

RESTATED BYLAWS



AMERICANA GARDENS HOMEOWNERS ASSOCIATION

A Condominium Residential Development

June 2020

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, VETERAN AND MILITARY STATUS, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (p) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

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RESTATED BYLAWS OF
AMERICANA GARDENS HOMEOWNERS ASSOCIATION
A Condominium Residential Development

ARTICLE 1 — NAME, LOCATION AND APPLICABILITY

1.1 **Name.** The name of the association is Americana Gardens Homeowners Association, a California Nonprofit Mutual Benefit Corporation ("Association").

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

1.3 **Application.** These Restated Bylaws are applicable to the residential Project known as Americana Gardens Homeowners Association subdivision ("Project"), located in the City of Palm Springs, Riverside County, California. These Restated Bylaws are also applicable to all Members of the Association and all tenants, employees, and other persons who use the facilities of the Project in any manner.

1.4 **Definitions.** Unless otherwise specified in these Restated Bylaws, the definitions set forth in the First Restated Declaration of Covenants, Conditions and Restrictions, (hereinafter "Restated Declaration"), apply to these Restated Bylaws.

1.5 **Membership Rights.** The qualifications for membership are set forth in Article II of the Restated Declaration and are hereby incorporated by reference.

ARTICLE 2 — MEETINGS OF MEMBERS

2.1 **Place of Member Meetings; Conduct.** All meetings of the Members shall be held at the onsite clubhouse or a place designated by the Board which shall be as close to the Project as reasonably possible. If no meeting place is designated, the meetings shall be held at the onsite clubhouse of the Association. No meeting of the Members shall, unless unusual conditions exist, be held outside of Riverside County, California. 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.

2.2 **Annual Member Meeting.** The annual meeting of the Members shall be held on a date and time established by the Board, so long as the annual meeting is held within the month of April each year ("Annual Meeting"). The purpose of the Annual Meeting shall be solely for the installation of newly elected directors, for reports from officers, committees and staff, and for questions and comments from Members regarding matters of common interest or concern to the Association, its Members and the Americana Gardens Homeowners Association in general.

2.3 **Special Member Meetings.** 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 (5%) of the voting power of the Association. The special Member meeting shall be held not less than thirty-five (35) nor more than ninety (90) days after adoption of the resolution or 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 Member Meetings.** The Secretary of the Association shall give written notice of any Member meeting to each Member of record in accordance with the following:

2.4.1 Except as otherwise provided in this Article, the notice shall be given at least twenty (20) but not more than ninety (90) days before the meeting, by first class mail, by personal delivery or by newsletter in accordance with *Corporations Code* §5016 and any other successor statute related thereto, as well as any other method permitted by California law.

2.4.2 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, notice shall be given at the principal office of the Association. When there is more than one (1) record Owner of a Unit ("Co-Owners"), only one of them shall be entitled to notice under this provision. It shall be up to the Co-Owners to designate the Member entitled to notice and, failing to do so, then it shall be provided to the first name listed on the Association's records for said Unit.

2.4.3 The notice shall state the place, date, and time of the meeting.

2.4.4 Voting at a meeting of the Members shall be as provided in Section 3.5.2 below. Except as noted in Article 3 below, the quorum for meetings of Members shall be twenty-five percent (25%) of the voting power of the Association.

2.5 **Informational Meetings.** At the request of the Board of Directors, the Association may conduct informational meetings for the Members from time to time.

ARTICLE 3 — MEMBER VOTING RIGHTS

3.1 **Voting Rights of Members.** Subject to the conditions and requirements set forth in the Restated Declaration, Members may exercise the voting rights which are set forth below:

3.1.1 **Election of Directors.** Members have the right to vote to elect directors of the Association, as provided in this Article 3. There is no quorum requirement for an election of directors.

3.1.2 **Regular Assessment Increases.** Regular Assessment increases greater than twenty percent (20%) of the Regular Assessment for the preceding fiscal year requires approval by Members, as provided in Article V, Section 3 of the Restated Declaration. For purposes of this subsection 3.1.2, a quorum shall mean more than fifty percent (50%) of the voting power of the Association and Member approval shall mean the affirmation by at least a majority of the valid votes cast by written ballot when the number of valid written ballots cast equals or exceeds a quorum.

3.1.3 **Special Assessments.** A Special Assessment greater than five percent (5%) of budgeted gross expenses for the fiscal year in which the Special Assessments are levied requires approval by the Members, as provided in Article V, Section 4 of the Restated Declaration. For purposes of this subsection 3.1.3, a quorum shall mean more than fifty percent of the voting power and Member approval shall mean the affirmation by at least a majority of the valid votes cast by written ballot when the number of valid written ballots cast equals or exceeds a quorum.

3.1.4 **Recall of Directors.** Members have the right to recall director(s) as provided in Section 4.8.2. below. For Member approval of a recall, the quorum requirement is fifty percent (50%) plus one (1) of the voting power of the Association.

3.1.5 **Certain Board Actions.** Member approval is required before the Board can exercise the powers enumerated in Section 4.12 below. Member approval shall require the affirmation by at least a majority of the valid votes cast by written ballot when the number of valid written ballots cast equals or exceeds a quorum requirement of twenty-five percent (25%) of the voting power of the Association.

3.1.6 **Amendments to the Restated Declaration.** Amendments to the Restated Declaration require Member approval pursuant to Article XII of the Restated Declaration.

3.1.7 **Amendments to these Restated Bylaws.** Members must approve amendments to these Restated Bylaws as provided in Article 9 below.

3.1.8 **Other Matters.** Member approval for other matters shall require the affirmation by at least a majority of the valid votes cast by written ballot when the number of valid written ballots cast equals or exceeds a quorum requirement of twenty-five percent (25%) of the voting power of the Association.

3.2 **Single Class of Membership.** The Association shall have one class of voting Membership comprised of Owners of Units.

3.3 **Voting Eligibility.**

3.3.1 **Record Date.** Members of record are Owners holding a Membership as of the close of business on a record date established by the Board in advance, such date to be not more than sixty (60) days before the day on which the written ballots are mailed, notwithstanding any transfer of Membership after the record date. In the absence of Board action to establish a record date for written balloting, the record date shall be thirty (30) days before the date scheduled for mailing of the written ballots.

3.3.2 **Foreclosure.** Any mortgagee who acquires title to a Unit pursuant to a judgement of foreclosure or a trustee sale shall automatically become entitled to exercise all voting rights which the Owner of said Unit would otherwise have had.

3.3.3 **Assignment of Voting Rights.** The right to vote is not transferable or assignable, except in connection with the transfer of a Member's ownership interest in the Unit to which the Membership is appurtenant, including a transfer pursuant to a contract of sale. If an Owner has leased or rented the Owner's Unit, the Owner shall retain the right to vote as a Member.

3.4 **One Lot, One Ballot.**

3.4.1 Ownership of a Unit includes a single vote for each issue on the ballot to be voted upon in the Association Election and one vote for each vacancy on the Association's Board of Directors Unit co-owners are deemed to be one Member for voting purposes.

3.4.2 A vote cast by a Member of a multi-owner Unit will be deemed to have the approval of the other owners of that Unit. Only one ballot may be cast for each Unit. If more than one ballot is received, or if any ballot is contested in writing by another co-owner, no ballot will be counted.

3.5 **Exercise of Vote.**

3.5.1 **By Written Ballot.** Written ballots are required for those issues described in Section 3.1 above. Unless otherwise indicated, such votes require a quorum of twenty-five percent (25%) of the voting power of the Association and must be accomplished as provided in Section 3.6 below.

3.5.2 **At Meetings of Members.** Voting at meetings of Members shall be limited to (i) advisory, non-binding votes to poll the Members in attendance with respect to a matter or issue of interest to the Association and its Members; or (ii) motions on procedural matters relating to the conduct of that meeting.

3.5.3 **Proxy Voting.** Proxy voting is not permitted.

3.5.4 **Cumulative Voting.** Cumulative voting is not permitted.

3.5.5 In light of the 30 day nomination notice/process identified in Section 4.2.1, there shall be no write in voting on any ballot for the election of directors.

3.6 Voting by Written Ballot.

3.6.1 **Written Ballots.** Any matter or issue requiring the vote of the Members, including the election of directors, shall be by written ballot without the necessity of calling a meeting of the Members, so long as the procedures and requirements for action by written ballot set forth in this Section 3.6 are satisfied, as well as the election rules adopted by the Board of Directors from time to time. Notwithstanding any other law or provision of the Association's governing documents, Board of Directors election and other elections required to be submitted to the Membership pursuant to *Civil Code* §5100 shall be conducted by a secret written ballot submitted to the Members without a meeting. The Inspector(s) of Elections shall deliver, or cause to be delivered, at least 30 days before an election, to each member the ballot or ballots as well as a copy of the Election rules. Delivery of the Election rules may be accomplished by either posting the Election rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12 pt. font, "The rules governing this election may be found here" or by delivering the Election rules with the ballot materials via individual delivery. If the Inspector(s) of the Election is an independent third party who is under contract to the Association for compensable services solely as an Inspector(s) of Election, then the Inspector(s) of Elections shall facilitate delivery of the ballots as well as a copy of the Election rules as set forth in this Section 3.6.1. If the Inspector(s) of Elections is a member (but still an independent third party), then the Inspector(s) of Elections shall be deemed, pursuant to these Election rules, to have delegated the responsibility to the Association (by and through the Association staff or Association's managing agent staff) to deliver the ballot materials as well as the Election rules pursuant to this Section 3.6.1. Ballots and two pre-addressed envelopes with instructions on how to return ballots, must be mailed by first class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, parcel or lot number on the ballot itself. The balloting process shall include all of the following ("Two Envelope Secret Ballot Process"):

(a) The ballot shall identify all the nominees or, as it relates to any other election, the proposed action and include the opportunity to specify approval or disapproval of the proposed action.

(b) The ballot itself is not signed by the voter, but is placed into a ballot envelope, which is then sealed ("Ballot Envelope"). The Ballot Envelope is then inserted into the second pre-addressed envelope ("Second Envelope") that is then sealed. In the upper left hand corner of the Second Envelope, the voter prints and signs his/her name and separate interest identifier that entitles him/her to vote.

(c) The Second Envelope is addressed to the Inspector(s) of Election. The Second Envelope can be mailed by the Member to the Inspector(s) of Elections or delivered by hand to a location specified by the Inspector(s) of Election. Any Member can request a receipt for delivery of their ballot. Failure to sign the Second Envelope shall invalidate the ballot.

3.6.2 **Ballot Schedule.** Unless otherwise determined by the board, the due date for ballots shall allow for voting up to and on the day of the Annual Meeting where/when the ballots will be counted. The ballot must be delivered to the Inspector(s) of Election at the Annual Meeting up to but no later than the scheduled meeting start time.

3.6.3 **Distribution of Written Ballots.** Unless the Board reserves the right to extend the period for the return of ballots as provided in Section 3.6.5(b), below, written ballots shall be mailed (or delivered in any other manner permitted by California or Federal law) to all Members not more than ninety (90) days prior to the date and time the ballots are to be received to be counted, but no less than thirty (30) days prior to such date.

3.6.4 Requirements for Valid Member Action by Written Ballot.

(a) For all matters other than election of directors, Member approval by written ballot shall only be valid if: (i) the number of votes cast by written ballot within the time established for return of the ballots equals or exceeds the quorum requirement specified in the Governing Documents, and

(ii) the number of affirmative valid votes cast during the prescribed balloting period equals or exceeds the number of affirmative votes required for approval.

(b) For director elections, there is no quorum requirement. Members are entitled to cast one vote for each vacant position on the Board. The nominees receiving the greatest number of valid votes, up to the number of vacancies, shall be elected and only one vote may be cast for any one nominee.

3.6.5 Content of Written Ballots and Information Materials.

(a) **Ballots for Director Elections.** Written ballots used in any election of directors shall set forth the names of those nominees who meet the eligibility requirements set forth in Section 4.3. The written ballot shall specify the time and date by which the written ballot must be received by the Association in order to be counted.

(b) **Ballots for Other Matters.** The provisions of this Section 3.6.5(b) shall not apply to the election of directors. Any written ballot distributed to the Members to vote on any issue shall set forth the proposed action and provide an opportunity for the Member to specify approval or disapproval of the proposal. The written ballot shall indicate (i) the percentage of affirmative votes necessary to approve the measure submitted for membership approval and the number of responses needed to meet the quorum requirement for valid action, and (ii) the date and time by which the written ballot must be received by the Association in order to be counted. The date fixed for the return of ballots may only be extended if the Association notifies the Members on the face of the written ballot or in the balloting materials originally sent to Members, that the Board is reserving the right to extend the balloting time period. In no event shall any extension or extensions exceed a total of one hundred twenty (120) additional days.

(c) **Information Materials.** The information materials accompanying the ballots shall include voting instructions and such other information as may be prescribed by the Board.

(d) **Authenticating Ballots, and Lost (or Otherwise Unusable) Ballots.** The Board of Directors shall establish a procedure, which must be followed by the Inspector(s) of Elections, for authenticating the ballots cast by Members (such as a numbering system or other form of authentication), as well as a procedure which must be followed when a homeowner requests a replacement ballot for lost or otherwise unusable ballots. This section shall apply to all written ballots, whether for Board of Director elections or any other ballot distributed to the membership.

3.6.6 Balloting Procedures and Inspector(s) of Elections.

(a) The Inspector(s) of Elections shall conduct and supervise the ballot process in accordance with California State law, these Restated Bylaws, the election rules and any resolutions by the Board of Directors. Any report or certificate made by the Inspector(s) of Elections shall be prima facie evidence of the facts therein.

(b) The Board of Directors shall appoint one (1) or three (3) inspector(s) of elections ("Inspector(s) of Elections"). The Inspector(s) of Elections shall be an independent third party (or parties), as determined by the Board of Directors at an open Board meeting. An independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an Inspector(s) of Elections (hereafter "Independent Third Parties"). Any member(s) who serves as an Inspector(s) of Elections shall be deemed a committee member for purposes of the Association's governing documents as well as any applicable insurance policy.

(c) The Inspector(s) of Elections may appoint Association staff or the managing agent's staff to receive the outer envelope containing the ballot materials ("Outer Envelope") and register receipt of the Outer Envelope by verifying the member's information on the voter list and confirming the Outer Envelope has been received by the Inspector(s) of Elections and the date it was received. Notwithstanding the above, the person performing the Outer Envelope verification, unless an Independent Third Party, cannot verify the accuracy of the signature nor shall they be allowed to count and tabulate votes at the meeting where such ballot materials are tabulated.

(d) The Inspector(s) of Elections shall determine the number of Memberships entitled to vote and the voting power of each Membership, shall receive the ballots, hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, count and tabulate the ballots, determine the results of election and shall further perform any acts which may be proper to conduct the election with fairness to all Members in accordance with *Civil Code* §5105 and the Association's governing documents. The Inspector(s) of Elections may also appoint and oversee additional persons to verify signatures and to count and tabulate votes at an Association meeting open to the membership as the Inspector(s) of Elections deem appropriate, provided that the additional persons are Independent Third Parties ("Designees").

(e) Any Member may return the written ballot by mail or personal delivery to the address set forth in the information materials for return of the ballots, and such written ballot must be received no later than the time and date indicated on the written ballot and/or in the accompanying information materials.

(f) Once cast, a written ballot may not be revoked.

3.6.7 Tabulation of Votes. At the close of the balloting period, written ballots shall be tabulated by the Inspector(s) of Elections and his/her designees in public at a properly noticed open meeting of the Board of Directors or if applicable, annual or special meeting of the membership.

3.6.8 Notification of Results of Balloting Process. Upon completion of the tabulation of ballots, the results shall be certified by the Inspector(s) of Elections to the Board and notification of the results shall be given to the Members as soon as practicable, except as may be otherwise provided in the Governing Documents. For ballots other than Board elections, if the number of valid ballots cast with respect to any matter is insufficient to satisfy the minimum quorum requirement for Member approval, the Board shall so notify the Members. The Inspector(s) of Elections' certification of the result of the balloting process shall be retained as permanent records of the Association.

3.6.9 Storage of Ballots. Following tabulation, all ballots, signed voter envelopes, voter lists and if applicable, candidate registration list shall be sealed and stored by the Inspector(s) of Elections for one (1) year. Thereafter, the ballots shall be stored by the Association for an additional one (1) year, after which the ballots themselves may be destroyed.

3.6.10 Additional Procedures. The Board may adopt such additional reasonable procedures as it deems necessary or appropriate to assure fairness in any balloting process.

ARTICLE 4 — BOARD OF DIRECTORS

4.1 Number; Qualifications. The affairs of this Association shall be managed and its duties and obligations performed by an elected Board of Directors, consisting of five (5) directors. Members of the Board must be Members of the Association and meet all the eligibility requirements set forth in Section 4.3.

4.2 **Nomination.** Nominations for election to the Board of Directors may be made by any of the following:

4.2.1 In accordance with *Civil Code '5105 (a)(3)*, any Member meeting the Eligibility Requirements, may submit to the Association a written statement nominating himself/herself for election to the Board of Directors ("Self Nomination Statement"). The Association shall notify the Members by general notice (via a document delivery that complies with *Civil Code '4040, e.g.*, newsletter, posting in a prominent location within the common area, information within billing statement, email if the member has consented to email delivery or first-class mail) and individual notice to those members requesting individual notice of the nomination process ("Nomination Notice/Process") and the deadline for Association receipt of the Self-Nomination Statement (the deadline must be at least 30 days after giving the Nomination Notice/Process – hereafter "Nomination Deadline"). The written self-nomination shall identify the candidate, containing that person's written consent to serve as a Director and must meet the eligibility requirements identified herein. In light of this self-nomination process, there shall be no write-in candidates or nominations from the floor at any annual or special Member meeting.

4.2.2 The Board, which may make nominations at any time prior to the Nomination Deadline.

4.3 **Eligibility.** In order to run for the Board of Directors, a Member must meet the eligibility / qualifications identified below ("Eligibility Requirements"):

(a) Must own a minimum twenty-five percent (25%) interest in his/her Unit. If title to the Unit is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person who shall be considered a member eligible to run for the Board of Directors unless they do not meet the other criteria contained in this Article 4.

(b) Must be the only Member of the Unit running for election to the Board of Directors and/or serving on the Board of Directors (a candidate shall not meet the eligibility qualifications to be a nominee, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same Unit as another person who is either properly nominated for the current election or is a director that is not up for election).

(c) A nominee for a Board seat (and a director during their Board tenure) must be current in the payment of regular and special assessments provided, however, that an Association may not disqualify a person for nomination (or remove a director) for non-payment of fines, fines renamed as assessments, collection charges, late charges, or other costs levied by a third party for collections. Furthermore, a nominee may not be disqualified (or shall not be removed as a director) and shall be eligible to run for the Board of Directors if that person has paid the regular assessment or special assessment under protest pursuant to *Civil Code §5658* or the person has entered into a payment plan pursuant to *Civil Code §5665*.

(d) A candidate may not be eligible/qualified to run for the Board of Directors if that candidate discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if that candidate was elected, either prevent the Association from purchasing the fidelity bond coverage required by *Civil Code §5806* or terminates the Association's existing fidelity bond coverage.

4.3.1 Notwithstanding the provision of this Section, an Association shall not disqualify a person from nomination, unless that person has been provided an opportunity to engage in Internal Dispute Resolution ("IDR") consistent with the Association's internal dispute resolution policy (or, if the Association has not adopted an internal dispute resolution policy, in accordance with the internal dispute resolution default policy set forth in *Civil Code §5915*) ("IDR Policy"). Notwithstanding any inconsistent scheduling of an IDR in the Association's IDR Policy, any IDR related to eligibility to run for the Board of Directors must be completed by the Nomination Deadline. A Board member must be current in the payment

of regular and special assessments and can be removed by the Board of Directors for failure to cure such delinquency in accordance with the provisions contained within the Association's Bylaws and, if none, upon providing written notice to the Board member to cure the delinquency which notice must be not less than ten (10) days individual delivery and, in addition thereto, the Association shall not remove a Board member for such delinquency unless they offer the Board member IDR consistent with this Section 4.3.1.

4.4 **30 Day Notice to the Membership and Voter List.** The Association shall provide general notice (if a Member has requested individual notice pursuant to Civil Code §4040, individual notice shall be provided to the requesting member) of all of the following at least thirty (30) days before the ballots are distributed:

(a) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector or Inspectors of Elections.

(b) The date, time, and location of the meeting at which ballots will be counted, provided, however, the Inspector(s) of Elections shall have the right to extend the date and time upon which ballots can be returned and, therefore, a change in the date, time or location of the meeting to afford more members the opportunity to vote.

(c) To the extent it's a Board of Directors election, the list of all eligible candidates' names that will appear on the ballot ("Candidate Registration List").

(d) A statement of the member's right to verify the accuracy of that member's information on the Voter List and, if applicable, on the Candidate Registration List.

(e) The Association shall retain, as Association election materials, both the Candidate Registration List, as well as a voter list. The voter list shall include name, voting power and either the physical address of the voter's separate interest, the parcel number or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used ("Voter List"). The Association shall permit members to verify the accuracy of their individual information on both the Candidate Registration List as well as the Voter List at least 30 days before the ballots are distributed up to the date the Voter List is finalized. The Association or the member shall report any errors or omissions to either list (if by member, delivered to the Association per Civil Code §4035) so that the Association can provide such errors or omissions to the Inspector or Inspectors who shall make the corrections within two business days.

4.5 **Annual Election.** The annual election of directors shall be conducted by secret ballot in accordance with *Civil Code* §5115 or any successor statute thereto, this Section 4.5 and Article 3. At each Annual Meeting of the Association, the Members shall fill, by election, all vacant positions on the Board. Except for uncontested director elections as enumerated in Section 4.5.1 below, the ballots shall be mailed by first class mail (or delivered in any other manner permitted by California and Federal law) to all Owners who are eligible to vote, at least thirty (30) days before the deadline date for the return of ballots. All ballots for the election of directors must be received no later than the scheduled start time of the Annual Meeting where/when the ballots will be counted. Any ballot received thereafter shall be invalid and shall not be counted. At an election, the Member may cast, in respect to each vacancy, one vote on a non-cumulative basis. The nominees receiving the highest number of votes up to the number of directors to be elected shall take office immediately following their election. In the event that there is a tie vote between those nominees who receive the lowest number of votes necessary to be elected, the tie shall be broken by a flip of a coin, which shall be conducted by the Inspector(s) of Elections. The Board of Directors shall adopt rules, consistent with the rule change procedure identified in Article IV, Section 2 of the Restated Declaration, to provide for a fair campaign process, balloting, tallying of election results, storage of election materials and selection of election inspector(s), all in accordance with *Civil Code* §5105(a) or any successor statute thereto. The results of the Board election shall be announced at the Annual Meeting.

4.5.1 Notwithstanding anything in these Restated Bylaws to the contrary (and in light of the substantial cost of conducting an annual election of directors), in the event the number of nominees is equal to or less than the number of vacant positions on the Board that are up for election ("Uncontested Director Election"), then the Inspector(s) of Elections shall declare (at the next regularly scheduled Board of Directors meeting after the close of nominations) an Uncontested Director Election and such nominees will be elected without any balloting, as such balloting is described in Section 4.5 above. The Inspector(s) of Elections will announce and declare such nominees in the Uncontested Director Election elected at the Annual Meeting and they shall take their seats immediately thereafter. Furthermore, at any Uncontested Director Election the membership shall have deemed to have elected to apply any excess operating funds to the following year's assessments to avoid negative tax consequences (to the extent there are any excess operating funds). Moreover, in light of the fact that Annual Meetings are informational and that no Member action can be taken at an Annual Meeting, there shall be no need for Members to approve the minutes of any Annual Meeting; as such, the Association shall provide the membership with the minutes of the last Annual Meeting with the documentation distributed to the membership with the annual policy statement.

4.6 **Special Election.** In the case of a special election called to fill a vacancy caused by a removal of a Director(s) by the Owners, all ballots for election of directors must be received by the Inspector(s) of Election on or before 4:00 p.m. the day before the Board or membership meeting which has been scheduled to count the ballots. Distribution and receipt of ballots, as well as the voting, tie-breaking and announcement of results for a special election shall be handled in the same manner as provided for in elections.

4.7 **Term.** Except as provided for in Section 4.8 herein, each Board member shall serve for a two (2) year term on a staggered basis. Two directors will be elected in even numbered years and three directors will be elected in odd numbered years, so that two year terms are staggered. Each director shall hold office until the election of his/her successor or until the director's death, resignation, removal, or judicial adjudication of mental incompetence. Directors shall be elected at each Annual Meeting.

4.8 **Removal.** Directors may be removed as follows:

4.8.1 The Board on a majority vote of at least three (3) directors 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 Court;
- (b) The director is convicted of a felony;
- (c) The director has failed to attend three (3) regular meetings of the Board in any twelve-month period;
- (d) The director has become delinquent in the payment of any assessment for a period in excess of forty-five (45) days. In this regard, the director who is delinquent for over forty-five (45) days shall be given a minimum of fifteen (15) days' written notice to pay any such delinquency, and only upon the failure of such director to pay such delinquency shall the Board declare vacant the office of such director; or
- (e) The director fails to meet the eligibility requirements set forth in Section 4.3 of these Restated Bylaws.

4.8.2 One (1) or more directors may be removed from office by Members prior to the expiration of the director's terms by the following procedure. Members may present a petition to any officer of the Board, signed by ten percent (10%) of the voting power of the Association calling for a vote of the Members to recall one or more directors ("Recall Ballot Measure"). Upon receipt of a petition, the Board shall immediately require the Inspector(s) of Elections to validate the signatures as soon as possible. Upon

validation by the Inspector(s) of Election that at least ten percent (10%) of the voting power of the Association did sign the petition, the Board shall mail the Recall Ballot Measure materials to the membership in accordance with the law. The date upon which the ballots must be returned shall be no less than thirty-five (35) days and no more than ninety (90) days from the date the petition was received and must, at a minimum, provide for a return date that is at least thirty (30) days from the date of mailing. A director shall be immediately removed if a majority of valid votes approve removal of that director's Recall Ballot Measure. The quorum for the recall vote shall be fifty percent plus one (50% + 1) of the voting power of the Association.

4.9 **Filling Vacancies.** Except for vacancies created by removal of a Board member by the Owners pursuant to Section 4.8.2 of these Bylaws, vacancies in the Board of Directors shall be filled by a vote of a majority of the remaining directors, even though they may constitute less than a quorum. Each person so selected shall fill the balance of the unexpired term. Vacancies created by removal of a Board member by the Owners pursuant to Section 4.8.2 of these Bylaws shall be filled consistent with the special election requirements set forth in Section 4.6 herein.

4.10 **Compensation.** 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 provided such out of pocket expenses are pre-approved by the Board of Directors.

4.11 **Powers and Duties.** 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, including but not limited to *Corporations Code §7140*. Said powers and duties shall be subject to the limitations of the Governing Documents, and shall include, but not be limited to, the following:

4.11.1 Formulating Rules and Regulations for the use and operation of the Units, the Common Area, common facilities and facilities owned or controlled by the Association;

4.11.2 Enforcing the applicable provisions of the Governing Documents and any other instruments governing the ownership, management, and control of the Project;

4.11.3 Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Documents in accordance with procedures set forth in Section 4.15 herein;

4.11.4 Paying taxes and assessments that are, or could become, a lien on all or a portion of the Association Property;

4.11.5 Fixing and establishing the fiscal year for the Association, including the power to modify the fiscal year;

4.11.6 Contracting for casualty, liability, and other insurance on behalf of the Association;

4.11.7 Contracting for goods and services for the Association Property facilities, and interests of the Association, subject to the limitations set forth in Section 4.12 herein;

4.11.8 Creating committees pursuant to resolutions 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 (2) or more directors to serve at the pleasure of the Board (such committees with delegated Board power must consist solely of Board members). No directors need serve on any committee which does not exercise any power or authority of the Board (e.g., social committees);

4.11.9 Delegating its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a general manager, property manager, or professional management agent, provided that the affairs of the Association shall be managed and all Association powers and authority shall be exercised under the ultimate discretion of the Board ;

4.11.10 Authorizing the withdrawal of monies from the Association's reserve accounts, upon the signatures of two (2) directors;

4.11.11 Entering any Unit to perform necessary construction, maintenance, inspection for compliance with the Governing Documents, and/or emergency repair work for the benefit of the Association Property or the Members in the aggregate;

4.11.12 Filling vacancies on the Board, except for a vacancy created by the removal of a director by Members;

4.11.13 Extending the time for return of ballots pursuant to Section 3.6.5(b) herein, by majority approval of the Board;

4.11.14 Providing any Owner with the following documents within ten (10) days of the mailing or delivery of a written request therefor and receipt of the costs to prepare and reproduce said documents:

(a) A copy of the Governing Documents;

(b) A copy of the most recent financial statement;

(c) A written statement from an authorized representative of the Association specifying (i) the amount of the Association's current Regular, Special, and/or other assessments and fees; (ii) the amount of any assessments levied on the Owner's Unit that are unpaid on the date of the statement; and (iii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Unit pursuant to the Restated Declaration;

(d) A statement noting any change in the Association's current assessments and fees which have been approved by the Board, but which have not become due and payable as of the date disclosure is provided pursuant to this Section.

4.12 **Limitation on Powers.** Notwithstanding the provisions of Section 4.11, the Board shall be prohibited from taking any of the following actions, except with the Member approval via a ballot measure pursuant to Section 3.1.5 of these Restated Bylaws:

4.12.1 Entering into a contract to furnish goods or services for the Association Property for a term longer than three (3) years with the following exceptions:

(a) A management contract approved by the Federal Housing Administration or Veterans Administration;

(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/or liability insurance of not more than three (3) years duration, provided that the policy provides for short rate cancellation by the insured;

(d) Agreements and equipment for bulk video and/or internet services for the membership not exceeding five (5) years in duration;

(e) Agreements for video camera and related services, as well as access systems and/or the sale or lease of burglar alarm and fire alarm equipment (installation and services) not exceeding five (5) years' duration; and

(f) Agreements for laundry equipment and services not exceeding seven (7) years in duration.

4.12.2 Incurring aggregate expenditures for new capital improvements to the Association Property (that otherwise did not exist previously) in any fiscal year in excess of ten percent (10%) of the gross budgeted expenses of the Association for that fiscal year. This section shall not limit expenditures for repair, maintenance and replacement of reserve line items;

4.12.3 Selling during any fiscal year property of the Association having an aggregate fair market value in excess of ten percent (10%) of the gross budgeted expenses of the Association for that fiscal year provided however that the Association may sell any Unit that the Association owns pursuant to a collection action for non-payment of assessments;

4.12.4 Borrowing money, incurring indebtedness and executing therefor promissory notes or other evidences of debt for the Association in excess of one hundred thousand dollars (\$100,000.00) for that fiscal year; or

4.12.5 Filling a vacancy on the Board created by the removal of a director by the Members.

4.13 Financial Documentation; Preparation, Reporting and Review Responsibilities.

With regard to the preparation, reporting and review of the Association's financial documentation, the Board shall have the following responsibilities:

4.13.1 Preparing an annual budget report for each fiscal year and distributing a copy thereof to each Owner not less than thirty (30) and not more than ninety (90) days prior to the beginning of the fiscal year, unless California law provides a different time line, in which case the statute shall control.

(a) The estimated revenue and expenses on an accrual basis;

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 5565 of the California *Civil Code*, based only on assets held in cash or cash equivalents, which shall be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;

(ii) As of the end of the fiscal year for which the study is prepared: (1) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components, and (2) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain those major components;

(iii) The percentage that the amount determined for purposes of clause (2) of subparagraph (ii), above, is of the amount determined for purposes of clause (1) of subparagraph (ii), above;

(iv) The current deficiency in reserve funding expressed on a per unit basis.

The summary of the Association's reserves disclosed pursuant to this Section shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision;

(c) A statement as to all of the following:

(i) Whether the Board, consistent with the reserve funding plan, has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date and duration of the assessment;

(ii) The mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use or other assets, deferral of selected replacement or repairs, or alternative mechanisms;

(iii) Whether the Board of Directors of the Association has determined to defer or not undertake repairs or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for the deferral or decision not to undertake the repairs or replacement; and

(iv) Whether the Association has any outstanding loans within an original term of more than one (1) year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(d) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain, or other components identified by the Board. The report shall include, but need not be limited to, reserve calculations made using the formula described in Paragraph 4 of subsection (b) of *Civil Code* §5570, and may not assume a rate of return on cash reserves in excess of two percent (2%) above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

(e) In lieu of the distribution of the annual policy statement, the Board may elect to distribute a summary of the statement to each Owner with a written notice that the statement 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 (5) working days of the receipt of the Owner's written request.

4.13.2 Preparing and distributing an annual report, within one hundred twenty (120) 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 and expense) statement for the fiscal year;

(c) A statement of changes in financial position for the fiscal year; and

(d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review or audit, if applicable, of the annual financial statement 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 audit or review from the books and records of the Association.

4.13.3 Within 30 to 90 days before the end of its fiscal year, the board shall distribute an annual policy statement that provides the members with information about association policies. The annual policy statement shall include all of the following information:

- (a) The name and address of the person designated to receive official communications to the association.
- (b) A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses.
- (c) The location, if any, designated for posting of a general notice.
- (d) Notice of a member's option to receive general notices by individual delivery.
- (e) Notice of a member's right to receive copies of meeting minutes.
- (f) The statement of assessment collection policies.
- (g) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.
- (h) A statement describing the Association's discipline policy, if any, including any schedule of penalties for violations of the governing documents.
- (i) A summary of dispute resolution procedures.
- (j) A summary of any requirements for Association approval of a physical change to a Residential Unit/Lot.
- (k) The mailing address for overnight payment of assessments.
- (l) Any other information that is required by law or the governing documents or that the Board determines to be appropriate for inclusion.

The annual policy statement shall be made available to the members pursuant to *Civil Code* Section 5320.

4.13.4 Causing 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 Community. 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. This study shall, at a minimum, include:

- (a) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(b) Identification of the probable remaining useful life of the components identified in (a), above, as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration or maintenance of the components identified in (a), above, during and at the end of their useful life;

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain the components identified in (a), above, during and at the end of their useful life, after subtracting total reserve funds as of the date of the study; and

(e) A reserve funding plan that indicates how the Association plans to fund the contribution identified in Section 4.13.4(d) above, to meet the Association's obligation for the repair and replacement of all major components with an expected remaining life of thirty (30) years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plan shall be adopted by the Board at an open meeting before the membership of the Association. If the Board of Directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in *Civil Code* §5605 (or any successor statute thereto).

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.

4.13.5 Reviewing the following on at least a monthly 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 to date 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 check register, monthly journal ledger and delinquent assessment receivables report; and

(e) The most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

4.13.6 Distributing a summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies, which distribution shall not be less than thirty (30) nor more than ninety (90) days preceding the beginning of the Association's fiscal year, that includes all of the following information:

(a) The name of the insurer.

(b) The type of insurance.

(c) The policy limits of the insurance.

(d) The amount of deductibles, if any.

4.13.7 Notifying its Members, as soon as reasonably practicable, by first-class mail if any of the policies described in paragraph 4.13.6 have lapsed, been canceled and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy described in paragraph 4.13.6, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent that any of the information required to be disclosed pursuant to paragraph 4.13.6, is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its Members. The summary distributed pursuant to paragraph 4.13.6 shall contain, in at least 10-point boldface type, the following statement: "This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of §5300 of the *Civil Code*, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult with their individual insurance broker or agent for appropriate additional coverage."

4.13.8 Notifying the Members of the Association in writing at the time that the annual budget report required in *Civil Code* Section 5300 is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the Board of Directors, and how and where those minutes may be obtained.

4.14 **Expending Reserve Funds.** 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.

The foregoing notwithstanding, the Board may reallocate monies in the reserve account for different specific line items of major components which the Association is obligated to repair, restore, replace, or maintain, as long as said reallocation is based upon a written finding by the Board of Directors, which explains the reason for the reallocation and includes the opinion(s) of professionals and/or experts confirming the need for the reallocation.

Additionally, notwithstanding the above, the Board may authorize the 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, if the Board has provided notice of intent to consider the transfer in a notice of meeting, which shall be provided as specified in *Civil Code* §4920. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Project, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Section. This special assessment is subject to the limitation imposed by *Civil Code* Section 5605. The Board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision, and of the availability of an accounting of those expenses, in the next available mailing to all Members of a notice or report addressed and mailed or delivered to a Member as part of a newsletter, magazine or other article regularly sent to Members. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

4.15 **Disciplinary Actions Against Members.**

4.15.1 The Board shall have the right to discipline a Member and/or his/her/its family, tenants, residents, co-owners, guests and/or invitees ("Invitees") for violation of any of the provisions of the Restated Declaration or Restated Bylaws (or any amendments thereto), Rules and Regulations, and Architectural Rules(hereafter "Governing Documents") by (i) suspending the Member's rights and privileges, to use the Association recreational amenities and/or facilities, rights and privileges to video/internet services (if the Association has in existence a bulk video and/or internet service agreement), as well as other use privileges granted to Owners in good standing, and/or (ii) imposing a monetary penalty.

4.15.2 The Board shall have the right to suspend video/internet service to a Unit (but only if the Association has entered into a bulk video and/or internet service agreement for the Property), and the rights of any Member, and the Invitees deriving rights from any Member, to use and enjoy the Association recreational amenities for any period during which the Member is delinquent in the payment of any assessment or monetary penalty, or as otherwise provided in the Governing Documents.

4.15.3 In connection with the general power of enforcement described above, the Board may discipline a Member for violations by the Member and/or his/her/its Invitees of any of the provisions of the Governing Documents, subject to the following limitations:

(a) The accused Member shall be given an opportunity to be heard and shall be given notice of a hearing before the Board of Directors in executive session, where the imposition of a suspension of membership privileges, monetary penalty, or both will be considered with respect to any alleged violation. Said notice shall be given not less than ten (10) days prior to the hearing;

(b) Notwithstanding the foregoing, under circumstances involving conduct that constitutes either (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Members, or (ii) a traffic or fire hazard, or (iii) a threat of material damage to, or destruction of, the Association Property, the Board or its agents may undertake immediate corrective or disciplinary action and conduct a hearing as soon thereafter as reasonably possible, if either (1) requested by the offending Member within five (5) days following the Association's action(s), or (2) on its own initiative;

(c) The amount of any monetary penalty shall be established from time to time for each type of violation in an amount to be determined 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;

(d) Except for nonpayment of any assessments, including monetary penalties, any suspension of a Member's privileges shall not exceed six (6) months for each violation. For nonpayment of any assessment, suspension of the Member's privileges shall continue until the Member remits payment of all monies due, including any collection costs.

ARTICLE 5 — MEETINGS OF DIRECTORS

5.1 **Regular Meetings.** Regular meetings of the Board of Directors shall be held as determined by the Board of Directors, provided however, that meetings are held at a minimum of at least once every three (3) months at a time and place within the Project or within the Coachella Valley as fixed by resolution of the Board. Any meeting room selected by the Board shall be as close as possible to the Project. Except for an emergency meeting, notice of the time, place and agenda of the meeting shall be posted at a prominent place or places within the Association Property, if possible, four days in advance or as otherwise permitted by law, and shall be communicated to the directors not less than seventy-two (72) hours prior to the meeting; provided, however, that prior to or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him/her of the time and place thereof.

5.1.1 Board meetings shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Board may adopt by resolution. Additionally, the Board must follow the following requirements in conducting its Board meetings:

(a) Except as described in paragraphs 5.1.1(b) through (d) below, inclusive, the Board of Directors of the Association may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was posted and distributed pursuant to this Section 5.1. This provision does not prohibit a resident who is not a member of the Board from speaking on issues not on the agenda;

(b) Notwithstanding Section 5.1.1(a), a member of the Board of Directors, a managing agent or other agent of the Board of Directors, or a member of the staff of the Board of Directors, may do any of the following;

(i) Briefly respond to statements made or questions posed by a person speaking at an open Board meeting as described in Section 5.5 below.

(ii) Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities, whether in response to questions posed by a Member of the Association or based upon his or her own initiative.

(c) Notwithstanding Section 5.1.1(a), the Board of Directors or a member of the Board of Directors, subject to rules or procedures of the Board of Directors, may do any of the following;

(i) Provide a reference to, or provide other resources for factual information to, its managing agent or other agents or staff.

(ii) Request its managing agent or other agents or staff to report back to the Board of Directors at the subsequent meeting concerning any matter, or take action to direct its managing agent or other agents or staff to place a matter of business on a future agenda.

(iii) Direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out this provision.

(d) Notwithstanding Section 5.1.1(a), the Board of Directors may take action on any item of business not appearing on the agenda posted and distributed pursuant to Section 5.1 under any of the following conditions (provided before discussing any item pursuant to this paragraph, the Board of Directors shall openly identify the item to the members in attendance at the meeting);

(i) Upon a determination made by a majority of the Board of Directors present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the Board, that require immediate attention and possible action by the Board, and that, of necessity, make it impracticable to provide notice.

(ii) Upon a determination made by the Board by a vote of two-thirds (2/3) of the Board members present at the meeting, or, if less than two-thirds (2/3) of total membership of the Board is present at the meeting, by a unanimous vote of the members present, that there is a need to take immediate action and that the need for action came to the attention of the Board after the agenda was posted and distributed pursuant to Section 5.1.

(iii) The item appeared on an agenda that was posted and distributed pursuant to Section 5.1 for a prior meeting of the Board of Directors that occurred not more than thirty (30) days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.

5.1.2 As used in this section, "meeting" includes any congregation of a majority of the members of the Board at the same time and place to hear, discuss or deliberate upon any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session.

5.2 **Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by any two (2) directors other than the President. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting shall be provided to the Members in the manner provided for notice of regular meetings and shall be sent to all directors not less than seventy-two (72) hours prior to the scheduled time of the meeting; provided, however, that notice need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

5.3 **Organizational Meeting.** Immediately after the Annual Meeting, described in Section 2.2, herein, 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.

5.4 **Quorum.** A majority of the Board shall constitute a quorum and if a quorum is present, the decision of a majority of the directors present shall be the act of the Board.

5.5 **Open Meetings.** Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly authorized to do so by the vote of the majority of the quorum of the Board. The Board of Directors shall set aside a time during any meeting of the Board for Members to speak, except for meetings of the Board held in executive session. A reasonable time limit for all Members of the Association to speak to the Board shall be established from time to time by the Board of Directors.

5.6 **Electronic Participation in Meetings.** Members of the Board and/or any committee may participate in a meeting through use of conference telephone, electronic video screen communications, or other communications equipment. Participation in a meeting, through the use of conference telephone, pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment (other than conference telephone) pursuant to this paragraph constitutes presence in person at that meeting if all of the following apply:

(a) Each member participating in the meeting can communicate with all of the other members concurrently.

(b) Each member is provided the means of participating in all matters before the Board (or applicable committee), including, without limitation, the capacity to propose, or to interpose an objection, to a specific action to be taken by the corporation.

(c) Association adopts and implements some means of verifying both of the following: (i) A person participating in the meeting is a director or other person entitled to participate in the board and/or committee meeting; and (ii) all statements, questions, actions, or votes by the Board and/or committee are taken or cast only by the directors and not by persons who are not directors, were made by that director and not by another person not permitted to participate as a director.

(d) As it relates to a telephone conference in which a majority of the members of the Board and/or committee, in different locations, are connected by electronic means, through audio or video or both, the notice of any such teleconferences shall be posted in the same manner as required for regular Board and/or committee meetings (or, if applicable, executive sessions). Additionally, for Board meetings that are not executive sessions, the notice of the teleconference meeting shall identify at least one physical location so that Members of the Association may attend and at least one member of the Board of Directors or representative designated by the Board of Directors shall be present at that location. Participation by Board members in a telephone conference meeting constitutes presence at that meeting as long as all Board members participating in the meeting are able to hear one another and Members of the Association speaking on matters before the Board.

5.7 Emergency Meetings. An emergency meeting of the Board may be called by the president of the Association, or by any two (2) members of the board other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by Section 5.1 above.

5.8 Executive Session. The Board may, with the approval of a majority of a quorum, adjourn a 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 discipline, and (e) meet with a member related to a payment plan for the member's delinquent assessments. The nature of any and all business to be considered in executive session shall first be announced in open session. In the event the executive session does not follow an open session, the Board may conduct an executive session if the nature of any and all business considered in such executive session is announced at the next regularly scheduled Board meeting. 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 in the same manner as a special meeting. Except for emergency meetings, the notice of time, place and agenda of the executive session shall be posted in a prominent place or places within the Association Property two (2) days in advance or as otherwise permitted by laws. Any matter related to the issues enumerated in this Paragraph discussed in executive session shall be generally noted in the Association minutes of the next Board meeting. The term *generally noted in the Association minutes* means that the date and time of the executive session shall be indicated with a list of the topic(s) discussed under the allowed categories enumerated in this Section.

5.9 Adjournment. 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 (24) 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.

5.10 **Action Without a Meeting.** Notwithstanding *Corporations Code* §7211, the Board of Directors shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail except for emergency meetings as that term is defined in Section 5.7 above for any emergency meeting, 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 may be conveyed by copy, facsimile and/or e-mail and shall be filed with the minutes of the proceedings of the Board. Written consent by e-mail for emergency meetings shall be acceptable and constitute written consent provided each director who has indicated e-mail approval confirms receipt of the proposed Board action and forwards a reply back to the Association, confirming receipt of the proposed Board action and approval of same (which reply shall be attached to the Board action via unanimous written consent as that director's consent to the intended Board action). An explanation of the action taken shall be communicated by any means the Board deems appropriate.

5.11 **Board Deliberation Regarding Member Discipline.** In any matter relating to the disciplining of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend that portion of the executive session in which the Board discusses the discipline of that Member.

5.12 **Meeting Minutes.** Except as specified in Section 5.8 related to the minutes for executive sessions, 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 (30) days of the meeting. The minutes, proposed minutes, or summary of 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. The Board may, but is not obligated to, keep minutes of executive sessions. However, if minutes of any executive session are taken, said minutes are confidential and shall be kept in a secure place in a separate minute book. Only members of the Board of Directors and those employees designated by the Board, as well as other designated representatives of the Association (such as, Association's corporate counsel and certified public accountant) shall be entitled to review executive session minutes. It is the intent of the Board that executive session minutes shall generally note the nature of any discussion and any action taken by the Board related thereto. Executive session minutes shall not be considered the type of minutes or Association "books and records" which are normally available to the membership under *Corporations Code* §8333, provided, however, that the agendas for executive sessions are available for Member inspection upon written request for same.

ARTICLE 6 — OFFICERS

6.1 **Enumeration of Officers.** The officers of this Association shall be a President, a Vice-President, a Secretary, and a Treasurer. The Board may appoint such additional officers as it may, in its sole discretion, determine necessary or desirable. Any number of offices may be held by the same person except for the offices of (a) President and Treasurer, and (b) President and Secretary. The President, Vice President, Secretary and Treasurer must be members of the Board of Directors. However, all other officers need not be members of the Board.

6.2 **Appointment and Term.** The officers shall be elected annually by the Board. Any vacancies shall be filled by the Board. Each officer shall hold his or her office at the pleasure of the Board.

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

6.3.1 The President shall:

- (a) Be the Chief Executive Officer of the Association and shall, subject to the approval of the Board, have general supervision, direction and control of the business affairs of the Association as usually vested in the office of President of a corporation;
- (b) Preside over all meetings of the Members and at all Board meetings;
- (c) 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;
- (d) By virtue of his or her office, be an ex-officio Member of all standing committees, including the executive committee, if any;
- (e) Call meetings of the Board whenever he or she deems it necessary, in accordance with any rules and notice requirements imposed by the Board and the Governing Documents. The notice period shall be not less than seventy-two (72) hours except in the case of emergencies;
- (f) Discharge any other duties as may be prescribed by the Board or by these Bylaws.

6.3.2 The Vice President shall:

- (a) Act in the place and in the stead of the President in the event of his or her absence, inability, or refusal to act; and
- (b) Exercise and discharge any other duties required of him or her by the Board. In connection with any such additional duties, the Vice-President shall be responsible to the President.

6.3.3 The Secretary shall facilitate or cause to be facilitated:

- (a) A record of all meetings and proceedings of the Board and of the Members;
- (b) All required notices of meetings of the Board and the Members;
- (c) The keeping of current records showing the names and addresses of all Members; and
- (d) Signing as Secretary all deeds, contracts, and other written instruments that have been approved by the Board, if the instruments that have been approved by the Board and signed by the President 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.

6.3.4 The Treasurer shall facilitate or cause to be facilitated:

- (a) The deposit all of the funds of the Association in any bank or banks selected by the Board;
- (b) The maintenance of books and records to account for Association funds and other Association assets;

(c) Disbursal and withdrawal of Association funds in the manner specified by the Board; and

(d) Preparation and distribution of the financial statements for the Association required by the Restated Declaration.

6.4 **Resignation and Removal.** The Board may remove any officer from office either with or without cause. An officer may resign at any time by giving notice to the Board, the President or the Secretary. 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.

6.5 **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. This section shall not apply to any employee who may be appointed an officer of the Association.

6.6 **Delegation.** With Board approval, an officer may delegate his or her powers and duties to any committee, employee or agent of the Association, including, but not limited to the property manager.

ARTICLE 7 — BOOKS AND RECORDS

7.1 **Required Books and Records.** The Association shall maintain at its principal office:

7.1.1 Copies of the Governing Documents as last amended;

7.1.2 Adequate and correct books and records of account;

7.1.3 Written minutes of the proceedings of its Members, of its Board, and of committees of its Board (excluding executive session minutes and all executive session agendas); and

7.1.4 A membership register containing each Member's name, mailing address and voting rights.

7.2 **Inspection Rights.** The above books and records shall be made available for inspection as follows:

7.2.1 The Association shall make available Association records and enhanced Association records for the time periods and within the time frames provided in *Civil Code* §5200, *et seq.*, as amended from time to time, or any successor statute thereto ("Statutory Inspection Rights") for inspection and copying by a Member of the Association or the Member's representative designated in writing to the Association. For purposes of this Section, the terms "association records" and "enhanced association records," as well as the fees that the Association can charge for said records shall be in accordance with the Statutory Inspection Rights. The Association may withhold or redact information from the Association records and enhanced association records consistent with the Statutory Inspection Rights.

7.2.2 Every director shall have the absolute right to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association at any reasonable time.

ARTICLE 8 — NONLIABILITY AND INDEMNIFICATION

8.1 **Limitation on Liability of Association's Directors and Officers.** No directors, committee members or officers of the Association (collectively and individually referred to as the "Released Party") shall be responsible to any Owner, or 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 for repair, replacement and maintenance of Association Property 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 Unit 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/her/its own willful or wanton act or gross negligence. It is the intent of this Section to provide volunteer directors and officers with protection from liability to the full extent permitted by California *Civil Code* Section 5800, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the *Civil Code* shall prevail.

8.2 **Indemnification of Association.** Each Owner shall be liable to the Association for any damage to the Association Property caused by the negligence or willful misconduct of the Owner or his/her/its family, guests, invitees or lessees. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring within any Unit owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose negligence or willful misconduct caused or contributed to the injury or damage. This Section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this Section.

8.3 **Indemnification by Association of Directors, Officers, Employees and Other Agents.** To the fullest extent permitted by 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(2).

8.4 **Approval of Indemnity by Association.** 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.

8.5 **Advancement of Expenses.** To the fullest extent permitted by 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 Sections 8.2 and 8.3 of this Article in defending any proceeding covered by those Sections 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.

8.6 **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of its directors, officers, 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 — AMENDMENTS

These Restated Bylaws may be amended by the vote or written consent of an affirmative vote of at least fifty percent (50%) plus one vote of all Members of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of these Restated Bylaws shall not be less than the percentage of affirmative votes prescribed for action to be taken under that specific clause or provision. An addition or amendment to this document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Notwithstanding the above, if the Restated Bylaws include a reference to a *Civil Code* or *Corporations Code* section that has been renumbered by the Legislature, then the Board of Directors may adopt a Board resolution to amend the Restated Bylaws to correct the technical statutory cross reference within the Association's Restated Bylaws and, thereafter, distribute a corrected Restated Bylaws to the membership.

CERTIFICATION

We, the undersigned, do hereby certify:

That we are the duly elected officers of Americana Gardens Homeowners Association, Inc.
a California Nonprofit Mutual Benefit Corporation.

That the foregoing Restated Bylaws constitute the Restated Bylaws of the Association, as duly
adopted by the vote or written consent of at least a majority of the voting power of the Members.

IN WITNESS WHEREOF, we have subscribed our names on the date hereunder written.

Americana Gardens Homeowners Association,
a California Nonprofit Mutual Benefit Corporation

Dated: _____

By: _____
President

Dated: _____

By: _____
Secretary