ....                                                  | 6                  |
| 5.5 Vacancies. ....                                                | 6                  |
| 5.6 Filling Vacancies. ....                                        | 6                  |
| 5.7 Compensation. ....                                             | 6                  |
| ARTICLE 6 NOMINATION AND ELECTION OF DIRECTORS .....               | 6                  |
| 6.1 Nomination. ....                                               | 6                  |
| 6.2 Election of Directors.....                                     | 6                  |
| 6.3 Uncontested Election of Directors.....                         | 6                  |
| ARTICLE 7 MEETINGS OF DIRECTORS .....                              | 7                  |

|            |                                                    |    |
|------------|----------------------------------------------------|----|
| 7.1        | Organizational Board Meetings. ....                | 7  |
| 7.2        | Regular Board Meetings. ....                       | 7  |
| 7.3        | Special Board Meetings. ....                       | 7  |
| 7.4        | Emergency Board Meetings. ....                     | 7  |
| 7.5        | Executive Session. ....                            | 7  |
| 7.6        | Notice to Directors. ....                          | 7  |
| 7.7        | Notice to Members Open Session. ....               | 7  |
| 7.8        | Notice to Members Executive Session. ....          | 8  |
| 7.9        | Open Meeting. ....                                 | 8  |
| 7.10       | Telephone Participation. ....                      | 8  |
| 7.11       | Quorum. ....                                       | 8  |
| 7.12       | Minutes of Meetings of Directors. ....             | 8  |
| ARTICLE 8  | POWERS AND DUTIES OF THE BOARD OF DIRECTORS .....  | 8  |
| 8.1        | Powers. ....                                       | 8  |
| 8.2        | Duties. ....                                       | 11 |
| ARTICLE 9  | INSURANCE .....                                    | 13 |
| 9.1        | Insurance. ....                                    | 13 |
| ARTICLE 10 | OFFICERS AND THEIR DUTIES; COMMITTEES .....        | 15 |
| 10.1       | Enumeration of Officers. ....                      | 15 |
| 10.2       | Election of Officers. ....                         | 15 |
| 10.3       | Term. ....                                         | 15 |
| 10.4       | Special Appointments. ....                         | 15 |
| 10.5       | Resignation and Removal. ....                      | 15 |
| 10.6       | Vacancies. ....                                    | 16 |
| 10.7       | Multiple Offices. ....                             | 16 |
| 10.8       | President. ....                                    | 16 |
| 10.9       | Vice-President. ....                               | 16 |
| 10.10      | Secretary. ....                                    | 16 |
| 10.11      | Chief Financial Officer. ....                      | 16 |
| ARTICLE 11 | COMMITTEES .....                                   | 16 |
| 11.1       | Committees of the Board. ....                      | 16 |
| 11.2       | Advisory Committees. ....                          | 17 |
| 11.3       | Compensation of Committee Members. ....            | 17 |
| ARTICLE 12 | BOOKS, RECORDS AND FUNDS. ....                     | 17 |
| 12.1       | Access to Association Records. ....                | 17 |
| 12.2       | Checks, Drafts, and Evidence of Indebtedness. .... | 17 |
| 12.3       | Funds and Deposits. ....                           | 17 |
| 12.4       | Fiscal Year. ....                                  | 17 |
| 12.5       | Delivery of Documents to Members. ....             | 17 |
| ARTICLE 13 | AMENDMENTS .....                                   | 18 |
| 13.1       | Amendment by Members. ....                         | 18 |
| 13.2       | Amendment by Board of Directors. ....              | 18 |
| 13.3       | Restatements of Bylaws. ....                       | 18 |
| ARTICLE 14 | MISCELLANEOUS .....                                | 18 |

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**SECOND AMENDED AND RESTATED BYLAWS  
OF  
MERRY MOUNTAIN OWNERS' ASSOCIATION, INC.**

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**ARTICLE 1 NAME AND LOCATION**

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The name of the corporation is Merry Mountain Owners' Association, Inc. ("Association"). The principal office of the Association shall be in Butte County, California, or at such other place reasonably convenient to the Development as the Board of Directors ("Board") may from time to time establish.

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**ARTICLE 2 DEFINITIONS**

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2.1 Declaration. "Declaration" means the *Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Merry Mountain*, recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_ in the Official Records of Butte County, California, as such Declaration may from time to time be amended.

2.2 Other Definitions Incorporated by Reference. The terms defined in the Declaration shall have the same meaning when used herein unless the context clearly indicates a contrary intention.

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**ARTICLE 3 MEMBERSHIP AND VOTING**

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3.1 Membership. Membership in the Association shall include, and shall be limited to, all Owners of any Lot located within the Development. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon becoming the Owner of a Lot, each Owner will automatically be a Member of the Association and shall remain a Member until such time as their 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 or encumbrance of the Lot to which it is appurtenant and then only to the transferee or mortgagee 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 Voting. Members shall be entitled to cast one (1) vote per measure or open Director position(s) for each Lot owned. The vote at any meeting of the Members may be by voice vote or by ballot as determined by the Board. In any election of Directors where the number of candidates does not exceed the number of Directors to be elected, the election of Directors may be accomplished in accordance with Section 6.3.

3.3 Vote of Joint Owners. If the joint Owners of a Lot are unable to agree among themselves as to how their vote or votes are to be cast, such vote shall be cast in accordance with the decision of a majority of such Owners. If there is no such majority, the vote for the Lot shall not be cast either in favor of or opposed to the issue or issues which are the subject of the vote, but the membership shall be counted for purposes of determining whether the quorum requirements applicable to the vote or meeting have been met. If any Owner casts a vote representing a certain Lot and no written objection thereto is received by the Secretary prior to the close of voting, it will thereafter be conclusively presumed for all purposes, such Owner was acting with the authority and consent of the other Owners of the Lot. The vote at any meeting

of the Members may be by voice vote or by ballot as determined by the Board. In any election of Directors where the number of candidates does not exceed the number of Directors to be elected, the election of Directors may be accomplished in accordance with Section 6.3, unless prohibited by California law.

3.4 Assignment of Membership Rights. A Member who has sold their Lot to a Contract Purchaser shall be entitled to assign to such Contract Purchaser their rights and privileges of membership in the Association and shall be deemed to have assigned to a Contract Purchaser who has assumed occupancy of the Member's Residence all rights of use and enjoyment of the Common Area. No assignment of any membership rights or privileges to a non-resident Contract Purchaser shall be binding, however, until the Board has been notified thereof in writing. Notwithstanding any assignment, until fee title to the Lot has been transferred of record, a Contract Seller shall remain liable for all assessments, fines, and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of their Lot. Any Member who has leased or rented their Lot to another person or persons shall in all events be deemed to have assigned to their tenants all rights of use and enjoyment of the Common Area. It is the express purpose and intent of the provisions of this Section to limit the right of use and enjoyment of the Common Area to Residents of the Development and their guests.

3.5 Cumulative Voting. Cumulative voting shall not be permitted in Member elections.

3.6 Adoption of Election Rules. The Board shall adopt Rules governing the Association's election procedures, which shall include the minimum requirements specified in Civil Code section 5105, or comparable successor statute, as it may be amended from time to time.

3.7 Record Dates. "Record Date" means the date for determining eligibility of Members to vote on a specific matter. The Board may set a Record Date for any member vote held pursuant to the secret ballot or written ballot and may set a Record Date for any other Member vote. The Record Date may not be more than sixty (60) days before the day on which the first ballot is mailed. If a Record Date for any vote held pursuant to secret ballot or written ballot is not set by the Board, the Record Date shall be the day the first ballot is mailed, or as provided for in Corporations Code section 7611.

#### **ARTICLE 4 MEETINGS OF MEMBERS**

4.1 Annual Membership Meeting. The annual meeting of the Members shall be held at least once per calendar year, in the month of July, or in another month on a date and at a time and place as designated by the Board, upon written notice to all the Members.

4.2 Special Membership Meetings. Special meetings of the Members may be called at any time by the President or by the Board or pursuant to the written request of Members entitled to cast at least five percent (5%) of the Total Voting Power.

4.3 Notice of Membership Meetings.

4.3.1 Written Notice. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or other person authorized to give notice of a meeting. Written notice shall be mailed by first-class mail, postage prepaid, or hand-delivered at least ten (10) days but not more than ninety (90) days before such meeting, to each Member who, on the record date for notice of the meeting, is entitled to vote at such meeting, except in the case of a special meeting called pursuant to a written request of Members, notice of

such special meeting shall be mailed or otherwise delivered within twenty (20) days after receipt of such written request by the Board, and the date of such special meeting shall be set by the Board and shall be not sooner than thirty-five (35) days nor later than one-hundred and fifty (150) days after the date of the Board's receipt of such written request.

4.3.2 Notice Content. Notice of meetings shall be addressed or otherwise delivered to the Member's address last appearing in the books of the Association or supplied by such Member to the Association for notice. Notice of any meeting of Members shall specify the date, hour, and place of the meeting, and the general nature of those matters which the Board intends to present for action by the Members.

4.3.3 Special Meetings. With respect to special meetings, only those matters referred to in such notice may be transacted. With respect to regular meetings, and notwithstanding the foregoing, any proper matter may be presented at the meeting for action by the Members, except if the meeting is attended by less than one-third (1/3) of the Total Voting Power of the Association, the Members may act only on matters the general nature of which has been set forth in the notice of such meeting.

4.4 Conduct of Membership Meetings. All meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure, such as Robert's Rules of Order, or such parliamentary procedures as the Association may employ. A reasonable time limit for all Members to speak at a meeting of the Members shall be established by the Board.

4.5 Place of Membership Meetings. Annual and special member meetings shall be held at a location within the Development, or the Board may designate another location as determined by the Board. As may be determined by the Board, annual and special member meetings may be held by conference telephone, electronic video screen communication, or other communication equipment, provided Members can participate in the Member meeting.

4.6 Quorum. The following quorum requirements must be satisfied to take valid action at any membership meeting:

4.6.1 Election of Directors. In any Member vote to elect one (1) or more Directors, the number of valid ballots received shall constitute a quorum of the Members.

4.6.2 Assessment Votes. As provided 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, which must be approved by the Members, a quorum shall mean more than fifty percent (50%) of the Members.

4.6.3 Other Member Votes. For all other votes or elections by the Members, including removal of Directors, a quorum shall mean twenty-five percent (25%) of the Members.

4.7 Proxies. At all meetings of the Members, each Member may vote in person or by proxy. All proxies shall be in writing and shall be filed with the Secretary. Any duly executed proxy continues in full force and effect until an instrument revoking it or a duly executed proxy bearing a later date is filed with the Secretary of the Association. Notwithstanding the preceding, no proxy shall be valid after the expiration of eleven (11) months from the date of its execution. A proxy shall automatically cease upon conveyance by the Member of their Lot.

4.8 Form of Proxy. A proxy covering any of the following matters shall not be valid unless it sets forth the general nature of the matter to be voted on: (a) removal of any or all directors pursuant to

Corporations Code section 7222; (b) filling a vacancy on the Board created by the removal of a director or to fill a vacancy not filled by the directors pursuant to Corporations Code section 7224; (c) voting on a transaction involving an interested director pursuant to Corporations Code section 7233; (d) amending the Articles or the Bylaws to repeal, restrict, create, or expand proxy rights pursuant to Corporations Code section 7613(f)(1); (e) amending the Articles pursuant to Corporations Code section 7812; Voting on the sale or exchange of all or substantially all of the Association assets pursuant to Corporations Code section 7911(a)(2); (f) voting on a merger pursuant to Corporations Code section 8012; (g) voting on amendments to principal terms of a merger agreement pursuant to Corporations Code section 8015(a); (h) voting to wind up or dissolve the Association as a corporation pursuant to Corporations Code section 8610; or (a) voting on a plan of distribution of Association assets in the event of dissolution pursuant to Corporations Code section 8719.

Any form of proxy distributed to ten (10) or more Members shall afford an opportunity on the proxy to specify a choice between approval and disapproval of each matter or group of matters intended, at the time the proxy is distributed, to be acted upon at the meeting for which the proxy is solicited and shall provide, subject to reasonable specified conditions, where a choice is specified the vote shall be cast in accordance with the choice.

4.9 Vote of the Members. If a quorum is present, in person or by ballot, the affirmative vote of a majority of the voting power so present and voting on any matter ("Simple Majority") shall constitute the act of the Members, unless the approval of a greater number or proportion of Members is required by any provision of the Governing Documents or of the law. The Members present at a member meeting may continue to transact business until adjournment of the meeting notwithstanding the withdrawal of enough members to leave less than a quorum. Other than adjournment, any other action requiring a vote of the Members must be approved by at least a majority of the voting power required to constitute a quorum, or by such greater number as required by law or by the Governing Documents.

4.10 Disclosure of Voting Results. For a period of one (1) year following the conclusion of a meeting or vote by secret ballot of the Members, the Association shall, upon written request from a Member, inform the Member of the result of any particular vote of the Members taken at such meeting or by secret ballot, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting in a particular vote. If the matter voted on was the election of Directors, the Association shall report the number of memberships cast for each nominee for director.

4.11 Adjournment. Whether or not a quorum is present, any meeting of Members may be adjourned from time to time to be reconvened later, subject to Section 4.6, above, by the vote of a majority of the Members present in person or by proxy at such meeting; however, in the absence of a quorum, no business other than adjournment may be transacted.

4.12 Voting by Secret Ballot. Pursuant to Civil Code sections 5105 through 5145, or successor statutes, secret ballots shall be required for Member action and elections regarding: (a) election of Directors, (b) Assessment increases legally requiring a vote, (c) removal of Directors, (d) amendments to the Governing Documents, excluding Rules, and (e) grants of exclusive use of Common Area property pursuant to Civil Code section 4600. Other matters requiring Member approval may be done at a meeting, by secret ballot or written ballot.

4.13 Voting by Written Ballot. Any action, which may be taken at a regular or special Member meeting, except for secret ballot elections required by Section 4.11, may be taken without a meeting of the Members if the Association distributes a written ballot, in compliance with Corporations Code section 7513. The determination to seek Member approval for Association actions using written ballots shall be made by the Board.

## **ARTICLE 5 BOARD OF DIRECTORS; QUALIFICATIONS; TERM OF OFFICE**

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5.1 Number of Directors. The affairs of the Association shall be managed by or under the direction of a Board, consisting of five (5) Directors.

5.2 Qualification and Disqualification of Directors.

5.2.1 Qualifications. (a) Only Members shall be eligible to be elected or serve on the Board and (b) only one (1) Owner of a particular Lot may serve on the Board at any time.

5.2.2 Disqualification. A person shall be deemed disqualified under the followings circumstances upon being offered the opportunity to engage in the Association's internal dispute resolution process: (a) the person is not current in the payment of regular or special assessment and has yet to enter into a payment plan with the Association or pay under protest, and (b) the person's past criminal convictions would prevent the Association from purchasing fidelity bond coverage required by Civil Code section 5806 or terminate the Association's existing fidelity bond coverage if elected to serve on the Board.

5.2.3 Limitation. The Association shall not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.

5.3 Election and Term of Office.

5.3.1 Election. The Directors shall be elected for a term of three (3) years on a staggered term basis, with two (2) Directors being elected in one year, then two (2) Directors elected in the next year, and one (1) Director elected in the subsequent year.

5.3.2 Term. There shall be no limit on the number of terms to which a Director may serve. Each Director shall serve until the expiration of their term and thereafter until a successor is elected, or until the earlier disqualification, death, resignation, or removal of such Director.

5.3.3 Tie. Any tie in the number of votes cast for candidates where more than one (1) Director is to be elected is to be decided by random drawing or other method of chance as determined by the Board.

5.4 Removal. Any Director may be removed from the Board, with or without cause, by the vote of a Simple Majority of the Members at a meeting, or by written ballot or secret ballot, as may be required by California law, or any change in applicable law. No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of their term of office.

5.5 Vacancies. A vacancy shall exist on the Board in the event of the disqualification, death, resignation, or removal of any Director, or if the authorized number of Directors is increased, or if the Members fail to elect the full authorized number of Directors. A reduction in the authorized number of Directors shall not cause the removal of a Director prior to the expiration of their term. The Board, by a majority vote of the Directors who meet all the qualifications for Directors as set forth in Section 5.2, above, may declare vacant the office of any Director who fails or ceases to meet any required qualification was in effect at the beginning of the Director's current term of office.

5.6 Filling Vacancies. Any vacancy occurring on the Board, except a vacancy created by the removal of a Director, may be filled by approval of the Board, or if the number of Directors, then in office is less than a quorum, by the vote of a majority of the remaining Directors at a meeting of the Board, or by

a sole remaining Director. Directors so chosen shall serve the remainder of the term of office of the Director whom they replace. The Members may elect a Director to fill a vacancy not filled by the Directors if the Board affirmatively decides not to fill the vacancy. If the Board accepts the resignation of a Director tendered to take effect at a future time, the Board, or if the Board decides not to act, the Members, may elect a successor to take office when the resignation becomes effective.

5.7 Compensation. No Director shall receive compensation for any service they may render to the Association as a Director. However, upon approval by the Board, any Director may be reimbursed for their reasonable expenses actually incurred in the performance of their duties.

## **ARTICLE 6 NOMINATION AND ELECTION OF DIRECTORS**

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6.1 Nomination. The Board may adopt nomination procedures, including Civil Code sections 5105 through 5115 for the nomination of eligible candidates. Such procedures shall include, without limitation, a mechanism for any eligible Member to self-nominate as a candidate for the Board.

6.2 Election of Directors. Director elections shall be conducted by secret ballot in accordance with the procedures set forth in Civil Code sections 5100 through 5135. There shall be no quorum requirement for the election of Directors, as provided in Section 4.6. The candidates receiving the largest number of votes shall be elected. There shall be no cumulative voting in Director elections.

6.3 Uncontested Election of Directors. If after the close of nominations, the number of Members nominated for the Board is equal to or less than the number of Directors to be elected, the Board may use acclamation, using the procedures required by Civil Code section 5103, provided the Association has held a regular election for the directors in the last three years. The three-year period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election. If the number of Directors so elected is less than the number of vacancies, the incoming Board shall fill the vacancy as provided for in Section 5.6.

## **ARTICLE 7 MEETINGS OF DIRECTORS**

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7.1 Organizational Board Meetings. After each annual meeting of the Members, the Board shall hold a meeting for the purpose of organization, election of officers, and transaction of other business, as appropriate.

7.2 Regular Board Meetings. Regular meetings of the Board shall be held at least quarterly, at a place within the Development, or a location as close as reasonably practicable to the Development, on a day and at a time as determined by resolution of the Board, or upon proper notice which conforms to the provisions of Section 7.6.

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

7.4 Emergency Board Meetings. The President or any two (2) Directors may call an emergency meeting of the Board. An "emergency meeting" is defined as a meeting held to address circumstances 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 to Members required by Section 7.7, below.

7.5 Executive Session. The Board may meet in executive session to confer with legal counsel or to discuss and vote upon personnel matters, Member discipline, litigation in which the Association is or may become involved, and matters relating to formation of contracts between the Association and others. In any matter relating to the discipline of a Member, the Board shall meet in executive session, and the Member and other persons whose participation is necessary or appropriate shall be entitled to attend the executive session, as determined by the Board. The Board shall also meet in executive session with

Members to discuss a Member's request to pay unpaid Assessments pursuant to a payment plan. Notwithstanding the preceding, the Board shall not in any way be obligated to accept or agree to any such payment plan.

7.6 Notice to Directors. Notice of Board meetings may be provided to Directors by first-class mail not less than four (4) days prior to the meeting or by: (a) personal delivery, (b) telephone or voice messaging system, or (c) email, not less than forty-eight (48) hours prior to the meeting. In the event of an emergency meeting as provided in Section 7.4, strict adherence to the notice requirements of this Section shall not be required if a reasonable effort to give notice to each Director is made, in consideration of the nature and circumstances of the emergency.

7.7 Notice to Members Open Session. Except for emergency meetings, see Section 7.4, and executive session meetings see Section 7.6 at least four (4) days prior, written notice of the day, time, and place of each meeting of the Board, whether regular or special, shall be given to Members by posting it in a location(s) designed by mail to Owners who requested individual notice of Board meetings. Notice of Board meetings may also be given by: (a) mailing or delivery to each Residence; (b) by newsletter; (c) by other means of communication designed to provide prior notice of such meetings; or (d) with the consent of the member, by email. The notice shall contain an agenda for the meeting.

7.8 Notice to Members Executive Session. Except for emergency meetings, see Section 7.4, if a meeting is held in executive session, the Association shall give notice of the day, time, and place of the meeting at least two (2) days prior to the meeting by posting it in a location(s) designed by the Board and by mail to Owners who requested individual notice of Board meetings. Notice of Board meetings may also be given by: (a) mailing or delivery to each Residence; (b) by newsletter; (c) by other means of communication reasonably designed to provide prior notice of such meetings; or (d) with the consent of the member, by email. The notice shall contain an agenda for the meeting.

7.9 Open Meeting. Regular and special meetings of the Board shall be open to Members of the Association, except when the Board meets in executive session, see Section 7.5. A reasonable time limit for Members to speak to the Board shall be established by the Board, which may limit Member commentary to a specific portion of the meeting.

7.10 Telephone Participation. Directors may participate in regular or special Board meetings by conference call, electronic video communications, or other communication equipment to the extent permitted by law, including, without limitation, Corporations Code section 7211(a)(6) if notice to the Members of the meeting is required pursuant to Section 7.6.

7.11 Quorum. The majority of the number of Directors then in office, but not less than two (2) Directors, 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. Business may continue to be conducted if any action taken is approved by at least a majority of the Directors required to constitute a quorum notwithstanding the withdrawal of enough Directors to leave less than a quorum.

7.12 Minutes of Meetings of Directors. Any matter discussed in an executive session shall be generally noted in the minutes of the next Board meeting which is open to the members. To protect and preserve the confidential nature of executive sessions, minutes of executive sessions shall not be subject to inspection by the Members or others. Within thirty (30) days after the date of a meeting of the Board, the Board shall make available to the Members: (a) minutes as adopted by the Board, (b) draft minutes, or (c) a summary of the minutes. Copies of proposed minutes, approved minutes, or summary minutes shall be provided to any Member upon request and upon reimbursement of the Association's costs in providing such copies. The Board may, but shall not be required to, post the minutes of its meetings on a website or in a location designated by the Board.

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

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8.1 Powers. In addition to such other powers as may be expressly set forth in the Governing Documents or provided by law, the Board shall have the power to establish, negotiate, impose, or determine the following:

8.1.1 Rules and Regulations. Adopt, publish, amend, repeal, and enforce Rules and regulations (all of which shall be in writing) governing the administration, management, operation, use, and occupancy of the Development, including, without limitation, the use of the Common Area and facilities, the personal conduct of Members and their tenants and guests within the Development, and any other matter which is within the jurisdiction of the Association. The procedure for the adoption and modification of Rules by the Board shall be in accordance with Civil Code sections 4340-4370, or successor statute.

8.1.2 Contracts. Authorize any officer or officers to enter any contract in the name of, or on behalf of, the Association. Unless expressly authorized by resolution of 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. No contract with any person or entity to supply or furnish the Association with goods or services shall be for a term more than three (3) years except upon the prior affirmative vote or written consent of a Simple Majority, with the following exceptions: (a) management contract, or (b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission.

8.1.3 Determination of Director Qualifications. After notice to the Member and an opportunity for a hearing by the Board, determine whether a Member is not eligible to serve on or be a candidate for the Board pursuant to Section 5.2.3 and California law.

8.1.4 Sanctions; Hearings; Continuing Violations. Impose any of the following sanctions, and conduct hearings, as indicated below:

8.1.4.1 Fines. Establish and impose fines as Enforcement Assessments under Section 6.8 of the Declaration, for infractions of any provision of the Governing Documents in accordance with a schedule of fines adopted by the Board.

8.1.4.2 Suspension. Suspend a Member's privileges, including the right to use the recreational facilities, if any: (a) when a Member is in default on the payment of

any Assessment or other charge levied by the Association, or (b) for a violation of the Governing Documents.

8.1.4.3 Hearing. Before any discipline is imposed upon a Member, the Board shall hold an executive session meeting to consider the matter.

8.1.4.4 Hearing Notice. At least ten (10) days prior to any Board meeting where discipline may be imposed on a Member, the Board shall provide written notice of the meeting to the Member by either personal delivery or first-class mail. The notice shall contain at least: (a) the date, time, and place of the meeting, (b) the nature of the alleged violation for which the Member may be disciplined, and (c) state the Member has a right to attend the meeting and may address the Board at the meeting.

8.1.4.5 Continuing Violations. In the case of continuing violations, the Board may deem such continuing violation to constitute two (2) or more separate and distinct violations of the same Governing Document provision and may impose separate and successive sanctions for each violation.

8.1.4.6 Decision Notice. If the Board imposes discipline upon a Member, the Board shall provide the Member with written notice of the disciplinary action, by either personal delivery or first-class mail, within fifteen (15) days following the action.

8.1.5 Manager. 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.

8.1.6 Professional Advisors. Consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals in carrying out its authority and responsibility under the Governing Documents and the law, and to pay for such professional services.

8.1.7 Investment of Reserve Funds. Invest Association reserve funds in prudent investments subject to the provisions of Section 8.2.6.

8.1.8 Entry for Repairs. Enter any Lot, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement, which the Association is responsible for and which it is authorized to perform, including without limitation the authorization provided in Section 8.5 of the Declaration. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot, any other Lot or the Common Area. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

8.1.9 Property Taxes. Pay all real property taxes and assessments levied, if any, upon any property within the Development to the extent not separately assessed to the Owners. Such taxes and assessments may be contested or compromised by the Association provided any such taxes are paid or a bond ensuring the payment is posted.

8.1.10 Mergers. To the extent permitted by law, participate in mergers and consolidations with other nonprofit mutual benefit organizations organized for the same purposes as this Association subject to Section 5.12 of the Declaration.

8.1.11 Association Property. Subject to the provisions of the Declaration, including any required approval of Members or Mortgagees, acquire, own, hold, convey, transfer, dedicate, or otherwise dispose of real or personal property consistent with the purposes and powers of the Association and the management, administration, and operation of the Development or the business and affairs of the Association, and grant and convey easements, licenses, and rights of way in, over, upon, or under the Common Area.

8.1.12 Indemnification of Agents. 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 their being a director, officer, employee, or agent of the Association or member of any committee appointed by the Board.

8.1.13 Bank Accounts. Open bank accounts and designate signatories upon such bank accounts, subject to any restrictions set forth in the Governing Documents.

8.1.14 Borrowing. Borrow money in the name of the Association as provided in Sections 5.10 and 5.11 of the Declaration.

8.1.15 Other Powers and Duties. 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.

8.1.16 Limitation of Powers. Pay compensation to members of the Board or officers of the Association; provided, subject to Board approval, directors and officers may be reimbursed for out-of-pocket expenses, verified in writing, incurred in the discharge of their duties.

8.2 Duties. In addition to such other duties as may be expressly set forth in the Governing Documents or provided by law, the Board shall have the duty to establish, negotiate, impose, or determine the following:

8.2.1 Records and Minutes. Cause to be kept complete records of its acts and the corporate affairs, including an accurate and current record of the Members, books and

records of account, and minutes of the proceedings of the Members, the Board, and committees of the Board.

8.2.2 Annual Budget Report. Prepare and distribute to the Members annually, not less than thirty (30) days nor more than ninety (90) days prior to the end of each fiscal year, an annual budget report as required by Civil Code section 5300.

8.2.3 Annual Policy Statement. Prepare and distribute to the Members annually, not less than thirty (30) days nor more than ninety (90) days prior to the end of each fiscal year, an annual policy statement as required by Civil Code section 5305.

8.2.4 Reserve Study. Cause to be conducted, at least once every three (3) years, a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Development if the current replacement value of such major components is equal to or greater than one-half (1/2) of the gross budget of the Association for the fiscal year, excluding the Association's reserve account for the year. The Board shall review the reserve study or cause it to be reviewed annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve-account requirements because of the review. The reserve study required by this Section shall include the minimum requirements specified in Civil Code sections 5500 through 5560.

8.2.5 Reserve Funds. 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 which the Association is obligated to maintain, restore, repair, or replace and for which the reserve fund was established. The Board may, however, authorize a temporary transfer of money from a reserve fund to the Association's general operating fund to meet short term cash flow requirements or other expenses, so long as the Board has made a written finding, recorded in the Board's minutes, explaining the reasons the transfer is needed and describing when and how the money will be repaid to the reserve fund, and any such transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except as otherwise expressly provided by law. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account.

8.2.6 Investment of Reserve Funds. Manage and invest Association reserve funds 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 most recent reserve fund study obtained by the Board as provided in these Bylaws and by law.

8.2.7 Monthly Review of Accounts. Review the Association's operating and reserve accounts at least in accordance with the following minimum requirements:

8.2.7.1 Board Review. On a monthly basis the Board shall review: (a) current reconciliation of the Association's operating accounts, (b) reserve accounts, (c)

current year's actual reserve revenues and expenses compared to the current year's budget, (d) latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts, (e) income and expense statement for the Association's operating and reserve accounts, and (d) check registers, monthly general ledger, and delinquent assessment receivable reports.

As used in this subsection, the term "reserve accounts" shall mean monies the Board has identified in its annual budget for use to defray the future costs of repair or replacement of, or additions to, those major components which the Association is obligated to maintain, restore, repair, or replace.

8.2.7.2 Committee Review. The review requirements of this Section may be met when every Director, or a subcommittee of the Board consisting of the Treasurer, and at least one other Director, reviews the documents and statements described in Section 8.2.7.1, independent of a Board meeting, so long as the review is ratified at the Board meeting after the review, and ratification is reflected in the minutes of the Board meeting.

8.2.8 Annual Report. Cause an annual report to be prepared not later than one hundred twenty (120) days after the close of the Association's fiscal year. The annual report shall comply with Corporations Code section 8321. If the Association's gross income in a fiscal year exceeds seventy-five thousand dollars (\$75,000.00), it shall distribute to all Members within one hundred twenty (120) days after the close of such fiscal year 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.

8.2.9 Notification of Assessment Increases. Provide notice to each Member, by first-class mail, of any increase in the Regular Assessments or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to such increased Regular Assessment or Special Assessment becoming due.

8.2.10 Collection of Assessments. Collect assessments levied by the Association by foreclosing the lien against any property for which assessments are not paid as required in the Declaration and/or by bringing an action at law against the Owner personally obligated to pay the same.

8.2.11 Certificate of Payment of Assessments. Issue, or cause an appropriate officer to issue, upon demand by any proper person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

8.2.12 Supervision. Supervise all officers, agents, and employees of the Association, and see their duties are properly performed.

8.2.13 Enforcement of Governing Documents. Enforce the provisions of the Governing Documents, as more particularly set forth in the Declaration, and perform all acts required of the Board under the Governing Documents or required by law.

8.2.14 Water and Other Utilities. Acquire, provide, and pay for utility services as necessary for the Common Area and facilities.

## **ARTICLE 9   INSURANCE**

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9.1 Insurance. The Association shall purchase, obtain, and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost, unless otherwise required by law.

9.1.1 Fire and Casualty Insurance. A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable and current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, all Common Facilities and personal property of the Association for or against the following: (a) loss or damage by fire or other risks covered by the standard extended coverage endorsement; (b) loss or damage from theft, vandalism or malicious mischief; or (c) such other risks, perils of coverage as the Board may determine.

9.1.2 Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Board, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence. Such insurance must include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

9.1.3 Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, and workers compensation insurance. The Board must purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors' and officers' liability insurance, it deems necessary or desirable.

9.1.4 Fidelity Insurance. The Association must maintain fidelity insurance coverage for its Directors, Officers, and employees in an amount, which is equal to or more than the combined amount of the reserves of the Association and total assessments for three months. The Association's fidelity insurance shall also include computer fraud and funds transfer fraud. If the Association uses a managing agent or management company, the Association's fidelity insurance coverage must additionally include dishonest acts by persons or entities and its employees.

9.1.5 Other Insurance. Any other insurance and bonds, including without limiting the generality of this Article, directors' and officers' insurance, demolition insurance, or flood and earthquake insurance, deemed necessary or prudent by the Board of the Association.

9.1.6 Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by this Article is for any reason not available, then the Association must obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board must notify the Owners of any material adverse changes in the Association's insurance coverage.

9.1.7 Copies of Policies. Copies of insurance policies or certificates thereof showing the premiums thereon have been paid shall be retained by the Association and shall be available for inspection by Owners at reasonable times.

9.1.8 Trustee. All insurance proceeds payable under Article, may, in the discretion of the Board, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests appear. The trustee may be a commercial bank in the County, which agrees in writing to accept such trust.

9.1.9 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any insurance policy pursuant to this Article. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

9.1.10 Insurance on Lots and Residences. Owners may carry whatever personal liability, property damage liability, and fire and casualty insurance with respect to their Lot, Residence, and personal property as the Owner desires. The Association will have no responsibility for the adequacy or extent of such insurance coverage.

## **ARTICLE 10 OFFICERS AND THEIR DUTIES; COMMITTEES**

10.1 Enumeration of Officers. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Chief Financial Officer, who shall be Directors, and such other officers as the Board may, from time to time, by resolution appoint.

10.2 Election of Officers. The Board must elect the Officers. The election of Officers shall take place at the first meeting of the Board following their election.

10.3 Term. The officers of this Association shall be elected annually by the Board, and each shall hold office for one (1) year, unless they sooner resign, be removed by the Board, or otherwise be

disqualified to serve. If an officer fails, for any reason set forth in the preceding sentence, to hold office for one (1) year, their successor shall hold office for the remaining term of their predecessor.

10.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such a period, have such authority, and perform such duties as the Board may, from time to time, determine.

10.5 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 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.

10.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such a vacancy shall serve for the remainder of the term of the officer they replace, subject to the Board's right to remove an officer.

10.7 Multiple Offices. The offices of Vice President and Chief Financial Officer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 10.4.

10.8 President. The President shall be the Chief Executive Officer of the Association and shall, subject to control of the Board, have general supervision, direction, and control of the affairs and the other officers and the employees and agents of the Association. The President shall preside at all meetings of the Members and at all meetings of the Board, 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 and the Bylaws, subject, however, to any limitations contained in the Declaration.

10.9 Vice-President. In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice-President shall have such other powers and perform such other duties as, from time to time, may be prescribed by the Board.

10.10 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may prescribe, a current register showing names of Members and their addresses; a book of minutes of all meetings of Directors, Members, and Committees of the Board setting forth the time and place of holding of such meetings; whether regular or special, and if special, how authorized; the notice thereof given; the names of those present at Directors or Committee meetings; the number of memberships and votes present or represented at Members meetings; and all the proceedings thereof. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board required by the Bylaws or by law to be given and shall maintain a proper record of the giving of such notice, and shall keep the books, records, and documents of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

10.11 Chief Financial Officer. The Chief Financial Officer, also known as the treasurer, shall be responsible for the receipt and deposit in appropriate accounts of all monies of the Association and shall cause disbursement of such funds as directed by resolution of the Board; may sign all checks and promissory notes of the Association; shall cause to be kept proper books of account; shall cause an annual review of the Association's books and financial statements to be made by a public accountant at the completion of any fiscal year for which such review is required by law or as determined by the Board; shall assist the Board in preparation of an annual budget and a statement of income and expenditures to be presented to the Members of the Association as provided by law; and shall have such other powers and perform such other duties as may be prescribed by the Board.

## **ARTICLE 11 COMMITTEES**

11.1 Committees of the Board. Any "Committee of the Board", a committee consisting only of Directors, as referred to in Corporations Code section 7212, 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.

11.2 Advisory Committees. The Board may appoint advisory committees consisting of at least two (2) members who are Members. Directors may be members of committees created pursuant to this Section provided fewer than a majority of Directors serve on any one committee. Such committees shall report on their activities to the Board from time to time as directed by the Board and shall operate under the supervision of and at the direction of the Board. No advisory committee shall have the authority to enter contracts or otherwise act on behalf of the Association. The Board shall have the right at any time, in its complete discretion, to disband any advisory committee or remove any member thereof.

11.3 Compensation of Committee Members. No committee member shall receive compensation for any service they may render to the Association as a committee member. However, upon approval by the Board, any committee member may be reimbursed for their reasonable expenses actually incurred in the performance of their duties.

## **ARTICLE 12 BOOKS, RECORDS AND FUNDS**

12.1 Access to Association Records. Association records shall, to the extent required by Civil Code section 5200, be available for inspection by any Member. The Governing Documents shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost. The Board may adopt and publish reasonable Rules establishing procedures relating to a Member's inspection and obtaining copies of Association records.

12.2 Checks, Drafts, and Evidence of Indebtedness. All checks, drafts, or other orders for payment of money and all notes or other evidence of indebtedness, issued in the name of the Association shall be signed in any manner specified by the Board; provided, however, the signatures of at least two (2) Directors, is required for withdrawal of funds from the Association's reserve account.

12.3 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 shall, from time to time, determine.

12.4 Fiscal Year. The fiscal year of the Association shall run from January 1 through December 31 of each year, unless otherwise determined by resolution of the Board.

12.5 Delivery of Documents to Members. All notices and documents distributed by the Association to the Members shall be delivered by one (1) or more of the following methods:

12.5.1 Hand Delivery. Personal delivery to a Member.

12.5.2 Mail. First-class mail, postage prepaid, addressed to a Member at the address shown in the books of the Association or otherwise provided by the Member. Delivery is deemed to be complete on deposit into the United States mail.

12.5.3 Electronic. Email, facsimile, or other electronic means if the Member has agreed. If a document is delivered by electronic means, delivery is complete at the time of transmission.

12.5.4 Publication. Publication in periodicals sent to Members of the Association.

12.5.5 General Notice. General Notice if applicable, by posting the document in a location, accessible to all members, or by posting the notice on the Association's website, if designated as a location for posting general notices in the annual policy statement prepared pursuant to Civil Code section 5310.

12.5.6 Other. Documents may be included in or delivered with a billing statement, newsletter, or other document delivered by one (1) of the methods provided in this Section, or any method of delivery provided the Member has agreed.

## **ARTICLE 13 AMENDMENTS**

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13.1 Amendment by Members. Except as otherwise expressly provided herein, these Bylaws may be amended by the affirmative vote representing at least a majority of a quorum of the Members of the Association.

13.2 Amendment by Board of Directors. Certain provisions of these Bylaws reflect legal requirements prescribed by Federal law, California law, and other governmental statutes and regulations. If any such laws, statutes or regulations are amended, revoked, or supplemented, the Board may, by the affirmative vote of a majority of the Directors present at a meeting at which a quorum has been established, amend these Bylaws to reflect the underlying law, statute, or regulation. The purpose of this provision is to provide the Members with notice of current legal requirements which affect their rights and obligations as they pertain to their Lot and membership within the Association.

13.3 Restatements of Bylaws. The Board may, by the affirmative vote of a majority of the Directors present at a meeting at which a quorum has been established, restate these Bylaws when it has been properly amended pursuant to this Article. Any such restatement shall supersede any prior bylaws and amendments in their entirety. Such restatement may also: (a) add, delete, or rearrange the text of the Bylaws to maintain consistency with any amendments including, but not limited to, altering the title and numbering of the restatement; (b) delete material, which is no longer legally effective; and (c) add text which indicates the Board has authorized the restatement and otherwise describes the background of the Development and the restatement process.

## **ARTICLE 14 MISCELLANEOUS**

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All references to Code sections shall refer to the California Code sections, unless otherwise specified.

### **CERTIFICATE OF AMENDMENT, RESTATEMENT, AND ADOPTION**

I hereby certify I am the Secretary of the Merry Mountain Owners' Association, Inc. and the preceding Second Amended and Restated Bylaws of Merry Mountain Owners' Association, Inc., were duly

approved by the required vote of the members of the Association. The preceding Second Amended and Restated Bylaws now constitute the Bylaws of the Association.

Executed: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, Secretary

