

BY-LAWS  
OF  
THE WINNERS CIRCLE BEACH & TENNIS RESORT TIME SHARE OWNER'S  
ASSOCIATION

ARTICLE I

Section 1: Principal Office. The principal office for the transaction of the business of THE WINNERS CIRCLE BEACH & TENNIS RESORT TIME SHARE OWNER'S ASSOCIATION, hereinafter called "Association" shall be located in San Diego County, State of California. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another within the County of San Diego.

ARTICLE II

Members

Section 1: Number of Members. There shall be one (1) member for each Time Share interest in The Winners Circle Beach & Tennis Resort Time Share Condominium Project, which membership shall be issued to the purchaser of said Time Share interest.

Section 2: Qualification of Members. Each member of the Association must be the Owner of a Time Share interest in The Winners Circle Beach & Tennis Resort Time Share Condominium project (hereinafter referred to as "Winners Circle").

Section 3: Joint Ownership of Time Share interest. In the event that such Time Share interest is owned in joint tenancy, or tenancy in common, such Owners shall from time to time designate one of their members in writing, to vote and to exercise all of the other rights of Ownership.

Section 4: Transfer of Time Share interest or Membership. Membership in this Association shall be transferable only when such Time Share interest has been validly assigned by written instrument or by operation of law.

Section 5: Voting. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Time Share Owners. Class A Members shall be entitled to one (1) vote for each Time Share in which they hold the interest required for membership by this Article. When more than one person or entity holds a Time Share interest, the vote for such Time Share interest shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Time Share interest.

Class B. The Class B Member shall be the Declarant of the Declaration. The Class B Member shall be entitled to one (1) vote for each Time Share interest in which it holds the interest required for membership by this Article, provided that

the Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class B membership equals less than twenty percent (20%) of the total voting power of the Association.
- (b) The second anniversary of the issuances of the most recent Final Subdivision Public Report of the Department of Real Estate of the State of California (the "DRE") with respect to the Time Shares.

The Members shall have the right to cumulate their votes in any vote to election or removal of Directors of the Association.

The presence in person or by proxy of thirty percent (30%) of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business.

Voting for election of the Board of Directors shall be by secret ballot.

Section 6: Membership Certificates. The Board of Directors may issue appropriate membership certificates evidencing membership in this Association.

Section 7: Dues and Assessments. The members of the Association shall be liable for the payment of such dues and assessments as may from time to time be fixed and levied by the Board of Directors, pursuant to the provisions of Article IV, Section I of these By-Laws and Article V of the Declaration. If such dues and assessments are not paid by the member prior to delinquency, they shall bear interest at the rate of ten percent (10%) annum from the date of delinquency and the Board of Directors in its discretion may file a claim of lien as provided for in Article IV, Section I of these By-Laws and Article IV of the Declaration.

In addition to the foregoing, there shall be added as a late charge the sum of \$5.00 per month upon the passage of fifteen (15) days from the due date, to those sums already due and owing.

Section 8: Enforcement of Lien. If such claim of lien is filed the Association shall have the right to foreclose the same in accordance with the provisions of the laws of the State of California, then in effect governing the foreclosure of mortgages on real property and the judgment in such action shall contain an award of attorney's fees to the Association; provided, that such action shall be brought within one hundred twenty (120) days after the filing of such claim of lien or it shall be barred.

Upon the entry of record of the satisfaction of any judgment or of a certificate executed by the Association acknowledging the satisfaction of such judgment or the redemption of such property from the lien of any such judgment and the Owner or Owners thereof shall be restored to all rights of membership in this Association.

Section 9: Payment of Delinquent Dues. At any time prior to judgment in such action, the delinquent member may pay said dues, assessments and interest together with costs

and attorney's fees incurred by the-Association to date of such payment, whereupon the Association will file for record a satisfaction and release of its lien.

### ARTICLE III Meetings of Members

Section 1: Place of Meetings. All annual meetings and all other meetings of members shall be held at the principal office of the Association or at a suitable location that is readily accessible at a reasonable cost to the largest possible number of members, which may be designated either by the Board of Directors pursuant to authority hereinafter granted to said Board or by the written consent of all members entitled to vote thereat, given either before or after the meeting and filed with the Secretary of the Association.

Section 1(a): Organizational Meeting. An organizational meeting of the members of the Association shall be held no later than six (6) months after recordation of the deed to the first Time Share interest in the Properties.

Regular meetings of members shall thereafter be held on an annual basis, on the same day of the month in which the organizational meeting was held; provided, however, that should said day fall upon a legal holiday, then any such annual meeting shall be held at the same time and place on the next day thereafter ensuing which is not a legal holiday.

Notice of such organizational meeting shall be sent to each Time Share interest Owner in writing, by first class mail, not less than thirty (30) days before the day designated for such meeting, nor more than ninety (90) days before said designated day, and shall specify the place, the day and the hour of such meeting, a brief statement of the matters which the governing body intends to present or believes that others will present for action by the members.

Section 2: Notice of Meetings. Written notice of each annual meeting shall be given to each member entitled to vote, either personally or by sending a copy of the notice through the mail or by electronic transmission, such as e-mail, to his address appearing on the books of the Association, or supplied to the Association by him, for the purpose of notice. If a member supplies no address, notice shall be deemed to have been given him if mailed to the place where the principal office of the Association is situated, or published at least once in some newspaper of general circulation in San Diego County. Such notice shall be sent to each member entitled thereto not less than thirty (30) days before said annual meeting, nor more than ninety (90) days before such meeting, and said notice shall specify the place, the day and the hour of such meeting, and the general nature of the business to be transacted.

Section 3: Special Meetings. Special meetings of members for any purpose or purpose whatsoever, may be called at any time by the governing body upon the vote of a majority of the governing body or upon receipt of a written request signed by members representing at least five percent (5%) of the voting power of the Association residing in members. If a special meeting is called by members, the request shall be submitted by such members in writing, specifying the general nature of the business proposed to be transacted and shall be

delivered personally or sent by registered mail or by electronic transmission or other facsimile transmission to the President, any Vice-President or the Secretary of the Association. The officer receiving the request shall cause notice to be promptly given to the members, that a meeting will be held. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of members. Notices shall be sent to each member entitled thereto not less than thirty (30) days before each special meeting, nor more than ninety (90) days, and said notice shall specify the place, the day and the hour of such meeting, and the general nature of the business to be transacted.

Section 4: Adjourned Meetings and Notice Thereof. Any members meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the members present or represented at such meeting and entitled to cast a majority of votes represented at such meeting, but in the absence of a quorum no other business may be transacted at any such meeting.

When any members meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

Section 5: Entry of Notice. Whenever any member who is entitled to vote has been absent from any meeting of members, whether annual or special, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such members, as required by law and the By-Laws of the Association.

Section 6: Quorum.

- (a) Definitions. For purposes of this Section, the following term shall have the following meaning.
  - (i) "Net Total Votes" means that number of votes which is equal to the difference between the total number of votes in the Association and the number of votes as to which voting rights are suspended at the time of the subject meeting in accordance with these By-Laws.
- (b) The presence either in person or by proxy at a Members' meeting of members representing and entitled to cast at least fifteen percent (15%) of the Net Total Votes shall constitute a quorum for any action by the members, unless a different requirement is imposed by these By-Laws, the Articles or the Declaration. A majority of the Net Total Votes present at a meeting at which a quorum is present shall prevail at such meetings unless a different percentage is required by these By-Laws, the Articles, or the Declaration. Unless otherwise expressly authorized by these By-Laws or the Declaration, all action required or permitted to be taken by the members may be taken only at a duly called and properly

noticed organization, annual or special meeting at which quorum is present. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If, however, such quorum shall not be present or represented, at any meeting of the members, no business shall be conducted, and the presiding officer shall adjourn the meeting sine die. If less than one third of the total voting power of the Association is in Attendance in person or by proxy, at a regular or special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the meeting, may be voted on by those members.

Section 7: Consent of Absentees. The transaction of any meeting of members, either annual or special, however called, and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, sign a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof, all such waivers, consents or approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

Section 8: Actions without meeting. Any action that maybe taken at any regular or special meeting of members may be taken without a meeting if the following conditions are met:

- (a) A written ballot is distributed to every member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the member to return the ballot to the Association.
- (b) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action.
- (c) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.
- (d) The Written ballot distributed to members of the Association affords an opportunity for the member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association and further provides that the vote of the members shall be cast in accordance with the choice specified.

Section 9: Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Secretary of the Association; provided however, that no such proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the members executing it specifies therein the length of time for which such proxy is to continue in force, which in no case shall exceed seven (7) years from the date of its execution. The

proxy form provided to the members shall meet the requirements of a written ballot set forth in Section 8, paragraph (d), Article III, of these By-Laws, and include the name or names of members who expect to be in attendance in person at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent members vote as specified in the form of proxy.

## ARTICLE IV

### Directors

Section 1: Powers and duties. Subject to the limitation of the Articles of Incorporation, these By-Laws, the Declaration and the Non-Profit Mutual Benefit Corporation Law as to action required to be taken, authorized, or approved by the Members of the Association, or a portion or percentage thereof, all Association powers and duties including those set forth in the Declaration shall be exercised by, or under the authority of the Board, and the business and affairs of the Association shall be controlled by the Board.

Section 2: Number, Qualifications, Term of Office. The affairs of the Association shall be managed by a Board of five (5) directors each of who must be a Member of the Association. A person is disqualified from serving as a director if the person, if elected, would be serving on the Board at the same time as: (i) another person who is serving on the Board in his/her capacity as a representative/agent of the same legal entity (where that legal entity is a Member of the Association) or a related legal entity (e.g., subsidiary, parent corporation, etc.); (ii) another person who is serving on the Board where both persons are members of the same household; or (iii) another person who is serving on the Board where both persons share ownership in the same Time Share interest. The Board also has the authority to remove a director if he/she is not current in the payment of his/her assessments or has his/her privileges suspended pursuant to the Declaration. At the organization meeting, the Members shall elect five (5) directors, three (3) of who shall hold office for three (3) years; and two (2) of whom shall hold office for two (2) years. At each annual meeting of the Members thereafter, the Members shall elect a new director to fill each vacancy created by the expiration of a prior director's term of office. Such new directors shall serve for a term of two (2) years or until the later election of their successors.

Notice of the meeting at which directors are to be elected shall set forth the number of directors to be elected by Members and shall call for nominations. Any Member entitled to vote at the meeting pursuant to the provisions of these By-Laws shall be eligible as a candidate for the position of director. Nominations shall be made as set forth in Section 3 of this Article VI.

The number of directors may be increased or decreased from time to time [but in no event shall be less than five (5)] by an amendment to these By-Laws by the Members as hereinafter provided by these By-Laws.

Section 3: Nominating Committee. The President of the Association shall appoint a committee to select qualified candidates for election to the Board at least ninety-five (95)

days before the date of the election, and the Secretary shall forward to each Member, with the notice of meeting required-by Article III, Section II, a list of candidates nominated, by office.

Members representing five (5%) percent-of the membership may nominate candidates for directorships at any time before the thirtieth (30th) day preceding such election. On timely receipt of a petition signed by the required number of Members, the Secretary shall cause the names of the candidates named on it to be placed on the ballot along with those candidates named by the nominating committee. At the meeting to elect directors, any Member present at the meeting, in person or by proxy, may place names in nomination.

Section 4: Removal and Vacancies. The entire Board or any individual director may be removed from office, with or without cause, at any duly called, noticed and held annual or special meeting of the Members, at which a quorum is present, by a majority of the total votes present at such meeting either in person or by proxy, and entitled to vote, provided, however that unless the entire Board is removed from office by the vote of the Members, no individual director shall be removed prior to the expiration of his term of office if the votes cast against removal or not consenting in writing to such removal would be sufficient to elect the director if voted cumulatively at an election at which the same number of votes were cast and the entire number of directors authorized at the time of the most recent election of the director were then being elected. A director may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power. A vacancy in the Board created by the removal of a director shall be filled by a majority of Members at a duly called special meeting, and each director so elected shall hold office until his successor is elected at an annual meeting of Members or at a special meeting duly called for that purpose. A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any director, or if the Members shall increase the authorized number of directors but shall fail at the meeting at which such increase is authorized or any adjournment thereof to elect the additional director so provided for, or in case the Members fail at any time to elect the full number of authorized directors. In the event of an increase in the authorized number of directors, no more than one director may be appointed, rather than elected to fill a vacancy created thereby. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board shall have the power to elect a successor to take office when the resignation shall become effective.

In the event that any member of the Board shall be absent from four (4) consecutive regular meetings of the Board of Directors, the Board may, by action taken at the meeting during which said fourth absence occurs, declare the office of said absent director to be vacant.

Section 5: Place of Meeting. All meetings of the Board shall be held at the Winners Circle Beach and Tennis Resort if reasonably possible, otherwise at a place as close thereto as reasonably possible, designated at any time by resolution of the Board or by written consent of a majority of the members of the Board.

Section 6: Organization Meeting of the Board. Immediately following the organization meeting and each annual meeting of the Members, the Board shall hold a regular meeting at the same place for the purpose of organization, election of officers and the transaction of other business.

Section 7: Other Regular Meetings. Other regular meetings of the Board shall be held at a time and at such place on the Property or as close thereto as reasonably possible, which place may be designated by the Board from time to time. Notice of the time and place of such meeting shall be communicated to each director not less than thirty (30) days prior to the meeting. Regular meetings of the Board shall be held at least once every six (6) months.

Section 8: Special Meetings. Special meetings of the Board for any purpose or purposes may be called by written notice at any time, by any two directors.

Notice of the time and place of special meetings and of the nature of any special business to be considered shall be given to each director either (a) by written notice given by first-class mail or (b) by written notice given by electronic transmission, such as email, at least fifteen (15) days prior to the scheduled time of such meeting.

Whenever any director has been absent from any special meeting of the Board and notice of such meeting has been duly given to such director, an entry in the minutes to the effect that notice has been duly given shall be made.

Section 9: Quorum Requirement, Waiver of Notice. The transaction of any business at any meeting of the Board, however, called and noticed, or wherever held shall be as valid as though made at a meeting duly held after regular call and notice, if a quorum is present, unless a quorum is expressly not required pursuant to these By-Laws, and if, either before or after the meeting, each of the directors, not present signs a written waiver of notice, or consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records, and made a part of the minutes of the meeting.

Section 10: Quorum. A bare majority of the Board shall constitute a quorum thereof.

Every act or decision done or made by a bare majority of the directors present at a meeting duly held at which a quorum is present, shall be regarded as the act of the Board, unless the provisions of these By-Laws, the Articles or the Declaration shall require or permit the particular action involved to be taken by the Board under other circumstances.

Section 11: Adjournment. A quorum of the directors may adjourn any directors' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which

case personal notice of the time and place shall be given before the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

Section 12: Open Meetings.

- (a) Regular and special meetings of the Board shall be open to all Members; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of the majority of a quorum of the Board.
- (b) The Board may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 13: Compensation. No director of the Association shall receive any salary or other compensation for services rendered as a director or officer of the Association.

However, directors and officers shall be reimbursed for expenses incurred in connection with the business of the Association and authorized by the Board. Nothing herein shall preclude any director from serving the Association in any capacity other than as an officer or a director and receiving compensation therefor as authorized and approved by the Board. Any director receiving any special compensation for services in such other capacity shall be excluded from deliberations and voting by the Board relative to the authorization thereof and fixing compensation with regard thereto.

Section 14: Committees. The Board shall have the power to appoint an Executive Committee and other committees and to delegate to such committees any of the powers and authority of the Board in the management of the business and affairs of the Association except the power to:

- (a) adopt, amend or repeal the Articles of Incorporation or By-Laws;
- (b) fill vacancies on the Board or in any committee;
- (c) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (d) appoint any other committees of the Board or the members of these committees;
- (e) approve any transaction (1) to which the Association is a party and one or more directors have a material financial interest or (2) between the Association and one or more of its directors or (3) between the Association and any entity in which one or more of its directors have a material financial interest.

Each Committee shall be composed of two (2) or more directors (one member of the Executive Committee shall be the President) and shall keep regular written minutes of the proceedings and report the same to the Board.

ARTICLE V  
OFFICERS

Section 1: Enumeration of Officers. The officers of the Association shall be President, Vice President, a Secretary, a Chief Financial Officer and such other officers as the Board may deem necessary. Any person may hold more than one office, provided that neither the Secretary nor the Chief Financial Officer may serve concurrently as the President. The President, Vice President and Secretary shall be members of the Board. The Chief Financial Officer may be, but need not be a member of the Board. Each officer must be a Member of the Association.

Section 2: Subordinate Officers. The Board may appoint, and may authorize the President or another officer to appoint, any other officers that the business of the Association may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in these By-Laws or determined from time to time by the Board.

Section 3: Election. The initial officers shall be chosen by a majority vote of the directors at the first meeting of the Board, and thereafter, officers shall be removed or chosen at any subsequent meeting of the Board by a majority vote of the total number of directors on the Board.

Section 4: Term. All officers shall hold office at the pleasure of the Board.

Section 5: Resignation of Officers. Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

Section 6: President. The President shall be the chief executive officer of the Association and shall, subject to the control of the Board, have supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be ex-officio a member of all standing committees, including the Executive Committee, if in existence, and shall have the general powers and duties of management usually vested in the office of President of a California nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these By-Laws.

Section 7: Vice President. In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting shall have all powers of, and be subject to all the restrictions upon, the President. The Vice-President shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by these By-Laws.

Section 8: Secretary. The Secretary shall keep or cause to be kept, a book of minutes at the principal office of the Association or such other places as the Board may order, of all meetings of directors and Members, with the time and place of holding, whether

regular or special, and if special how authorized, the notice thereof given, the names of those persons present at the directors' meetings, the number of Members present or represented at Members' meetings and the proceedings thereof.

The Secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the By-Laws or by law to be given, except that notice of the organization meeting may be given by the Declarant, and he shall keep the seal of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or the By-Laws.

The Secretary shall keep, or cause to be kept, at the principal executive office, as determined by resolution of the Board, a record of the Members, showing the names of all Members, their addresses, and the class of membership held by each.

Section 9: Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept or maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all times be open to inspection by any director. The Chief Financial Officer shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the By-Laws. The Board may delegate the performance of the foregoing duties, subject to supervision by the Chief Financial Officer, to a professional manager retained by the Association.

## ARTICLE VI INDEMNIFICATION OF DIRECTORS, OFFICERS EMPLOYEES, AND OTHER AGENTS

Section 1: Definitions. For the purpose of this Article,

- (a) "agent" means any person who is or was a director, officer, employee, or other agent of this Association, or is or was serving at the request of this Association as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise;
- (b) "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative or investigative; and
- (c) "expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his position or relationship as agent and all attorneys' fees, costs and other expenses incurred in establishing a right to indemnification under this Article.

Section 2: Successful Defense by Agent. To the extent that an agent of this Association has been successful on the merits in the defense of any proceeding referred

to in this Article, or in the defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the claim. If an agent either settles any such claim or sustains a judgement rendered against him, then the provisions of Section 3 through 5 of this Article shall determine whether the agent is entitled to indemnification.

Section 3: Actions Brought By Persons Other Than The Association. Subject to the required findings to be made pursuant to Section 5 below, this Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding other than an action brought by, or on behalf of the Association, or by an officer, director or person granted related status by the Attorney General, or by the Attorney General on the ground that the defendant director was or is engaging in self-dealing within the meaning of California Corporation Code Section 5233, by reason of the fact that such person is or was an agent of this Association, for all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding.

Section 4: Action Brought By or On Behalf of the Association.

- (a) Claims settled out of court. If any agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of this Association, with or without approval, the agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other dispositions or for any expenses incurred in defending against the proceeding.
- (b) Claims and suits awarded against agent. This Association shall indemnify any person who was or is a party or is threatened to be made a party to any threat pending, or completed action brought by or on behalf of this Association by reason of the fact that the person is or was an agent of this Association, and for all expenses actually and reasonably incurred in connection with the defense of that action, provided that both the following are met:
  - (i) The determination of good faith conduct required by Section 5 of this Article below must be made in the manner provided for in that section; and
  - (ii) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the agent should be entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

Section 5: Determination of Agent's Good Faith Conduct. The indemnification granted to an agent in Section 3 and 4 of this Article above is conditioned on the following:

- (a) Required standard of conduct. The agent seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he believed to be in the best interest of this Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its

equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in the best interest of this Association or that he had reasonable cause to believe that his conduct was unlawful. In the case of a criminal proceeding, the person must have no reasonable cause to believe that his conduct was unlawful.

- (b) Manner of determination of good faith conduct. The determination that the agent did act in a manner complying with Paragraph (a) above shall be made by:
  - (i) the Board by a majority vote of a quorum consisting of directors who are not parties to the proceeding; or
  - (ii) the affirmative vote or written ballot of a majority of the votes of the Members represented and voting at a duly held meeting at which quorum is present (which affirmative votes also constitute a majority of the required quorum), with the persons to be indemnified not being entitled to vote thereon.
  - (iii) the court in which the proceeding is or was pending. Such determination may be made on application brought by this Association or the agent or the attorney or other person rendering a defense to the agent, whether or not the application by the agent, attorney or other person is opposed by this Association.

Section 6: Limitations. No indemnification or advance shall be made under this Article, except as provided in Section 2 or S(b)(iii), in any circumstances when it appears:

- (a) that the -indemnification or advance\_ would be inconsistent with a provision of the Articles, a resolution of the Members, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnifications; or
- (b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 7: Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by this Association before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it is determined ultimately that the agent is entitled to be indemnified as authorized in this Article.

Section 8: Contractual Rights of Nondirectors and Nonofficers. Nothing contained in this Article shall affect any right to indemnification to which persons other than directors and officers of this Association, or any subsidiary hereof, may be entitled by contract or otherwise.

Section 9: Insurance. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's

status as such, whether or not this Association would have the power to indemnify the agent against that liability under the provisions of this Section.

## ARTICLE VII MISCELLANEOUS

Section 1: Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board.

Section 2: Contracts, Etc. How Executed. The Board, except as otherwise provided in these By-Laws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by a contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 3: Inspection of By-Laws. The Association shall keep in its principal office the original or a copy of these By-Laws, certified by the Secretary, which shall be open to inspection by the Members at all reasonable times during office hours.

Section 4: Fiscal Year. The fiscal year of the Association shall terminate on December 31 of each year.

Section 5: Maintenance and Inspection of Other Corporate Records. The accounting books, records and minutes of proceedings of the Members and the Board and any committee(s) of the Board shall be kept at such place or places designated by the Board or, in the absence of such designation, at the principal executive office of the Association. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form. The minutes and accounting books and records shall be open to inspection on the written demand of any Member, at any reasonable time during usual business hours, for a purpose reasonably related to the Member's interests as a Member. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts.

The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of records by the Member desiring to make the inspection.
- (b) Hours and days of the week when such an inspection may be made.
- (c) Payments of the cost of reproducing copies of documents requested by a Member.

Each director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

Section 6: Annual Report to Members. The Association shall provide to the directors and to the Members annual reports as follows:

- (a) A proforma operating statement (Budget) of "Basic Expenses" for the Property for each calendar year which operating statement shall be distributed to Owners not less than 60 days before the beginning of each calendar year, except the first calendar year of the Association, with respect to which the Budget shall be distributed as soon as reasonably possible.
- (b) An annual report shall be distributed within 120 days after the end of each fiscal year, consisting of the following:
  - (i) a balance sheet as of the last day of each fiscal year,
  - (ii) an operating statement for such fiscal year,
  - (iii) a statement of charges in financial position for the fiscal year and
  - (iv) any information required to be reported under Section 8322 of the California Corporation Code.
- (c) A list of the names, addresses and telephone numbers of the members of the governing body of the Association.

## ARTICLE VIII EVIDENCE OF MEMBERSHIP, SEAL

Section 1: Evidence of Membership. The Board shall have the power, but not the obligation, to cause the issuance of evidence of membership in the Association to the Members in such form as the Board shall determine.

Section 2: Seal. The Association shall have a seal in circular form having within its circumference the name of the Association, its date of incorporation and such other matters as may be required by the laws of California.

## ARTICLE IX AMENDMENTS, CONFLICTS

Section 1: Amendments. The Articles of Incorporation and these By-Laws may be amended from time to time by vote at a duly called, noticed and held regular or special meeting of the Members. Amendment to the Articles of Incorporation may be enacted with the vote or written assent of a bare majority of the governing body and a bare majority of voting power of the Association residing in members. An amendment of the By-Laws may be enacted with the vote or written assent of thirty percent (30%) of the voting power of the Association residing in members. Notwithstanding the prior provision, the percentage of voting power necessary to amend a specific clause or provision in these By-Laws shall not be less than the percentage of affirmative votes/written assent necessary for action to be taken under that

clause or provision. Amendments shall be kept by the Secretary with the other records and books of the Association and shall become effective upon the execution of such written instrument as required by this Section without any further action or requirement.

Section 2: Conflicts. In the event of any inconsistency between these By-Laws and the Articles shall control, and in the event of any inconsistency between these By-Laws or the Articles and the Declaration, the Declaration shall control.

## ARTICLE X DISSOLUTION

Upon the winding up and dissolution of the Association, after paying or adequately providing for the debts and obligations of the Association, the remaining assets may be distributed to the members of the Association as provided in the Declaration.

## CERTIFICATION

THIS IS TO CERTIFY:

That I am the duly elected, qualified and acting Secretary of the Winners Circle Beach and Tennis Resort Time Share Owners Association, a California Non-profit Mutual Benefit Corporation, and that the above and foregoing By-Laws were adapted as the By-Laws of said Corporation at a meeting of the Board of Directors thereof, held on this Tenth day of December 2021.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Association this Eleventh day of December 2021.

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Nichole Peterson, Secretary