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**TOWN HALL DRAFT**

**SECOND RESTATED BYLAWS**

**FOURTH WALNUT CREEK MUTUAL  
a California nonprofit mutual benefit corporation**

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DRAFT

**SECOND RESTATED BYLAWS**  
**FOURTH WALNUT CREEK MUTUAL**  
a California nonprofit mutual benefit corporation

By this instrument, the Members of the Mutual hereby fully amend and restate, in their entirety, all previous bylaws, as well as all amendments to those bylaws, and substitute in their place these Bylaws.

**ARTICLE 1: DEFINITIONS**

- 1.1 “Board” or “Board of Directors” means the Board of Directors of the Mutual.
- 1.2 “Bylaws” means the Mutual’s bylaws.
- 1.3 “CC&Rs” means the Mutual’s declaration as the term is defined in the Davis-Stirling Act.
- 1.4 “Davis Stirling Act” means and refers to the Davis-Stirling Common Interest Development Act, which is the portion of the California Civil Code beginning with Section 4000, that governs common interest developments.
- 1.5 “Development” has the same meaning as such term is defined in the Mutual’s CC&Rs.
- 1.6 “Director” means any member of the Mutual’s Board of Directors.
- 1.7 “Inspector of Election” means an inspector of elections as defined in the Davis-Stirling Act.
- 1.8 “Member” means a Member of the Mutual as defined in the Mutual’s CC&Rs.
- 1.9 “Mutual” means the Fourth Walnut Creek Mutual, a California nonprofit mutual benefit corporation.
- 1.10 “Quorum” means a quorum of the Membership as defined hereinafter.
- 1.11 “Separate Interest” means a separate interest as defined in the Mutual’s CC&Rs.

**ARTICLE 2: MEMBERSHIP**

2.1 Membership. Each person or entity automatically becomes a Member of the Mutual upon obtaining a publicly-recorded fee title ownership interest in a Separate Interest and remains a Member until they cease to have such recorded fee ownership of a Separate Interest in the Development. Members are subject to the terms and provisions of the Articles of Incorporation, the CC&Rs, these Bylaws, and the Policies (“Policies”).



2.2 Membership in the Foundation. Membership in the Foundation and the voting rights and privileges of members of the Foundation shall be as prescribed in the Foundation's governing documents, as amended from time to time. No Member shall transfer any membership and/or interest in the Foundation except in compliance with the provisions of the Foundation's governing documents. Membership in the Foundation is distinct from membership in the Mutual and shall be as determined by the Foundation.

2.3 Relationship to Foundation. The Development is one of many common interest developments (collectively, "the Rossmoor developments") located within a senior citizen housing community known as "Rossmoor." The Rossmoor developments are managed and operated by various associations known within Rossmoor as "mutuals." The mutuals (including Fourth Walnut Creek Mutual) are beneficiaries under a certain trust agreement. The Foundation is the trustee under the trust agreement. By the terms of the Foundation's articles of incorporation and the trust agreement currently in effect, the primary purpose of the Foundation is to act as trustee with respect to all land and improvements owned by the Foundation and to provide services and furnish community facilities to the mutuals and for the benefit of the residents of the Rossmoor developments. Among other things, the Foundation is required by the trust agreement to collect for the costs of such services and facilities, such costs to be allocated pro rata among the mutuals that are the beneficiaries under the trust based on the number of Manors of the respective mutuals. The portion of these costs of the Foundation allocable to the Mutual are included as a component of the Annual Assessment imposed by the Mutual, as provided in the Declaration.

2.4 Proof of Ownership. If the Board requests proof of record fee ownership of a Separate Interest, the Member must provide such proof in the form of a recorded deed.

2.5 Suspension of Membership Privileges. The Mutual is permitted to suspend Membership rights and privileges, except voting rights, as provided for in these Bylaws.

### **ARTICLE 3: MEMBERSHIP MEETINGS**

3.1 Generally.

- a. Annual Meetings. The Mutual shall hold an annual meeting each year (1) to count ballots for the election of Directors at the expiration of the corresponding Director's term and at least once every four years, (2) to announce the outcome of the Director election by membership vote, and (3) to conduct any other Mutual business. Such meetings may include ballot counting for other types of elections as well.
- b. Special Meetings. Special meetings may be called for any lawful purpose by any of the following: (i) President of the Mutual, or (ii) majority of a quorum of the Board. In addition, special meetings of Members for any lawful purpose may be called by five percent (5%) or more of the Members, or as otherwise required by law. If a special meeting is called by Members of the Mutual, the request must be submitted to the Board in writing, specifying the nature of the business to be

transacted. The Director or officer receiving the request must promptly deliver the request to the remaining Directors.

c. Date, Time, and Location of Meetings.

- i. Selected by the Board. The Board is permitted to set the date and hour to hold annual meetings. However, the annual meeting must be held in the same month as the preceding annual meeting if it is reasonably practical to do so, but not more than fifteen (15) months from the date of the preceding annual meeting.
- ii. Selected by the Membership. If the date, time and/or location of a membership meeting selected by petitioning Members is unreasonable or contrary to the governing documents and/or statutory requirements, the Board is empowered to reschedule the date, time and/or location to something reasonable, relatively close to the original date, time and location requested by the Members calling the meeting, and compliant with the governing documents and statutory requirements.
- iii. Location of Membership Meetings. Annual and special membership meetings will be held at a suitable location in or reasonably close to the development.

3.2 Notice Requirements.

- a. Notice of Annual Meetings or Special Membership Meetings Called by the Board. Except where one or more different periods are required by superseding provisions of the Davis-Stirling Act, notice of annual meetings or special membership meetings called by the Board must be given not less than ten (10) days nor more than ninety (90) days before the date of the meeting.
- b. Notice of Special Meetings Called by Petition of the Members. Notice of special meetings called by the Members must be given by the Board within twenty (20) days of the Board's receipt of such request. If the Board fails to give notice, the persons calling the special meeting may give notice consistent with these Bylaws and the law. Member-initiated special membership meetings must be held not less than thirty-five (35) days nor more than one hundred and fifty (150) days following the Board's receipt of the request.
- c. Notice for Ballot-Counting Meetings. If secret ballots are to be counted at a Membership meeting or Board meeting, at least thirty (30) days' notice, or any longer period of notice required by the Bylaws or the Davis-Stirling Act, must be given to every Member before the voting deadline.

- d. Notice Contents and Other Requirements.
- i. Generally. The notice must specify at least the place, date, and time of the meeting.
  - ii. Special Membership Meetings. In the case of a special membership meeting, the notice must include the general nature of the business to be transacted as specified by those persons calling the meeting. No other business may be transacted except as specified in the notice.
  - iii. Annual Membership Meetings. In the case of the regular annual meeting, the notice must include those matters which the Board intends to present for action by the Members. When the authorized Quorum for a regular membership meeting is less than one-third of the voting power, then only matters, the general nature of which was given in the notice, may be voted upon. Otherwise, any proper matter may be presented at the meeting.
  - iv. Membership Meetings Conducted Entirely By Electronic Means. A membership meeting may be conducted entirely by electronic means, without any physical location being held open for the attendance of any Director or Member, if all notices and other conditions required in Civil Code §5450 are met. If the conditions of Civil Code §5450 cannot be met or do not apply, membership meetings may still be conducted by electronic means if the notice requirements of Corporations Code §7511 and the meeting requirements of Corporations Code §7510(a) and (f) are met.
- e. Delivery Requirements. Notice of any membership meeting must be delivered as follows:
- i. Method of Delivery. Either personally, by electronic transmission (when consented to by the Member and not revoked), by first-class mail, charges prepaid, or by any other means permitted by law.
  - ii. Location of Delivery. To the Member: (a) at the Member's preferred delivery method, and, if specified, the Member's alternate or secondary delivery method as specified in a written notice provided by the Member to the Mutual pursuant to Civil Code §4041(a); or (b) if the Member fails to provide such notice, the last mailing address provided in writing by the Member; or (c) if none of the above, the property address of the Member's Separate Interest.
  - iii. Delivery Deemed Given. Notice of a membership meeting is deemed given when delivered personally, deposited in the mail, or upon completion of electronic transmission to those Members who have consented to same.

3.3 Chair and Secretary of Meeting. The President of the Board or, in the President's absence, the Vice President or any other person designated by the Board must call the membership meeting to order and must chair the meeting. The Secretary of the Board must act as Secretary. In the absence of the Secretary, the presiding Officer must appoint someone to serve as acting Secretary for the meeting.

3.4 Recording of Meetings. Audio and video recording of membership meetings are prohibited by anyone other than a person authorized by the Board to record the meetings for the sole purpose of preparing official Mutual minutes.

#### **ARTICLE 4: VOTING RIGHTS**

4.1 Number of Votes. For each matter submitted to the Membership for a vote, Members are entitled to one (1) vote for each Separate Interest (regardless of the number of Members having an interest in the Separate Interest). The Mutual may not suspend the voting rights of Members.

4.2 Co-Owners. Where there is more than one owner of a Separate Interest subject to the Mutual's CC&Rs, all such Co-owners are Members and may attend any meeting of the Mutual, but only one Co-owner is entitled to exercise a vote to which the Separate Interest is entitled. Fractional votes are not permitted. In the event more than one ballot is cast for a particular Separate Interest on the same matter, only the first ballot received will be opened and counted.

4.3 Proof of Membership. No person or entity may exercise the rights of membership without an ownership interest in a Separate Interest subject to the Mutual's CC&Rs. If the Board requests proof of ownership, the required proof is a recorded deed showing the required ownership or, if the property was transferred within the past thirty (30) days and a copy of the newly-recorded deed is not yet available, a completed escrow closing statement is sufficient.

4.4 Presumption of Consent. Unless the Inspector(s) of Election receive a written objection prior to the close of balloting from a co-owner, it is conclusively presumed that a voting owner acted with the consent of their co-owners.

4.5 Voting for Properly Nominated Candidates; No Write-In Candidates. Members must vote only for those candidate(s) who have been properly nominated prior to the close of nominations. Write-in candidates shall not be permitted.

4.6 Electing Board Seats with Different Terms. In any election where different Board seats to be filled have different terms, the elected candidate(s), in the order of the most votes received, will fill the longest terms available first.

4.7 Record Date. For Membership elections where written ballots are used, the record date for voting in the election will be the first date any ballots are distributed to the Membership. However, if a ballot-counting meeting (whether a Membership meeting or a Board meeting) for a Membership election is adjourned, the Board may establish a new record date and if so, must

give notice of the adjourned meeting to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting. Only Persons who are/were Members on the original or new record date are entitled to vote for their respective Separate Interest(s). Nothing in this subsection permits the casting of more than one ballot for each Separate Interest. Persons acquiring title on other than a record date may attend the ballot-counting election meeting but are not entitled to vote. For any Membership election where a written ballot is not used, the Board is permitted to set a record date for an election no more than sixty (60) days before the date of the election meeting.

4.8 Proxies. Proxy voting is not permitted.

4.9 No Cumulative Voting. Cumulative voting is not permitted.

4.10 Quorum. Unless otherwise provided by law or these Bylaws, the Quorum requirement for membership meetings or elections is twenty percent (20%) of the voting power of the Mutual, with the following exceptions: (i) there is no Quorum required for the election of Directors, and (ii) there is no Quorum required for the annual meeting of the Members unless a vote of the Members is required, in which case the Quorum requirements set forth elsewhere in these Bylaws shall apply. A Quorum may be represented by any combination of Members physically present, virtually present by electronic video screen communication, conference telephone, or other means of remote communication, as permitted by Corp. Code §7511(a), and/or present by casting a ballot as set forth in Civil Code §5115(d). Under the Davis-Stirling Act, the Quorum for an election to approve an assessment increase is more than fifty percent (50%) of the members.

4.11 Lack of Quorum and Adjournment. In the absence of a Quorum at the beginning of a membership meeting, no business may be transacted, except to adjourn the meeting to another date and time by the vote of at least a majority of the Members represented at the meeting. However, excepting only the circumstances described in the first sentence of this paragraph, a ballot-counting meeting for a Membership election, whether conducted at a Membership meeting or a Board meeting, may be adjourned to another date and time selected by vote of the Board of Directors. The date of any adjourned ballot-counting or other meeting must be announced by the Board at the Membership or Board meeting, and written notice of the date, time, and place the adjourned meeting must be given to the Members within the notice period required by law. Any adjournment must be to a date not less than five (5) days nor more than thirty (30) days from the date the original meeting was called.

4.12 Loss of Quorum. The Members present at a duly called membership meeting at which a Quorum is initially present may continue to transact business until adjournment, notwithstanding the loss of a Quorum, so long as the business must be approved by enough Members to constitute at least a majority of a Quorum had a Quorum been present.

4.13 Approval Requirements.

a. Generally. The approval requirement for all matters decided by the Membership is the affirmative vote of a majority of the votes represented and voting in a duly

held election in which a Quorum is represented, which affirmative votes also constitute a majority of the required Quorum, unless otherwise specified in these Bylaws or the CC&Rs.

- b. By Ballot. Approval by written ballot (secret or non-secret) is valid only when: (i) the number of votes cast by ballot by the specified deadline equals or exceeds the Quorum (if any) required to be present at a meeting authorizing the action; and (ii) the number of votes cast equals or exceeds the number of votes that would be required to approve the action at a meeting.

## **ARTICLE 5: NOMINATIONS**

5.1 Nomination Procedures and Notice. Prior to the election of Directors, the Board must, by written notice to all Members, solicit nominees. The solicitation must specify the qualifications for candidates for the Board the procedure and deadline for submitting a nomination. The deadline must be at least thirty (30) days after giving notice or otherwise as provided by law. Delivery of the solicitation must be by general notice or, if individual notice is requested by a Member before the solicitation is given, by individual notice, pursuant to Civil Code §4040. Nominees must be listed as candidates on the ballot provided (i) they meet candidate and Director qualifications and (ii) their nomination is made prior to the date and time set for the close of nominations.

5.2 Self-Nomination. Any qualified person may nominate themselves for election to the Board of Directors by submitting to the Mutual a written statement signed and dated by the person nominating themselves on or before the deadline for submitting a nomination. The Mutual may accept candidate statements and may establish the criteria and deadlines for such statements in the Mutual's election rules consistent with these Bylaws and the law.

5.3 Floor Nominations and Write-In Candidates. Once nominations have been closed, no write-in candidates are allowed on ballots and no floor nominations of candidates can be made at the ballot-counting meeting.

5.4 Election by Acclamation (Uncontested Elections). When, as of the deadline for submitting nominations provided for in Civil Code §5115(a), the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the Mutual may, but is not required to, consider the qualified candidates elected by acclamation if all the conditions set forth in Civil Code §5103 are met.

## **ARTICLE 6: DIRECTOR ELECTIONS**

6.1 Number and Term of Directors. The Board will consist of five (5) Directors. The term of each Director is two (2) years and until a qualified successor is elected to fill their seat. Three (3) Directors will be elected in even-numbered years and two (2) Directors will be elected in odd-numbered years.

6.2 Candidate and Director Qualifications. Members must meet the qualifications in the subsections hereafter to be eligible for nomination as a candidate for, or to serve as a Director on, the Board.

- a. Candidates Must Be Members. The Mutual must disqualify the nomination of a candidate who is not a Member of the Mutual at the time of nomination. Proof of membership must be a recorded deed. Persons holding a fee simple interest in a Separate Interest merely as security for the performance of an obligation are not eligible to either be a candidate for or to serve on the Board. In the case of a Member that is an entity, an officer, director, principal, or authorized representative of the entity must be designated as a candidate or for service as a Director by the entity in writing.
- b. Prior Ownership for One Year. To be eligible for nomination and/or to serve on the Board, a candidate for the Board or serving Director must be the record Owner of a Separate Interest for a period of at least one year.
- c. Member in Good Standing. To be eligible for nomination and/or to serve on the Board, a candidate for the Board or serving Director must not be delinquent by sixty (60) days or more in the payment of any regular or special Assessment, except:
  - i. A person may not be disqualified from nomination for nonpayment of fines, fines characterized as assessments, collection charges, late charges or costs levied by a third party.
  - ii. A person may not be disqualified from nomination because the person has paid the regular or special assessment under protest.
  - iii. A person may not be disqualified from nomination due to delinquent assessments if the person has entered into a payment plan with the Mutual pursuant to Civil Code §5665 and is fulfilling the terms of the payment plan.
- d. Co-Owners Eligible for Only One Position. To be eligible for nomination and/or to serve on the Board, a candidate or person serving on the Board must not have a record fee simple ownership interest in a Separate Interest which is part of the Development with another person concurrently serving as a Director. Where two or more co-owners concurrently seek election to the Board, only the first nomination will be effective.
- e. Criminal Conviction. The Mutual may disqualify a candidate or Director that discloses, or if the Mutual is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the Mutual from purchasing the insurance required by Civil Code §5806 or terminate the Mutual's existing insurance coverage required by Civil Code §5806 as to that person. Each

nominee, at the time of nomination, shall disclose the existence of any past criminal conviction, with sufficient details to allow the Board to determine whether the criminal conviction will prevent the Mutual from purchasing the required insurance coverage or result in the termination of such insurance coverage.

- f. Internal Dispute Resolution. Before any candidate for nomination or serving Director may be disqualified, the candidate must be provided the opportunity to engage in internal dispute resolution as provided in the Davis-Stirling Act.

6.3 Trusts. If title is held in the name of one or more trustees, subject to a trust, a sole trustee or one of several trustees is permitted to be a candidate for a position on the Board or to serve on the Board subject to all qualifications and/or requirements of the Mutual's governing documents and/or the law.

## **ARTICLE 7: REMOVAL OF DIRECTORS**

7.1 Removal of Director by the Board. By vote at a duly noticed meeting of the Board, a majority of the Board may declare vacant the office of any Director for any of the reasons listed below. However, before any such removal may occur, the Board must, at its next open meeting or a special open meeting called for this purpose, review evidence and make a finding of whether the Director should be removed and, if the Board makes such finding, the Board may remove the Director from the Board and, if so, must record its findings and action in the minutes of the meeting.

- a. The Director ceases to meet the qualifications for election of a Director.
- b. The Director has been declared of unsound mind by a final order of court.
- c. The Director has been absent from more than three (3) consecutive regular meetings of the Board or more than four (4) regular meetings within any twelve (12) month period.
- d. The Director has allowed a proposed contract or other transaction to be put to a vote by the Board or membership without disclosing that they will receive a financial benefit from the transaction.

7.2 Removal of Directors by Membership. The entire Board, or any individual Director, may be removed from office by the affirmative vote of a majority of a Quorum of the Members. The successors to Directors removed by the Membership must be elected by the Membership. After a successful election to remove the Board or one or more directors, if less than a quorum of the Board remains, a Membership election to fill all vacancies must be conducted at the earliest possible opportunity and the removed Board or Director(s) will continue to serve until replaced at an election of the Membership. Such replacement election may be conducted simultaneously with the removal election as long as the timing of the elections is



consistent with the law. Ballots for the replacement election may only be counted if the removal election is successful.

7.3 Resignation. Any Director may resign by giving notice to the President, the Secretary, or the Board. The resignation will take effect upon the giving of the notice unless a later time is specified in the notice. If the resignation is effective at a future time, the resigning Director may participate in the selection of a successor to fill the vacated seat.

7.4 Vacancies. Vacancies created other than by removal by the Members may be filled by the designation of a majority of the remaining Directors, except, if there are less than a quorum of Directors, vacancies may be filled by the unanimous designation of the remaining Directors. If the remaining Directors are unable to so designate a qualified Member to fill the vacancy, the Board may notice a special election for Members to elect replacement Directors. Each Director so appointed or elected holds office until the end of his/her predecessor's term.

## **ARTICLE 8: INSPECTOR(S) OF ELECTION**

### 8.1 Selection.

- a. Process. Prior to the date ballots are first sent out, the Board of Directors must, at an open meeting of the Board, select either one (1) or three (3) Inspector(s) of Election.
- b. Eligible Inspector(s). The Board may select as Inspector(s) of Election, any person or entity or subdivision of a business entity not currently employed or under contract to the Mutual. Eligible Inspectors include, but are not limited to:
  - i. Poll Workers. A volunteer poll worker with the County Registrar of Voters;
  - ii. Accountants. A licensee of the California Board of Accountancy, not under contract to the Mutual;
  - iii. Notary Public. A notary public commissioned by the California Secretary of State;
  - iv. Mutual Members. Members of the Mutual, but not: (i) members of the Board, (ii) candidates for the Board, (iii) persons related to a member of the Board, or (iv) persons related to a candidate for the Board;
  - v. Professional Inspectors. Third party persons or entities who provide professional election services who contract with the Mutual solely to serve as an Inspector of Election.

### 8.2 Duties. Duties of Inspector(s) of Election include the following:

- a. Membership. Determine the number of memberships entitled to vote and the voting power of each.
- b. Closing and Reopening of Polls. Determine when the polls close, including any desired extensions of the voting period, and determine whether to reopen the polls to allow Members to cast ballots if the polls were previously closed, all consistent with the Mutual's other governing documents.
- c. Receive Ballots. Receive all ballots. Once received by an Inspector of Election, ballots are irrevocable.
- d. Custody. Sealed ballots, signed voter envelopes, voter list, and candidate registration list shall at all times be in the custody of the Inspector(s) of Election or at a location designated by the Inspector(s) until after the tabulation of the vote, and until the time allowed by Civil Code §5145 for challenging the election has expired, at which time custody shall be transferred to the Mutual. No person, including a Member of the Mutual or an employee of the management company, is permitted to open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The Inspector(s) of Election or the Inspector(s) appointee(s) may verify the Member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated and, on request of the Board of the Directors, will share such information with the Board to allow it to solicit votes when necessary or desirable.
- e. Challenges. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. If there is a recount or other challenge to the election process, the Inspector(s) of Election must make the ballots available for inspection and review by a Mutual Member or the Member's authorized representative, upon written request. A Mutual Member may authorize a representative to review the ballots on his or her behalf. Any recount must be conducted in a manner that preserves the confidentiality of the vote.
- f. Counting Ballots. Count and tabulate all votes. All votes must be counted and tabulated by the Inspector(s) of Election or the Inspector(s) appointee(s) in public at a properly noticed open meeting of the Board of Directors or Members or, if the ballot counting and tabulation is conducted by video conference, as permitted by Civil Code §5450, the camera must be placed in a location to allow Members to witness the Inspector of Election doing so. During in-person ballot counting and tabulating, candidates and Members may witness, but not interfere with, the counting and tabulation of the ballot and must remain at least six (6) feet away from the Inspector(s) and their appointee(s) at all times.
- g. Appoint Assistants. Appoint and oversee additional independent third parties to verify signatures, and to count and tabulate votes as the Inspectors of Election deem appropriate provided that such persons are independent third parties.

- h. Results. Determine the tabulated results of the election.
- i. Impartiality. Perform all duties impartially, in good faith, to the best of the ability of the Inspector(s) of Election, as expeditiously as is practical, and in a manner that protects the interests of all Members of the Mutual. Any report made by the Inspector(s) of Election is *prima facie* evidence of the facts stated in the report.
- j. Miscellaneous. Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Civil Code, the Corporations Code, the Mutual's governing documents, and all applicable rules of the Mutual regarding the conduct of the election that are not in conflict with the Civil Code.

8.3 Removal. The Board has the power to remove any Inspector(s) who cease(s) to meet the required qualifications, are unable or unwilling to perform their duties, or for any other good reason, and to appoint one or more replacement Inspectors.

## **ARTICLE 9: ACTION BY BALLOTS**

9.1 Secret Ballots. The use of secret ballots is only necessary when required by law. When secret ballots are not required by law, elections may be conducted by secret ballot, non-secret written ballot, or any other method permitted by law. Any action which may be taken at any meeting of Members may be taken without a meeting (except to count ballots, which can be done at either a Membership meeting or a Board meeting) if the Mutual distributes a secret written ballot to every Member entitled to vote on the matter.

9.2 Power of Attorney. The Mutual cannot deny a ballot to a person with general power of attorney for a Member. The ballot of a person with a general power of attorney must be counted if timely returned.

9.3 Pre-Ballot Notice. For Director and recall elections only, at least thirty (30) days before the ballots are distributed, the Mutual must provide general notice (or individual notice to a Member who requested it) which includes:

- a. The date, time and physical address to mail or hand deliver ballots to the Inspector(s);
- b. The date, time and location of the ballot counting meeting; and
- c. A list of candidates to appear on the ballots.

9.4 Candidate List and Voter List. The candidate list must include the name and address of individuals nominated as a candidate for election to the Board of Directors. The voter list must 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. The Mutual must retain, as Mutual election materials, both a candidate registration list and a voter list.

9.5 Verification of Lists. The Mutual must permit Members to verify the accuracy of their individual information on the candidate registration list, if applicable, and the voter list at least thirty (30) days before the ballots are distributed. The Mutual or Member must report any errors or omissions to either list to the Inspector(s) of Election who must make the corrections within two business days. Reports of any errors or omissions should be made early enough to allow for corrections to be made before the ballots are distributed.

9.6 Ballot Package. All secret ballots mailed or otherwise delivered to the membership must include a double-envelope system and voting instructions for completing and returning the secret ballots as provided for in the Davis-Stirling Act. Ballots seeking approval to amend or restate governing documents must be delivered to the Members with the text of the proposed amendment.

- a. Secret Ballot – Generally. Secret ballots must be marked to indicate the Member's selections, if any. Blank ballots will still count toward Quorum requirements. Secret ballots do not require a signature but are not invalidated by Member signatures.
- b. Secret Ballot – Content. Ballots must: (i) set forth the proposed action; (ii) provide an opportunity to approve or disapprove each item submitted for a vote; (iii) set forth the number of ballots needed to satisfy the Quorum requirement, if any; (iv) specify the percentage of votes required to pass the proposal; (v) state a deadline by which the ballot must be returned to be counted; and (vi) in the case of a Director election, the candidates' names identified in the pre-ballot notice.
- c. Inner Envelope. The Mutual will provide two envelopes. To preserve secrecy, the secret ballot is to be placed within an inner envelope with no identifying information. However, extraneous information written on the inner envelope by a Member will not invalidate the ballot. The inner envelope containing the secret ballot is to be placed into a second outer envelope containing identifying information.
- d. Outer Envelope. In the upper left-hand corner of the outer envelope containing a secret ballot, the voting Member must sign his/her name and indicate (print, type, etc.) his/her name and the address entitling the voter to vote. The outer envelope must be addressed to the Inspector(s) of Election.
- e. Delivery. The completed outer envelope containing the inner envelope and ballot may be (1) mailed by first-class mail to the address on the outer envelope or hand-delivered to the Inspector(s) of Election as specified on the pre-ballot notice or, (2) where there is no pre-ballot notice, as specified in the voting instructions. Delivery must be made to every Member entitled to vote at least thirty (30) days before the initial voting deadline. Any Member may request a receipt for delivery.

9.7 Extended Voting Deadline. The Inspector may reopen the polls and extend the voting deadline to allow additional balloting to achieve a Quorum or to permit additional

participation by the Members in an election when desirable or appropriate. If the voting deadline is extended, the Board is empowered to adjourn the ballot-counting meeting to a date at or beyond the extended voting deadline and Members who have not previously voted may do so up to the extended voting deadline.

9.8 Election Rules. At least thirty (30) days before the voting deadline, the Inspector(s) of Election must deliver, or cause to be delivered, the election rules to all Members. Such rules may be delivered (1) by individual delivery (Civil Code §4040) or (2) by posting the rules on an internet website and including the website address (URL) on the ballot with the phrase, in at least 12-point font: “The rules governing this election may be found here:”

9.9 Counting Ballots. Inspectors of election must oversee the opening and tabulating of all ballots before the membership at a properly noticed open meeting of the Board or membership as provided for in these Bylaws and the election rules. No person is permitted to open or otherwise review any ballot prior to the time and place at which the ballots are opened and counted.

## **ARTICLE 10: POST-ELECTION RESULTS**

10.1 Breaking a Tie. In the event of a tie leaving the outcome of the election unresolved, the following will apply:

- a. The Inspector(s) of Election, and any designees, will immediately conduct a recount of the ballots. If there is a charge, the Mutual will bear the expense. Members may observe the recount under the same conditions as the original ballot counting.
- b. Following the immediate recount, if the tie remains, all other newly elected Directors will immediately begin serving their terms. An incumbent Director whose seat was tied will continue in office until a runoff election determines the winner for his/her seat. Only candidates who tied for the seat will be in the runoff.
- c. In lieu of a runoff and if the tied candidates agree, the winner may be decided by a coin toss or the drawing of names by the Inspector(s) of Election.

10.2 Results of an Election. The tabulated results of the election must be announced immediately after all the ballots have been counted. The tabulated results of the election must be promptly reported to the Board of Directors and must be recorded in the minutes of the next Board meeting. Within fifteen (15) days of the election, the Board must publicize the tabulated results of the election in a communication directed to all Members.

10.3 Handling and Storage of Election Materials after the Election. The sealed ballots, signed voter envelopes, voter list, and candidate registration list shall at all times be in the custody of the Inspector(s) of Election or at a location designated by the Inspector(s) until after the tabulation of the vote, and until the time allowed by Civil Code §5145 for challenging the

election has expired, at which time custody must be transferred to the Mutual. The Mutual must maintain Mutual election materials for one year after the election.

10.4 Election Recount or Other Challenge. If there is a recount or other challenge to the election process, the Inspector(s) of Election shall, upon written request, make the ballots available for inspection and review by a Mutual Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote. Election recounts, other than the automatic recount following a tie leaving the outcome of an election unresolved, will be conducted as follows:

- a. Any Member of the Mutual may demand a recount of the ballots provided (i) demand is made in writing to the Inspector(s) of Election within five (5) days after the election results have been announced, and (ii) the Member pays in advance for the estimated cost of the recount, which estimate will be provided by the Inspector(s) of Election. Monies advanced by the Member must be refunded if the outcome of the election is changed by the recount.
- b. The recount must be commenced within seven (7) days of the request for the recount and must be done by or under the supervision of the Inspector(s) of Election. If any Inspector of Election declines to perform the recount, the Board may appoint a replacement Inspector of Election, using the criteria specified in these rules and the replacement Inspector will assume custody of the ballots.
- c. Any recount may be observed by Members of the Mutual. No election materials may be touched or handled by any person without the express consent of the Inspector(s) of Election and under the supervision of the Inspector(s). The results of the recount must be reported to the Board of Directors and must be recorded in the minutes of the next Board meeting and reported to the membership.

## **ARTICLE 11: ROLE OF BOARD OF DIRECTORS**

11.1 Powers. The business and affairs of the Mutual is controlled by the Board. In addition to the powers and duties set forth in the Mutual's Governing Documents, the Board is empowered to perform any and all other acts that a nonprofit mutual benefit corporation is empowered to do in the administration of the Mutual's affairs and to protect and advance the general welfare of the Mutual.

11.2 Enactment of Rules, Regulations, and Policies. The Board may adopt, amend, and repeal Rules and Regulations (typically called "Policies") and establish a system of fines and penalties regarding any matter set forth in the Governing Documents, including, without limitation, (i) the use, occupancy, and maintenance of the Development, (ii) the general health, welfare, comfort, and safety of residents in the Development, (iii) the conduct of persons within the Development, (iv) the use of Common Areas, and (v) the interpretation and implementation of the Governing Documents. The Board must use the following procedure for adopting Rules and Regulations:

- a. Distribution to Members. The proposed Rules must be distributed to the membership at least twenty-eight (28) days (unless the law provides a different minimum and, if so, at least that number of days) before an open Board meeting at which the Board will vote on adopting the rules. The distribution must include a notice of the meeting and a description of the purpose and effect of the proposed Rules.
- b. Vote on Rules. At the scheduled Board meeting, the Board must vote on adoption, amendment, or repeal of the Rules after considering any comments received from Members on this issue.
- c. Approved Rules. Within fifteen (15) days of approving the Rules, the Mutual must distribute notice of the Rules change to the membership.
- d. Applicability. This Section applies only to Rules that relate to: (i) use of the Common Area, Exclusive Use Common Areas, or Separate Interests; (ii) architectural modifications by the Members, including procedures for architectural approval; (iii) Member discipline, including fine schedules and procedures for imposing discipline; (iv) standards for payment plans for Members' delinquent assessments; (v) dispute resolution procedures; and (vi) election procedures. This Section does not apply to: (i) Common Area maintenance; (ii) decisions on specific situations that are not intended to apply generally; (iii) assessment rates; or (iv) Rules changes or the issuance of other documents that are required by law or that repeat existing law or the Governing Documents if the Board has no discretion as to the substantive effect of the change.
- e. Member Vote to Reverse Rule Change. A rule change may be reversed by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a Quorum is present. A Rule which is reversed pursuant to this Section may not be re-adopted for one (1) year after the date of the membership vote reversing the rule change. However, the Board may at any time adopt a different Rule on the same subject as the Rule change that had been reversed.

11.3 No Compensation. No Officer or Director is permitted to receive compensation for services rendered to the Mutual. However, Officers and Directors may be reimbursed for actual expenses incurred in the performance of their duties. Any Officer or Director requesting reimbursement for expenses must provide appropriate documentation, such as a receipt, to the Board before being reimbursed by the Mutual.

11.4 Conflicts of Interest. The Mutual is not permitted to enter into any contract with any party in which any Officer or Director of the Mutual, the Manager, management company, or any employee of the Mutual has a direct or indirect economic interest in the contract without: (i) full disclosure of the interest to the Board; (ii) full disclosure of the interest in the minutes of the Board meeting where the discussion occurred; and (iii) recusal by the interested party from deliberations and voting on the issue.

11.5 Duty to Defend. The Mutual must indemnify and defend and must advance reasonable attorneys' fees and costs and all expenses and liabilities its Officers, Directors, Committee members, and employees reasonably incur in connection with any proceeding to which they may be a party by reason of having been an Officer, Director, Committee member, or employee of the Mutual. However, the Mutual may recover its attorneys' fees and costs from those persons who are adjudged to have acted in bad faith or in gross negligence in the performance of their duties or to be liable to the Mutual (unless the Court determines that the person is fairly and reasonably entitled to indemnity for expenses).

## **ARTICLE 12: MEETINGS OF THE BOARD**

12.1 Member Notice of Board Meetings. Members must be given an agenda and notice of the date, time, and place of open session Board meetings at least four (4) calendar days prior to the meeting and of executive session Board meetings at least two (2) calendar days prior to the meeting. The notice and agenda may be given by posting the notice in a prominent place or places accessible to all Members and which have been designated for the posting of notices by the Mutual in the annual policy statement, by mail or delivery of the notice to each Separate Interest, by newsletter, inclusion in a billing statement or other properly delivered document, by broadcast television programming, or as otherwise permitted in the Davis-Stirling Act. An emergency meeting of the Board may be called if there are circumstances that could not have been reasonably foreseen which require immediate attention by the Board. In such instances, the Board must give notice, as may be reasonable and practical.

12.2 Director Notice of Board Meetings. Notice of Board meetings must be given to each Director, at least four (4) calendar days prior to an open meeting or at least two (2) calendar days before an executive session meeting, to the address, phone number, fax number, or e-mail address listed on the Mutual's records for the Director.

12.3 Waiver of Notice. Notice of a meeting need not be given to a Director who (1) provided a waiver of notice or consent to holding the meeting or (2) provided an approval of the minutes thereof in writing, whether before or after the meeting, or (3) who attends the meeting without protesting the lack of notice to that Director, prior thereto or at its commencement. The waivers, consents and approvals referenced in this Section must be filed with the corporate records or made a part of the minutes of the meetings.

12.4 Place of Meetings. All meetings of the Board must be held at a place in or near the Development designated by the Board or at a suitable location in or reasonably close to the Development.

12.5 Regular Meetings. Meetings of the Board must be held at least once per quarter.

12.6 Special Meetings. Special meetings of the Board may be called by the President or by a majority of the Board. Such meetings may be held upon four (4) days' notice for open session meetings and upon two (2) days' notice for executive session meetings. In the event of an emergency, the Board may meet with less notice, but must post such notice to the membership and must note in the minutes of the meeting the reason why more notice could not be given.



12.7 Executive Sessions. Executive session meetings of the Board may be held as authorized by statute. Such purposes include but are not limited to: (i) litigation; (ii) the formation of contracts with third parties; (iii) Member discipline; (iv) personnel matters; (v) meeting with a Member to consider a payment plan for delinquent assessments; and (vi) to vote on the foreclosure of a delinquent assessment lien. Any matters considered in executive session must be generally noted in the minutes of the next meeting that is open to the membership.

12.8 Quorum of Directors. A majority of the number of Directors authorized in the Bylaws constitutes a quorum of the Board for the transaction of business. Directors may not attend Board meetings by proxy and may not vote by proxy.

12.9 No Action Outside Meetings. The Board is not permitted to take action on any “item of business” (as defined in the Davis-Stirling Act) outside of a Board meeting.

12.10 Adjournment of Board Meetings. A majority of the Directors present at a meeting, whether or not a quorum is present, may adjourn any Board meeting to a stated day and hour. If the meeting is adjourned for more than twenty-four (24) hours, before the adjourned meeting is held, notice of the adjournment must be given to Directors who were not present at the time of the adjournment.

12.11 Attendance by Members. Members are entitled to attend regular and special (non-executive session) meetings of the Board. A reasonable amount of time must be set aside during the meeting for Members to address the Board, as provided for in the Davis-Stirling Act.

12.12 Conduct of Board Meetings. The Board may establish Rules for the orderly conduct of its meetings. Board meetings must be conducted by the Mutual’s President or, in the President’s absence, an Officer or Director designated by the Board.

12.13 Teleconference. Directors and Members may participate in a Board meeting through the use of a conference telephone, electronic video screen, or similar communications equipment, so long as the meeting is conducted in a manner permitted in Civil Code §§4090, 4926, and 5450. Participation in a meeting pursuant to this Section by Directors or Members constitutes presence in person at such meeting. A Board meeting or meeting of the Members may be conducted entirely by teleconference, without any physical location being held open for the attendance of any Director or Member, if all of the conditions of Civil Code § 4926 are met.

12.14 Minutes of Meetings. Within thirty (30) days after the date of any meeting of the Board, the Board shall make available to the Members either: (i) the minutes of that meeting as adopted by the Board; (ii) those minutes as proposed for adoption which shall be marked to indicate draft status; or (iii) a summary of the minutes. Copies of the minutes, proposed minutes, or summary of minutes of any Board meeting (other than an executive session) shall be provided to any Member of the Mutual upon request and upon reimbursement of the Mutual’s costs in providing such copies. Members of the Mutual shall be notified annually in writing of their right to obtain copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

12.15 Recording of Meetings. Audio and video recording of meetings are prohibited by anyone other than a person authorized by the Board to record the meetings for the sole purpose of preparing official Mutual minutes.

## **ARTICLE 13: OFFICERS**

13.1 Number. The Officers are President, Vice President, Secretary, Treasurer, each of whom must be a Director, and such other Officers as the Board may designate. The President may not hold more than one (1) office; however, any two (2) of the remaining offices may be held by a single person.

13.2 Election of Officers. The Board must meet to select the Officers of the Mutual immediately after or as soon as practicable after the results of the election of Directors are announced. If the meeting of the Board for selection of Officers occurs at a separate meeting from the one where the Directors were elected, the Board must give notice to all Members, consistent with notice requirements. Notice of the organizational meeting must be given at the same time as the annual meeting. If the meeting is held immediately following the annual meeting, notice to the newly elected Directors is not necessary to legally constitute the meeting, provided that a majority of the Board is present.

13.3 Term of Office. Officers hold office at the pleasure of the Board. Officers must be appointed by the Board and will hold office until the annual election of Directors or such time as they resign, are removed, or are otherwise disqualified to serve. Within thirty (30) days of any election of Directors resulting in a change in the membership on the Board, the Board must reappoint Officers. The same persons may be appointed to the same offices.

13.4 Removal and Resignation. Any Officer may be removed at any time by the vote of a majority of all the Directors then in office, at any regular or special meeting of the Board at which a quorum is present. Any Officer may resign at any time by giving written or verbal notice to the Board. Any such resignation will take effect on the date the notice is given unless a later date is specified in the notice.

13.5 Vacancies. A vacancy in any office, because of death, resignation, removal, disqualification, or any other cause, must be filled in the manner prescribed in these Bylaws for regular appointments to such office.

13.6 President. The President is the principal executive Officer of the Mutual and, subject to the control of the Board, supervises, directs, and controls all of the business and affairs of the Mutual. The President presides at all meetings of the Board, has the general powers and duties of management usually vested in the office of the President of a corporation, and has such other powers and duties as may be prescribed by the Board or these Bylaws. The President acts as the spokesperson (or liaison) between the Manager and the Board unless the Board directs otherwise.

13.7 Vice President. In the absence or disability of the President, the Vice President must perform all duties of the President. The Vice President has such other powers and will perform such other duties as from time to time may be prescribed by the Board or these Bylaws.

13.8 Secretary. The Secretary must keep or cause to be kept in the management office: (i) minutes of all meetings of the Board and the membership; (ii) the names of all Members of the Mutual and their addresses; and (iii) such other records of the Mutual's affairs as may be necessary and proper. The Secretary must give or cause to be given notice of all meetings of the Members and of the Board that are required by the Bylaws or by law and has such other powers and performs such other duties as may be prescribed by the Board or by these Bylaws.

13.9 Treasurer. The Treasurer (or "Chief Financial Officer") must keep or cause to be kept accounts of the monies, properties, and business transactions of the Mutual. The Treasurer must cause to be deposited all monies and other valuables, in the name and to the credit of the Mutual, with such depositories, as may be designated by the Board. The Treasurer must cause to be disbursed the funds of the Mutual as may be ordered by the Board, must render to the President and Directors, whenever they request it, an account of the Mutual's transactions and the financial condition of the Mutual, which must be made a part of the minutes of Board meetings, and has such other powers and performs such other duties as may be prescribed by the Board or these Bylaws.

13.10 Assistant Treasurer and Assistant Secretary. The Board may appoint one (1) or more Assistant Treasurers and/or Assistant Secretaries, who need not be Members of the Mutual, to assist the Officers in their duties.

13.11 Parliamentarian. The Board may also appoint a Parliamentarian to advise it on matters of parliamentary procedure.

## **ARTICLE 14: COMMITTEES**

14.1 Establishment of Committees. The Board may establish Committees as it deems appropriate and necessary to advise and/or assist the Board in carrying out its duties. The Board is empowered to specify the task of each Committee, may limit the number of members of any Committee, may appoint non-Members to Committees, may limit the term of the Committee, and may appoint Committee chairpersons, who need not be Directors. Committee chairpersons may be appointed by the Board and, if not appointed, may be elected by members of the Committee.

14.2 Term of Office. Committees dissolve automatically at each annual meeting to be reappointed by the new Board at the Board's discretion. Individual Committee members and Committee chairs may be added or removed at any time by the Board, with or without cause.

14.3 Committee Authority. Except as may be otherwise provided in the Governing Documents, Committees are advisory only and have no authority to spend Mutual monies, enter into contracts, or direct Mutual personnel or vendors.

14.4 Member Comments. Each Committee must receive comments and complaints from Members on any matter within its field of responsibility. Committees must handle or dispose of such comments or complaints as they deem appropriate or refer them to any other Committee, Director, or Officer of the Mutual also involved in that matter or to the Board.

14.5 No Compensation. Committee membership is voluntary, and members are not permitted to be compensated for their services. However, Committee members are permitted to be reimbursed for reasonable expenses incurred in the performance of their duties.

14.6 Meetings. Committees must meet from time to time as may be necessary to perform their duties. Committees must make interim reports to the Board during the course of their task and must make a final report to the Board upon completion of their tasks.

14.7 Conflicts of Interest. No Committee member may participate in or make recommendations on any matter which involves a Committee member or a member of their own family or in which a Committee member or a member of their family has a direct or indirect financial interest.

14.8 Executive Committee. The Board may appoint Executive Committees as provided for by law.

## **ARTICLE 15: BUDGETS, RESERVES, AND FINANCIAL STATEMENTS**

15.1 Review of Accounts. The Board must do the following not less frequently than monthly, in accordance with the Davis-Stirling Act:

- a. Operating Accounts. Cause a current reconciliation of the Mutual's operating accounts to be made and to review the same.
- b. Reserve Accounts. Cause a current reconciliation of the Mutual's Reserve Accounts to be made and to review the same.
- c. Actual to Budget. Review the current year's actual revenues and expenses compared to the current year's budget for the Mutual's Operating and Reserve Accounts.
- d. Bank Statements. Review and cause to be reconciled the most current account statements prepared by the financial institution where the Mutual has its Operating and Reserve Accounts.
- e. Income and Expense Statements. Review an income and expense statement for the Mutual's Operating and Reserve Accounts.
- f. Register, Ledger, and Delinquencies. Review the check register, monthly general ledger, and delinquent assessment receivable reports.

15.2 Operating Budget. The Board must annually prepare an estimated operating budget for the next fiscal year. The budget must include the following, in accordance with the Davis-Stirling Act:

- a. Revenue and Expenses. The estimated revenue and expenses on an accrual basis;
- b. Reserves. A summary of the Mutual's Reserves, based upon the most recent review or study, which must be printed in bold type and include: (i) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component; (ii) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components; and (iii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components, as of the end of the fiscal year for which the study is prepared;
- c. Special Assessments. A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required in order to repair, replace, or restore any major component or to provide adequate Reserves therefor;
- d. Reserve Procedure. A general statement addressing the procedures used for the calculation and establishment of Reserves to defray the costs of future repair, replacement, or additions to those major components that the Mutual is obligated to maintain;
- e. Summary in Lieu of. In lieu of the distribution of the budget, the Board may elect to distribute a summary of the budget to all Members, with a written notice, in at least 10-point boldface type on the front page of the summary, that the budget is available at the business office of the Mutual or at another suitable location and that copies will be provided upon request, at the Mutual's expense;
- f. Revised Budget. If the Board, in its reasonable discretion, deems it necessary at any time during the course of its fiscal year to adjust or modify the budget, it may do so, and copies of the revised budget must be sent to all Members within thirty (30) days of its adoption by the Board.

15.3 Annual Review. An annual review of the financial statement of the Mutual must be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy. A copy of the review of the financial statement must be distributed to all Members within one hundred twenty (120) days after the close of each fiscal year.

15.4 Reserve Study. The Reserve study must be reviewed annually and at least once every three (3) years, the Board must cause a site-review study of the Reserve account to be performed. The study must, at a minimum, include:

- a. Major Components. Identification of those major components of the Common Areas which the Mutual is obligated to repair, replace, restore, or maintain;
- b. Remaining Life. Identification of the probable remaining useful life of the components, as of the date of the study;
- c. Cost to Repair or Replace. An estimate of the cost of repair, replacement, restoration, or maintenance of the components during and at the end of their useful life;
- d. Annual Contribution. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components during and at the end of their useful life, after subtracting total Reserve funds as of the date of the study;
- e. Reserve Funding Plan. A reserve funding plan that indicates how the Mutual plans to fund the annual contribution to meet the Mutual's obligations 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 must 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 must be adopted by the Board of Directors at an open meeting before the membership of the Mutual. If the Board of Directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase must be approved in a separate action of the Board.

15.5 Approval of IRS Resolution. A majority the Membership present at a Membership meeting may approve an IRS Resolution that any excess income for the current year will be applied to the next fiscal year, as provided by IRS Revenue Ruling 70-604 or any other applicable IRS Revenue Ruling. Neither written balloting (secret or non-secret) nor a Quorum is required for this approval.

## **ARTICLE 16: INSPECTION OF RECORDS**

16.1 Maintenance of Records. The Mutual must keep or cause to be kept records of the Mutual as follows:

- a. A membership register, setting forth all names, mailing addresses, and telephone numbers of the Members (as may be changed from time to time by written notice from the Member to the Board of Directors);
- b. The Mutual's books and records, membership lists, governing documents, minutes of meetings, and any other documents relevant to the Mutual must be kept in written form or any other form capable of being converted into clearly

legible paper form, and must be retained pursuant to the Mutual's document retention policy and applicable law;

- c. Financial records and books of account of the Mutual, including a chronological listing of all receipts and expenditures of funds and a separate account for each Assessment levied or charged against each Separate Interest or Member, the dates when so assessed and when due, the amounts paid thereon, and the balance, if any, of any Assessment remaining unpaid; and
- d. All other documents required to be made available to Members under this Article. Such additional documents must be kept for at least the time frame during which Members are entitled to inspect them, as stated below.

16.2 Records Subject to Inspection. The Mutual must make the following documents available for inspection and copying by any Member or a representative designated in writing by the Member:

- a. Any financial document or statement required to be distributed annually to Members;
- b. Interim unaudited financial statements, periodic or as compiled, containing any of the following, which must be prepared in accordance with Generally Accepted Accounting Principles: (i) balance sheet; (ii) income and expense statement; (iii) budget comparison; and (iv) general ledger, showing all transactions that occurred in Mutual's account over a specified period of time;
- c. Executed contracts, not otherwise privileged under law;
- d. Written board approval of vendor or contractor proposals or invoices;
- e. State and federal tax returns;
- f. Reserve account balances and records of payments made from reserve accounts;
- g. Agendas and minutes of meetings of the Members, the Board, and any Committees appointed by the Board; excluding, however, minutes, and other information from executive sessions of the Board;
- h. Check registers;
- i. The Mutual's Governing Documents;
- j. An accounting prepared pursuant to Civil Code §5520(b) or any successor statute;
- k. "Enhanced Mutual Records" which are defined as invoices, receipts and canceled checks for payments made by the Mutual, purchase orders approved by the Mutual, bank account statements for bank accounts in which assessments are

deposited or withdrawn, credit card statements for credit cards issued in the name of the Mutual, statements for services rendered, and reimbursement requests submitted to the Mutual, provided that the person submitting the reimbursement request is solely responsible for removing all personal identification information from the request;

- l. The Mutual's membership list, including each Member's name, property address, mailing address and email address, but not including information for members who have opted out under the Davis-Stirling Act. The Member requesting the list must state the purpose for which the list is requested which purpose must be reasonably related to the requester's interest as a Member. If the Mutual reasonably believes that the information in the list will be used for another purpose, it may deny the Member access to the list; and
- m. "Mutual Election Materials" which means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied.

16.3 Records Not Subject to Inspection. The following records are not subject to inspection:

- a. Executive session minutes of the Board;
- b. Personnel records (other than payroll records);
- c. Litigation files or records protected by the attorney-client privilege;
- d. Pending contracts;
- e. Legal invoices (however, Members do have the right to know how much money is being spent on legal matters);
- f. Records likely to lead to identity theft;
- g. Records likely to lead to fraud;
- h. Records reasonably likely to compromise the privacy of an individual Member (such as owner records, including goods or services provided to Members for which the Mutual received monetary consideration other than assessments);
- i. Disciplinary actions, collection activities, or payment plans of other Members;
- j. Personal information, including a social security number, tax id number, driver's license number, credit card account numbers, bank account number, or bank routing number; and



- k. Interior architectural plans for individual homes.

16.4 Limitation on Availability of Records. As provided for in the Davis-Stirling Act, Mutual records for the current fiscal year and for each of the previous two (2) fiscal years must be made available for inspection and copying. However, minutes of Member meetings, Board meetings, and meetings of Committees with decision-making authority must be permanently available for inspection and copying. All records are subject to redacting, as provided for by law.

16.5 Deadlines for Producing Records. Mutuals must produce records within the following time frames pursuant to the Davis-Stirling Act:

- a. Minutes of Member and Board meetings: within thirty (30) calendar days of the meeting;
- b. Minutes of Committees with decision making authority: within fifteen (15) calendar days following approval of the minutes;
- c. Records for the current fiscal year: within ten (10) business days from receipt of the request;
- d. Records for the previous two (2) fiscal years: within thirty (30) calendar days from receipt of the request;
- e. Any record or statement available pursuant to Civil Code §5300 (budget, reserves, lien policies, insurance, financial statement, etc.) or Civil Code §4525 (governing documents, assessments, violations, construction defects, etc.), or any successor statutes within the timeframes specified by statute;
- f. Membership list: within five (5) business days of the Mutual's receipt of a Member's written request.

16.6 Inspection and Copying Procedure. The Mutual must make the above Mutual records available for inspection and copying in the Mutual's business office within the Development. If the Mutual does not have a business office within the Development, the Mutual must make the specified Mutual records available for inspection and copying at a place agreed upon by the Member and the Mutual. If the Mutual and the Member cannot agree upon a place for inspection and copying, or if the Member requests, in writing, copies of specifically-identified records, the Mutual may mail copies of the requested records to the Member by first-class mail.

16.7 Redacting Information. The Mutual may withhold or redact information from the Mutual records, as provided for by law.

16.8 Sale and Use of Mutual Records. The Mutual records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. Neither the Mutual nor its managing agent shall (a) sell a member's personal information for any purpose without the consent of the

member or (b) transmit a member's personal information to a third party without the consent of the member unless required to do so bylaw, including, but not limited to, Civil Code §§5200 through 5240, inclusive.

16.9 Production Fees. The Mutual may bill the requesting Member, including a Director, for copying, redacting, and mailing the requested records as permitted by the Davis-Stirling Act.

## **ARTICLE 17: DISCLOSURES**

17.1 Distribution of Disclosures. The Board must distribute documents and disclosures described in this Article by individual delivery pursuant to Civil Code §4040. The annual budget report and annual policy statement must be made available to the members as a full report, or a summary of the report as provided for in Civil Code §5320.

17.2 Annual Budget Report. The Board must distribute an annual budget report thirty (30) to ninety (90) days before the end of its fiscal year including all of the following information:

- a. A pro forma operating budget, showing the estimated revenue and expenses on an accrual basis.
- b. A summary of the Mutual's reserves, prepared pursuant to Civil Code §5565.
- c. A summary of the reserve funding plan adopted by the Board, as specified in paragraph 5 of subdivision (b) of Civil Code §5550. The summary must include notice to members that the full reserve study plan is available upon request, and the Mutual must provide the full reserve plan to any member upon request.
- d. A statement as to whether the Board 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.
- e. A statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code §5560, 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 must also set out the estimated amount, commencement date, and duration of the assessment.
- f. A statement as to the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.

- g. 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 Mutual is obligated to maintain. The statement must include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (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.
- h. A statement as to whether the Mutual has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.
- i. A summary of the Mutual's property, general liability, earthquake, flood, and fidelity insurance policies. For each policy, the summary must include the name of the insurer, the type of insurance, the policy limit, and the amount of the deductible, if any. To the extent that any of the required information is specified in the insurance policy declaration page, the Mutual may meet its obligation to disclose that information by making copies of that page and distributing it with the annual budget report. The summary distributed pursuant to this paragraph must contain, in at least 10-point boldface type, the following statement:
- This summary of the Mutual's policies of insurance provides only certain information, as required by section 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 Mutual Member may, upon request and provision of reasonable notice, review the Mutual's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Mutual maintains the policies of insurance specified in this summary, the Mutual'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. Mutual Members should consult with their individual insurance broker or agent for appropriate additional coverage.
- j. A statement describing the status of the common interest development as a Federal Housing Administration (FHA)-approved condominium project pursuant to FHA guidelines, including whether the common interest development is an FHA-approved condominium project, as required by Civil Code §5300(b)(10).

- k. A statement describing the status of the common interest development as a federal Department of Veteran Affairs (VA)-approved condominium project pursuant to VA guidelines, including whether the common interest development is an VA-approved condominium project, as required by Civil Code §5300(b)(11).
- l. A copy of the completed “Charges For Documents Provided” disclosure identified in Civil Code §4528. For purposes of this Section, “completed” means that the “Fee for Document” section of the form individually identifies the costs associated with providing each document listed on the form.

17.3 Assessment and Reserve Funding Disclosure Summary Form. The Assessment and Reserve Funding Disclosure Summary form, prepared pursuant to Civil Code §5570, must accompany each annual budget report or summary of the annual budget report.

17.4 Annual Policy Statement. Within thirty (30) to ninety (90) days before the end of its fiscal year, the Board must distribute an annual policy statement that provides the members with information about Mutual policies. The annual policy statement must include all of the following information:

- a. The name and address of the person designated to receive official communications to the Mutual, pursuant to Civil Code §4035;
- b. A statement explaining that a member may submit a request to have notices sent to up to two (2) different specified addresses, pursuant to Civil Code §4040(b);
- c. The location, if any, designated for posting of a general notice, pursuant to Civil Code §4045(a)(3);
- d. Notice of a member’s option to receive general notices by individual delivery, pursuant to Civil Code §4045(b);
- e. Notice of a member’s right to receive copies of meeting minutes, pursuant to Civil Code §4950(b);
- f. The statement of assessment collection policies required by Civil Code §5730;
- g. A statement describing the Mutual’s policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments;
- h. A statement describing the Mutual’s discipline policy, if any, including any schedule of penalties for violations of the governing documents pursuant to Civil Code §5850;
- i. A summary of dispute resolution procedures, pursuant to Civil Code §§5920 and 5965;

- j. A summary of any requirements for the Mutual approval of a physical change to property, pursuant to Civil Code §4765;
- k. The mailing address for overnight payment of assessments, pursuant to Civil Code §5655; and
- l. Any other information that is required by law or the governing documents or that the Board determines to be appropriate for inclusion.

17.5 Minutes. The Board must notify Members of their right to receive minutes and how and where those minutes may be obtained at the time the budget is distributed or at the time of any general mailing to the entire membership of the Mutual.

17.6 Financial Statement. The Board must annually distribute to the Members a review of the Mutual's financial statement for any fiscal year in which the gross income of the Mutual exceeds \$75,000 within one hundred twenty (120) days of the close of the fiscal year all pursuant to Civil Code §5305.

17.7 Reserve Transfers for Litigation. The Board must notify Members, in its next available mailing, of any transfers from Reserves to pay for litigation pursuant to Civil Code §5520.

17.8 Other Disclosures as Required by Law. The Board must make such other applicable disclosures as are required by law.

## **ARTICLE 18: RULES ENFORCEMENT AND DISPUTE RESOLUTION**

18.1 Rules Enforcement Procedures. Voting rights may not be suspended. Other Membership privileges may not be suspended, or fines imposed, except as follows:

- a. Notice of Hearing. The Board must set a hearing date and notify the Member in writing at least ten (10) days in advance, by either personal delivery or individual delivery pursuant to Section 4040. The notice must set forth the date and nature of the violation, the proposed penalty, and the Member's right to present evidence in his or her defense, either in writing or in person, at the hearing.
- b. Hearing. The hearing must be held in executive session.
- c. Notice of Decision. Within fifteen (15) days after the Board makes a decision on imposition of any penalty or fine, notice of the decision must be given to the Member, which must specify the violation and the penalty imposed. In the event the Mutual suspends Membership privileges, the suspension does not take effect until five (5) days after the notice of decision is given to the Member.

18.2 Internal Dispute Resolution. If the Mutual and a Member are involved in a dispute involving their rights, duties, or liabilities under California law or the Governing Documents,

either the Mutual or the Member may request internal dispute resolution, as provided for in the Mutual's Rules and Regulations, pursuant to the Davis-Stirling Act.

18.3 Pre-Litigation Dispute Resolution. Before filing suit for actions for declaratory, injunctive, or writ relief, either alone or in conjunction with a money claim in an amount within the jurisdiction of the small claims court, the party seeking to litigate the matter must offer alternative dispute resolution, pursuant to the procedures described in the Civil Code §5930.

## **ARTICLE 19: MISCELLANEOUS**

19.1 Fiscal Year. The fiscal year of the Mutual must be a calendar year unless a different fiscal year is adopted by the Board.

19.2 Conflicts. In the case of any conflict, the CC&Rs prevail over the Articles of Incorporation, which prevail over the Bylaws and the Bylaws prevail over the Rules.

19.3 Amendments. These Bylaws may be modified, amended, or replaced with new Bylaws as follows:

- a. Amendment by Members. These Bylaws may be modified, amended, or replaced with new Bylaws by the affirmative vote of a majority of the votes represented and voting in a duly held election in which a Quorum is represented.
- b. Amendment to Conform to Statute. If at any time a provision in these Bylaws contradicts current law, according to a written opinion of the Mutual's legal counsel, the Board of Directors will have the authority, on the unanimous approval of the Directors and without approval of the Members, to amend that provision, but only to the extent necessary to render the provision compliant with applicable law.

**CERTIFICATION**

WE CERTIFY this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ that these Second Restated Bylaws have been duly approved and adopted by the membership of Fourth Walnut Creek Mutual.

FOURTH WALNUT CREEK MUTUAL.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

DRAFT