

## BALLOT PACKAGE VERSION

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# AMENDED AND RESTATED BYLAWS OF HOMEOWNERS OF CRESTMONT ASSOCIATION

### NOTICE

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HOMEOWNERS OF CRESTMONT ASSOCIATION**

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# AMENDED AND RESTATED BYLAWS OF HOMEOWNERS OF CRESTMONT ASSOCIATION

## ARTICLE 1 NAME AND LOCATION

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- 1.1 Name and Location. The name of the corporation is HOMEOWNERS of CRESTMONT ASSOCIATION, which is hereinafter referred to as the “Association.” The principal office of the Association shall be located in Alameda County, State of California, or at such other place reasonably convenient to the Development as the Board of Directors may from time to time establish.
- 1.2 Purpose. The purpose of the Association shall be as set forth in its Articles of Incorporation.
- 1.3 Successor Entity. In the event the Association as a corporate entity is dissolved, a nonprofit unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association. The affairs of such unincorporated association will be governed by the laws of the State of California, and to the extent consistent therewith, by the Declaration, the Articles of Incorporation, and these Bylaws as if they were created for the purpose of governing the affairs of an unincorporated association.

## ARTICLE 2 DEFINITIONS

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Any capitalized terms that are not defined below shall have the meaning set forth in Article III of the Declaration (“Definitions”).

- 2.1 Additional Charges. “Additional Charges” shall mean all costs, fees, charges, and expenditures including, but not limited to, interest, late charges, attorney fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.
- 2.2 Articles of Incorporation. “Articles of Incorporation” shall mean the Agreement of Consolidation filed with the Office of the Secretary of State of California on August 16, 1965, and as they may be amended from time to time.
- 2.3 Assessment. “Assessment” shall mean an “annual assessment” or “special assessment” as such terms are used in the Declaration.
- 2.4 Association. “Association” shall mean HOMEOWNERS of CRESTMONT ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

- 2.5 Board of Directors. “Board of Directors” or “Board” shall mean the governing body of the Association.
- 2.6 Bylaws. “Bylaws” shall mean these Amended and Restated Bylaws of the Association as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.
- 2.7 Committee of the Board. “Committee of the Board” shall mean a committee consisting only of directors as described in *Corporations Code* section 7212.
- 2.8 Corporations Code. “*Corporations Code*” shall mean the California *Corporations Code* as amended from time to time.
- 2.9 Declaration. “Declaration” or “CC&Rs” shall mean the Amended Declaration of Restrictions, Covenants and Agreements Affecting Real Property Commonly Known as Crestmont No. 1 Tract 1614, Oakland, Alameda County, California and Crestmont No. 2 Tract 1710, Oakland, Alameda County, California, recorded March 24, 2003, as Document No. 2003164798 in the Office of the County Recorder of Alameda County, State of California, and any duly-recorded amendments thereof.
- 2.10 Development. “Development” shall mean all the real property described in the Declaration as comprising the Crestmont standard subdivision and any additional real property as may hereafter be brought within the jurisdiction of the Association.
- 2.11 Governing Documents. “Governing Documents” shall mean the Articles of Incorporation, Bylaws, Declaration, and Rules.
- 2.12 Lot. “Lot” shall mean any of the numbered parcels of land shown upon the subdivision maps as enumerated in the Declaration. There are three hundred fifteen (315) Lots within the Development.
- 2.13 Majority of a Quorum. “Majority of a Quorum” shall mean the affirmative vote of a majority of the votes cast at a duly-held meeting at which a quorum is present or by written ballot without a meeting in conformity with *Corporations Code* section 7513 provided the number of ballots cast is sufficient to establish the required quorum.
- 2.14 Member. “Member” shall mean an Owner.
- 2.15 Member in Good Standing. “Member in Good Standing” shall mean a Member of the Association who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents and who is in compliance with all of the provisions of the Governing Documents.



- 2.16 Owner. “Owner” shall mean the record owner, whether one (1) or more persons or entities, of any interest in any Lot appearing by deed duly recorded in the office of the County Recorder of Alameda County, and including contract purchasers under an installment land contract, but excluding those persons having such interest merely as security for the performance of an obligation.
- 2.17 Proxy. “Proxy” shall mean a written authorization signed by a Member or a Member’s attorney-in-fact giving another person or persons power to vote for such Member, as defined in *Corporations Code* section 5069.
- 2.18 Resident. “Resident” shall mean any person who resides on a Lot within the Development whether or not such person is an Owner.
- 2.19 Rules. “Rules” shall mean the policies, guidelines, rules, and regulations governing the administration, management, operation, use, and occupancy of the Development, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Development, enforcement of the Governing Documents, and any other matter which is within the jurisdiction of the Association including but not limited to architectural guidelines for purposes of architectural approval and enforcement, as adopted, published, or amended by the Board from time to time.
- 2.20 Total Voting Power. “Total Voting Power” shall mean the total number of votes of all Members at a particular time, calculated on the basis of one (1) vote for each Lot.

### **ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS**

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- 3.1 Membership. Membership in the Association shall be open to and limited to Owners of any Lot located within the Development. Ownership of a Lot is the sole qualification to be a Member. Upon becoming the Owner of a Lot, each Owner shall automatically be eligible to be a Member of the Association and once accepted by the Board shall remain a Member until such time as his or her ownership of a Lot ceases for any reason.
- 3.2 Owner’s Address for Notice. It shall be each Owner’s responsibility to notify the Association in writing of any change in the Owner’s address for the purpose of receiving notices from the Association. The fact that a different address appears on correspondence to the Association from an Owner shall not constitute such written notice, unless it is expressly stated in writing that such address is a change of address for the purpose of receiving notice from the Association.
- 3.3 Notice of Transfer of Title. Upon transfer of title to a Lot, the transferee shall be responsible for notifying the Association of such transfer. The notification shall set forth the address of the Lot, the names of the transferee and the transferor,

and the date of sale or other transfer. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association or the Board to the Lot Owner shall be deemed to be duly made and given to the transferee if duly and timely made and given to the person shown as the Owner of the Lot and at the address in the Association's records.

3.4 Proof of Membership. No person shall exercise the rights of a Member until satisfactory proof of membership has been furnished to the Association.

3.5 Voting Rights; Joint Owners.

3.5.1 One Vote Per Lot. Only Members shall be entitled to vote on any issue or matter presented to the Members for approval or membership vote. Members shall be entitled to cast one (1) vote for each Lot owned.

3.5.2 Joint Owners. In the event more than one (1) person owns a given Lot, the vote for such Lot shall be exercised as the Owners among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If the joint Owners are unable to agree among themselves as to how their vote or votes are to be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of the other Owners of that Lot.

3.5.3 Trusts, Corporations, Other Entities. In the case of an Owner that is a trustee or is not a natural person (such as a corporation or other entity), the vote of such Owner may be cast by any authorized representative of the Owner designated by notice in writing to the Association.

3.5.4 Conservator, Guardian, Parent of Minor, Executor. The power to cast a particular Member's vote may be exercised by (i) the Member's conservator, (ii) the guardian of the Member's estate, (iii) the parent(s) entitled to custody of a Member if the Member is a minor, or (iv) the executor or administrator of a deceased Member's estate if the Member's interest in the Lot is subject to administration in his or her estate.

3.6 Record Date for Voting. Consistent with *Corporations Code* section 7611(c), the Board may fix a date not more than sixty (60) days before the date of any mailing or delivery of written ballots as the record date for determining Members entitled to vote and only Members as shown in the records of the Association as of the record date for voting shall be entitled to vote in such vote or election. If no record date for voting is set by the Board, Members on the day of the mailing or delivery of ballots shall be entitled to vote in such vote or election.

## **ARTICLE 4                    MEETINGS OF MEMBERS; PROXIES**

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- 4.1     Record Date for Notice. As provided in *Corporations Code* section 7611(a), the Board may fix a date not more than ninety (90) days and not less than ten (10) days preceding the date of any meeting of the Members as a record date for determining the Members entitled to notice of such meeting. If the Board sets a record date for notice, only those persons identified as Members in the records of the Association on the date so fixed shall be entitled to notice of such meeting. If no record date for notice is fixed by the Board, Members at the close of business on the business day three (3) days preceding the day in which notice is given are entitled to notice of a meeting of Members.
- 4.2     Record Date for Voting. As provided in *Corporations Code* section 7611(b), the Board may fix a date not more than sixty (60) days before the date of any meeting of Members as the record date for determining Members entitled to vote and only Members as shown in the records of the Association as of the record date for voting shall be entitled to vote at such meeting. If no record date for voting is set by the Board, Members on the day of the meeting shall be entitled to vote at such meeting.
- 4.3     Annual Meeting of Members. As required pursuant to *Corporations Code* section 7510(b), an annual meeting of the Members for the purpose of electing directors shall be held each year on a date and at a time and place to be designated by the Board.
- 4.4     Special Meetings of Members. Special meetings of the Members may be called at any time by the President or by the Board of Directors and, as provided in *Corporations Code* section 7510(e), shall be called upon receipt by the Board of a written request signed by Members entitled to cast at least five percent (5%) of the Total Voting Power of the Association.
- 4.5     Notice of Member Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the Secretary or other person authorized to call a meeting.
- 4.5.1     Delivery of Meeting Notice. Notices of Member meetings may be given personally, by electronic transmission (fax or email), by mail, or by other means of written communication. The written notice shall be addressed or otherwise delivered to the Member's address last appearing on the books of the Association or supplied by the Member to the Association for the purpose of notice.
- 4.5.2     Content of Meeting Notice. Notice of any meeting of Members shall specify the date, hour, and place of the meeting, and the general

nature of those matters which the Board intends to present for action by the Members.

- 4.5.3 Time for Sending Meeting Notice. Except for special meetings called pursuant to a written request of Members [*Corporations Code* section 7510(e)], written notices of Member meetings must be sent at least ten (10) days but not more than ninety (90) days before such meeting, to each Member, except that if the notice is mailed and it is not mailed by first-class, registered, or certified mail, it must be mailed at least twenty (20) days before the meeting.
- 4.5.4 Electronic Transmission of Meeting Notice. Notices sent by electronic transmission must comply with *Corporations Code* section 20, which requires, among other things, that the Member consents to receiving notice by electronic transmission.
- 4.5.5 Special Timing for Certain Meetings Called by Members. In the case of a special meeting called pursuant to a written request of at least five percent (5%) of the Members [*Corporations Code* section 7510(e)], notice of such special meeting must be sent within twenty (20) days after receipt of such written request by the Board, and the date of such special meeting shall be set by the Board and shall be not sooner than thirty-five (35) days and not later than ninety (90) days after the date of the Board's receipt of such written request.
- 4.6 Conduct of Member Meetings. All meetings of Members shall be conducted in accordance with a system of parliamentary procedure or such parliamentary procedures as the Association may adopt.
- 4.7 Place of Member Meetings. Annual and special meetings of the Members shall be held at a convenient place located within or as close as reasonably practicable to the Development as designated by resolution of the Board.
- 4.8 Quorum Requirement. Quorum requirements for action by the Members shall be as follows:
  - 4.8.1 Election of Directors. In any election of one (1) or more directors, the number of votes cast shall constitute a quorum.
  - 4.8.2 All Other Member Votes. For any other action that may be taken by the Members, a quorum shall mean the presence in person or by Proxy of not less than ten percent (10%) of the Total Voting Power of the Association.
- 4.9 Act of Members Requires Majority of a Quorum. Except where the Governing Documents specify a higher percentage of a quorum or a specified percentage of the Total Voting Power of the Members for any action that may be taken by the

Members, the affirmative vote of a Majority of a Quorum shall constitute the action of the Members.

- 4.10 Proxies Are Permitted. At all meetings of the Members, each Member may vote in person or by Proxy.
- 4.11 Form of Proxies. All Proxies must be in writing, must be signed and dated by the Member, and must be filed with the Secretary.
- 4.12 Proxies for Certain Matters. A Proxy covering any of the matters listed in *Corporations Code* section 7613(g) shall not be valid unless it sets forth the general nature of the matter to be voted on.
- 4.13 Revocation and Expiration of Proxies. Every Proxy shall be revocable. Every Proxy shall expire eleven (11) months after the date of its execution unless the Member executing the Proxy has specified a length of time in the Proxy, which shall not in any case be longer than three (3) years from the date of execution. A Proxy remains in effect until it expires or is revoked. A Proxy is automatically revoked upon conveyance by the Member of his or her interest in all real property within the Development. A Proxy is not revoked by the death or incapacity of the Member unless, before the vote is counted, written notice of the death or incapacity is received by the Association. A Member can revoke a Proxy by notifying the Association in writing that the Proxy is revoked, or by executing a subsequent (later dated) Proxy which is presented to the meeting, or (as to a particular meeting) by the Member attending the meeting and voting in person.
- 4.14 Voting by Members. A vote of the Members may be conducted (i) at a meeting, or (ii) by action without a meeting pursuant to *Corporations Code* section 7513 as set forth in Section 4.17 (“Action Without a Meeting”).
- 4.15 Voting at Meetings. Pursuant to *Corporations Code* section 7512(b), the only matters that may be voted upon at any meeting of Members are those matters the general nature of which was given in the notice of such meeting, pursuant to Section 4.5.2 (“Content of Meeting Notice”). If any required quorum is present in person or by Proxy at a meeting of the Members, the affirmative vote of a majority of the voting power so present and voting on any permitted matter shall constitute the act of the Members. The vote at any meeting of Members may be by voice vote, by show of hands, or by written ballot, provided that the vote on any matter at a meeting shall be by written ballot if so determined by the Board.
- 4.16 Results of Membership Votes. To the extent required by *Corporations Code* section 8325, for a period of sixty (60) days following the conclusion of an annual, regular, or special meeting of Members, a Member shall, upon written request, be informed forthwith of the result of any particular vote of the Members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of

directors, the Association shall report the number of votes cast for each nominee for director.

- 4.17 Action Without a Meeting. Any action that may be taken at a regular or special meeting of the Members may be taken by written ballot without a meeting conducted in compliance with *Corporations Code* section 7513, including setting forth the proposed action on the written ballot, providing an opportunity to specify approval or disapproval of any proposal, identifying the number of responses needed to meet the quorum requirement and the percentage and/or number of approvals necessary to pass the measure submitted, and specifying the time by which the ballot must be received by the Association in order to be counted. A written ballot, once cast, may not be revoked.

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**ARTICLE 5                    BOARD OF DIRECTORS: NOMINATION, SELECTION, TERM OF OFFICE, REMOVAL**

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- 5.1 Number of Directors. The affairs of this Association shall be managed by or under the direction of, and the corporate powers shall be exercised by, a Board of Directors. The authorized number of directors shall be a minimum of five (5) and a maximum of nine (9).
- 5.2 Annual Election of Directors. Directors shall be elected by majority vote at the annual meeting or by written ballot without a meeting.
- 5.3 Qualification of Directors. Only persons who satisfy all of the following qualifications shall be eligible to be elected to or serve on the Board: (i) is a Member in Good Standing (including any Member who holds title as trustee of a trust) or in the case of a Member in Good Standing that is not a natural person (such as a corporation or other entity), an officer, director, principal, or authorized representative of the Owner entity, (ii) is at least eighteen (18) years of age, and (iii) has not been found by a court of competent jurisdiction to be of unsound mind. Co-Owners of one (1) or more Lots may not serve on the Board at the same time.
- 5.4 Nomination Procedures. Nominations of candidates for election to the Board of Directors may be made by any of the following ways:
- 5.4.1 By Nominating Committee. The Board may appoint a nominating committee to nominate candidates for election to the Board prior to any election of directors. If appointed, the nominating committee shall nominate as many candidates for election to the Board as it shall in its discretion determine, but shall endeavor to nominate not less than the number of positions on the Board that are to be filled in the election. All nominations shall be made from among persons who satisfy the qualifications set forth in Section 5.3 (“Qualification of Directors”).

- 5.4.2 By Self-nomination. Any Member who satisfies the qualifications set forth in Section 5.3 (“Qualification of Directors”) may place his or her name in nomination for election to the Board by giving notice to the President or Secretary of the Association before the close of nominations.
- 5.5 Voting for Directors; Cumulative Voting Not Permitted. In all elections of directors, Members may cast, in respect to each position on the Board to be filled, one (1) vote for each Lot owned. The persons receiving the largest number of votes shall be elected. If written ballots are used, cumulative voting (i.e., giving more than one vote to any candidate) shall not be permitted.
- 5.6 Tied Votes. In the case of a tied vote for one (1) or more positions on the Board, the candidates shall draw lots to determine the winner or winners.
- 5.7 Term of Office. In the annual election of directors, the Members shall elect directors for terms of two (2) years each. Each director shall serve until the expiration of his or her term and thereafter until a successor is elected, or until the earlier disqualification, death, resignation, or removal of such director.
- 5.8 Removal of Directors by the Members. Consistent with *Corporations Code* section 7222, any director may be removed from the Board, with or without cause, by the vote of a majority of the Total Voting Power of the Association.
- 5.9 Reduction of Number of Directors. Any reduction of the authorized number of directors shall be subject to the provisions of *Corporations Code* section 7222(c).
- 5.10 Vacancies, Resignation, Disqualification of Directors. A vacancy shall exist on the Board (i) in the event of the death, resignation, or removal (by the Members) of any director, (ii) in the event of a declaration of a vacancy by the Board as provided below in this Section 5.10, (iii) if the authorized number of directors is increased, or (iv) if the Members fail to elect the full authorized number of directors.
- 5.10.1 Resignation. Any director may resign by giving written notice to the Board. The resignation shall be effective on the date specified in the notice. Unless otherwise provided in the notice, the acceptance of a resignation shall not be necessary to make it effective. Any director who ceases to be an Owner or ceases to be an officer, director, principal, or authorized representative of an Owner entity that is not a natural person shall be deemed to have resigned from the Board.
- 5.10.2 Disqualification of a Director. As provided in *Corporations Code* section 7221(b), the Board of Directors, by a majority vote of the directors who meet all of the qualifications for directors as set forth in Section 5.3 (“Qualification of Directors”), may declare vacant the office

of any director who fails or ceases to meet any required qualification that was in effect at the beginning of that director's current term of office.

5.10.3 Failure to Perform Duties. The Board, by vote of a majority of a quorum, may declare vacant the office of any director who: (i) fails within sixty (60) days after receiving notice of election to accept office, either in writing or by attending a meeting of the Board as a director, or (ii) is absent without excuse from three (3) consecutive meetings of the Board.

5.11 Filling Vacancies.

5.11.1 Removal by Members. Pursuant to *Corporations Code* section 7224, vacancies on the Board created by the removal of a director by the Members shall be filled by approval of the Members. A director elected by the Members to fill such a vacancy shall serve the remainder of the term of office of the director whom he or she replaces.

5.11.2 Other Vacancies. Any vacancy occurring on the Board of Directors, except a vacancy created by the removal of a director by the Members, may be filled (i) by approval of the Board of Directors; or (ii) by a sole remaining director. If the Board accepts the resignation of a director tendered to take effect at a future time, the Board, including the resigning director, may choose or, if the Board fails to act, the Members may elect, a successor to take office when the resignation becomes effective. The Members may elect a director at any time to fill any vacancy not filled by the directors. A director elected by the Members or chosen by the Board in accordance with this Section 5.11.2 to fill a vacancy shall serve the remainder of the term of office of the director whom he or she replaces.

5.12 Removal of Entire Board; Replacement Directors. In the case of a vote by the Members to remove the entire Board of Directors, the incumbent directors shall not be removed from office unless and until one (1) or more replacement directors have been elected by the Members. If, in such election, the Members fail to elect the full number of replacement directors, the vacancies then existing on the Board may be filled by the elected replacement directors pursuant to clause (i) or clause (ii) of Section 5.11.2 ("Other Vacancies"). All of the directors replacing those removed by the Members shall serve until the next annual election of directors.

5.13 Directors' Conflict of Interest. The provision of the *Corporations Code*, at sections 7233 and 7234, shall apply to any contract or other transaction authorized, approved, or ratified by the Board or a Committee of the Board.



- 5.14 No Compensation of Directors. No director shall receive compensation for any service he or she may render to the Association as a director. However, upon approval by the Board, any director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.
- 5.15 Directors' Standard of Care. As provided in *Corporations Code* section 7231, a director shall perform the duties of a director, including duties as a member of any Committee of the Board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.
- 5.16 Limitation of Liability of Officers and Directors. As provided in *Corporations Code* section 7231, no director, officer, committee member, employee, or other agent of the Association shall be liable to any Owner or any other person or entity, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

## **ARTICLE 6                      MEETINGS OF DIRECTORS**

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- 6.1 Organizational Meeting. As soon as possible, but in any event within sixty (60) days, after each annual election of directors, the Board of Directors shall hold a meeting for the purpose of organization, appointment of officers, and transaction of other business, as appropriate.
- 6.2 Regular Meetings of the Board. Regular meetings of the Board shall be held at least once every other month upon proper notice which conforms to the provisions of Section 6.4 ("Notice to Directors") at the place, day, and time determined by the Board as set forth in such notice.
- 6.3 Special Meetings of the Board. Special meetings of the Board shall be held when called by the President of the Association or by any two (2) directors.
- 6.4 Notice to Directors. Regular meetings of the Board may be held, without further notice to the Board, at a place within or reasonably convenient to the Development and on a day and time fixed by resolution of the Board. If not fixed by resolution of the Board, notice of each meeting of the Board shall be communicated to the directors not less than four (4) days prior to a regular meeting, and not less than forty-eight (48) hours prior to a special meeting; *provided, however,* that shorter notice may be given in the case of a bona fide emergency; and *provided, further,* that notice of a meeting need not be given to any director who signed a waiver of notice or a written consent to holding the meeting, whether before or after the meeting.

- 6.5 Open Meeting. Regular and special meetings of the Board of Directors shall be open to all Members of the Association, except when the Board meets in executive session. A reasonable time limit for all Members to speak to the Board shall be established by the Board; however, the right to speak to the Board shall not entitle any Member to participate in the Board's deliberations on any matters unless requested to do so by the Board.
- 6.6 Executive Session. The Board may meet in executive session to confer with legal counsel or to discuss and/or vote upon personnel matters, Member discipline, litigation in which the Association is or may become involved, matters that relate to the formation of contracts between the Association and others, and for the purpose of meeting with a Member, upon such Member's request, regarding the Member's payment of Assessments. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested to do so by that Member, and that Member and any other person(s) whose participation is, in the judgment of the Board, necessary or appropriate, shall be entitled to attend the executive session. There shall be no requirement that the Board convene an open meeting in order to meet in executive session.
- 6.7 Remote Participation. As provided in *Corporations Code* section 7211, directors may participate in regular or special Board meetings through the use of conference telephone, electronic video screen communications, or other communications equipment or technologies. *Corporations Code* section 7211 includes, among other things, the requirements that (i) each Board member participating in the meeting can communicate with all of the other Board members concurrently, and (ii) that each Board member is provided the means of participating in all matters before the Board, including but not limited to the capacity to propose, or to interpose an objection to, a specific action to be taken by the Association.
- 6.8 Quorum for Board's Action. A majority of the number of directors then in office (but not less than two) shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by a majority of the required quorum for that meeting.
- 6.9 Voting by Directors. Pursuant to *Corporations Code* section 7111(c), each director shall be entitled to one (1) vote and a director may not vote by Proxy or otherwise delegate his or her right to vote on any matter before the Board.
- 6.10 Board's Action by Unanimous Written Consent Without a Meeting. As provided in *Corporations Code* section 7211(b), any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board

shall individually or collectively consent in writing to such action. Such written consents shall be filed with the minutes of the proceedings of the Board.

- 6.11 Minutes of Meetings of Directors. Any matter discussed in an executive session shall be generally noted in the minutes of the next following open meeting of the Board and minutes of executive sessions shall not otherwise be required. Copies of the minutes of Board meetings (other than Executive Session meeting minutes, if any) shall be provided to any Member of the Association within a reasonable time upon request and upon reimbursement of the Association's costs in providing such copies.

## **ARTICLE 7                    DUTIES OF THE BOARD OF DIRECTORS**

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The Board shall be ultimately responsible for the management and conduct of the affairs of the Association. Without limiting the generality of the foregoing, the specific duties of the Board shall include the following:

- 7.1 Supervision. The Board shall supervise all officers, agents, and employees, if any, of the Association and see that their duties are properly performed.
- 7.2 Records and Minutes. The Board shall cause to be kept a complete record of all its acts and the corporate affairs, including an accurate and current record of the Members setting forth their names and addresses, adequate and correct books and records of account, and minutes of the proceedings of the Members, the Board, Committees of the Board, and any other committee appointed by the Board having decision-making authority.
- 7.3 Maintain Insurance. The Board shall procure and maintain adequate casualty, liability and other insurance, as the Board shall determine is necessary consistent with the provisions of the Declaration.
- 7.4 Enforcement of Governing Documents. The Board shall enforce the Governing Documents on its own initiative or upon receipt of written complaint from an Member or a Resident, in accordance with the procedures set forth in the Declaration.
- 7.5 Notice of Assessments; Collection of Assessments. The Board shall send written notice to each Owner in advance of each fiscal year of the basic assessment levied against his or her Lot for that fiscal year and shall diligently pursue the collection of all Assessments.
- 7.6 Annual Financial Report. The Board shall annually notify each Member of the Member's right to receive a financial report pursuant to *Corporations Code* section 8321. The annual report shall contain in appropriate detail: (i) a balance sheet as of the end of the fiscal year, (ii) an income statement for the fiscal year,

(iii) a statement of changes in financial position for the fiscal year, (iv) a statement of the place where the names and addresses of the current Members is located, and (v) any information required by *Corporations Code* section 8322 (concerning transactions, if any, with “interested parties” as defined in the statute). If not prepared by an independent accountant, the foregoing report shall be accompanied by a certificate of an authorized officer of the Association that the statements were prepared without an audit from the books and records of the Association. The annual report must be prepared not later than one hundred twenty (120) days after the close of such fiscal year.

- 7.7 Biennial Notice to Secretary of State. The Board shall file with the Secretary of State the biennial (every two years) statement of names of officers and of agent for service of process required pursuant to *Corporations Code* section 8210.

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

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Subject to the provisions of the California Nonprofit Mutual Benefit *Corporations Code* (Section 7110 and following of the *Corporations Code*), the activities and affairs of the Association shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board shall have the power to exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members by other provisions of the Articles of Incorporation or these Bylaws, and undertake any action on behalf of the Association as the Board shall deem necessary or proper in furtherance of the purposes and powers of the Association and/or the interests of the Association and its Members. Without limiting the generality of the foregoing, the Board shall have the powers specified in this Article 8, subject to any limitations or conditions as may be set forth in the Articles of Incorporation, the Bylaws, or the Declaration.

- 8.1 Make Contracts. The Board shall have the power to authorize any officer or officers to enter into any contract in the name of, or on behalf of, the Association.
- 8.2 Consult Professional Advisors. The Board shall have the power to consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals in carrying out the Board’s authority and responsibility under the Governing Documents and the law, and to pay for such professional services.
- 8.3 Hire a Manager and Others. The Board shall have the power to engage the services of a manager or management company, as either an employee or an independent contractor, and engage such other employees or independent contractors as the Board may deem necessary, and to prescribe their duties.

- 8.4 Adopt and Enforce Rules. The Board shall have the power to adopt, publish, amend, repeal, and enforce Rules as defined in Section 2.19, including architectural guidelines.
- 8.5 Collect Assessments by Legal Action. As addressed in the Declaration, the Board shall have the power to collect Assessments levied by the Association by bringing an action at law against the Owner personally obligated to pay the same.
- 8.6 Open Bank Accounts. The Board shall have the power to open bank accounts and designate signatories upon such bank accounts on behalf of the Association.
- 8.7 Indemnify Agents. To the extent provided in *Corporations Code* section 7237, the Board on behalf of the Association shall have the power to and shall indemnify and hold harmless, to the maximum extent permitted by California law, each person who is or at any time was a director, officer, employee, or agent of the Association, or member of any committee appointed by the Board from and against any and all claims, liabilities, expenses, judgments, fines, settlements, and other amounts, as those terms are defined by California law, actually and reasonably incurred by any such person, and to which any such person shall become subject by reason of his or her being a director, officer, employee, or agent of the Association, or member of any committee appointed by the Board.
- 8.8 Appointment of Committees. The Board may appoint committees as it deems appropriate in carrying out the powers and purposes of the Association except that the Board may not delegate its authority to hold hearings or impose sanctions to any such committee other than a Committee of the Board (as defined in Section 2.7). Any Committee of the Board shall consist of at least two (2) directors and shall have such powers and duties as the Board shall determine, subject to the limitations of *Corporations Code* section 7212. All committees and committee members shall serve at the pleasure of the Board.

## **ARTICLE 9                    OFFICERS AND THEIR DUTIES**

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- 9.1 Enumeration of Principal Officers. The principal officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer, who shall at all times be members of the Board of Directors. The Board may, from time to time, by resolution appoint other officers as the Board may determine, as provided in Section 9.4 (“Special Appointments”).
- 9.2 Appointment of Principal Officers. The appointment of principal officers shall take place at the first meeting of the Board following each annual election of directors.

- 9.3 Term. The principal officers of this Association shall be appointed annually by the Board, and each shall hold office for one (1) year, unless he or she shall sooner resign, be removed by the Board, or otherwise be disqualified to serve.
- 9.4 Special Appointments. The Board may appoint such other officers as the affairs of the Association may require (for example, one or more assistant secretaries or assistant treasurers), each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Officers appointed pursuant to this Section 9.4 need not be members of the Board or Members of the Association.
- 9.5 Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces, subject to the Board's right to remove an officer.
- 9.7 Multiple Offices. One (1) person may hold two (2) or more offices except that neither the Secretary or any assistant secretary nor the Treasurer or any assistant treasurer may serve concurrently as President. This provision is intended to prohibit a single individual from having apparent authority to bind the Association by virtue of holding both offices, pursuant to *Corporations Code* section 7214.
- 9.8 Authority to Bind Association. Unless expressly authorized by resolution of the Board, no officer shall have any power or authority to bind the Association or to render the Association liable for any purpose or on any account.
- 9.9 No Compensation of Officers. No officer shall receive compensation for any service he or she may render to the Association as an officer. However, upon approval by the Board, any officer may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.
- 9.10 President. The President shall be the chief executive officer of the Association and shall, subject to control of the Board of Directors, have general supervision, direction, and control of the affairs of the Association and of the other officers and the employees and agents of the Association. The President shall preside at all meetings of the Members and at all meetings of the Board, shall be an *ex officio* member of all Committees of the Board, shall have the general powers and duties of management usually vested in the office of the President of an Association, and shall have such other powers and duties as may be prescribed by the Board of Directors and the Bylaws, subject, however, to any limitations

contained in the Declaration. In the absence or disability of the President, the Board shall designate another director to preside at a meeting of the Board or of the Members.

- 9.11 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 of the powers of, and be subject to all of the restrictions upon, the President including the restriction on holding multiple offices as set forth in Section 9.7 ("Multiple Offices"). The Vice President shall have such other powers and perform such other duties as, from time to time, may be prescribed by the Board of Directors. In the absence or disability of both the President and the Vice President, or if there is not a Vice President in office, the Board shall designate another director to preside at a meeting of the Board or of the Members.
- 9.12 Secretary. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board of Directors may prescribe, a book of minutes of all meetings of directors and Committees of the Board, all meetings of any other committee appointed by the Board that has decision-making authority, and all meetings and votes of Members. The Secretary shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors required by the Bylaws or by law to be given and shall maintain a proper record of the giving of such notice; shall keep or cause to be kept in safe custody the books, records, and documents of the Association; and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.
- 9.13 Treasurer. The Treasurer shall be responsible for the receipt and deposit in appropriate accounts of all monies of the Association and shall cause disbursement of such funds as directed by resolution of the Board of Directors; may sign all checks and promissory notes of the Association; shall keep or cause to be kept proper books of account; shall cause an annual review of the Association's books and financial statements to be made by a public accountant at the completion of any fiscal year for which such review is required by law or as determined by the Board; shall assist the Board in preparation of an annual budget and a statement of income and expenditures to be presented to the Members of the Association as provided by law; and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors.

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## **ARTICLE 10                    MINUTES; BOOKS AND RECORDS; FUNDS**

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- 10.1 Minutes of Meetings. To the extent required by *Corporations Code* section 8320(a)(2), the Association shall keep minutes of meetings and proceedings of the Members (including membership votes), meetings of the Board and Committees of the Board, and meetings of any other committee appointed by the

Board that has decision-making authority. As provided in Section 6.11 (“Minutes of Meetings of Directors”), any matter discussed in executive session shall be generally noted in the minutes of the next following open meeting of the Board, and minutes of executive sessions shall not otherwise be required. Minutes shall set forth the time and place of holding of such meetings; whether regular or special, and if special, how authorized; what notice was given; the names of those present at meetings of the directors or of any Committee of the Board or of any other committee appointed by the Board that has decision-making authority; the number of votes cast in any vote or election of the membership (or, if applicable, the number of Members present in person or represented by Proxy at Member meetings); and all the proceedings thereof.

- 10.2 Members’ Access to Minutes, Books, and Records. As provided in *Corporations Code* section 8320, the Association shall keep at its principal office (or at such other place in or near the Development as the Board may prescribe) the Governing Documents and the Association’s books of account; minutes of meetings of Owners, the Board, and committees; and the names and addresses of the Members (collectively, the “Association Records”), which shall be made available for inspection and copying by any Member or the Member’s duly-appointed representative for a purpose reasonably related to the Member’s interest as an Owner and subject to a requesting Member’s compliance with all applicable prerequisites and any applicable limitations (including but not limited to *Corporations Code* section 8332 concerning protection of constitutional rights of other Members and *Corporations Code* section 8338 concerning use of memberships lists). The Board may establish reasonable rules regarding (i) notice to be given to the custodian of the Association Records by the Member desiring to make the inspection, (ii) hours and days of the week when such an inspection may be made, and (iii) payment of the cost of copying any of the Association Records requested by a Member.
- 10.3 Directors’ Inspection Rights. As provided in *Corporations Code* section 8334, every director shall have the right at any reasonable time to inspect and copy all books, records, and documents and to inspect the physical properties, if any, of the Association.
- 10.4 Checks, Drafts, and Evidences of Indebtedness. All checks, drafts, or other orders for payment of money, or notes or other evidences of indebtedness issued in the name of the Association shall be signed by two (2) or more persons and in the manner specified by resolution of the Board of Directors.
- 10.5 Funds and Deposits. Any funds of the Association shall be deposited to the credit of the Association in such banks or other depositories as the Board of Directors shall, from time to time, determine.
- 10.6 Fiscal Year. The fiscal year of the Association shall be as determined by resolution of the Board of Directors.



## **ARTICLE 11                    AMENDMENTS**

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- 11.1 Amendments Generally. These Bylaws may be amended by approval of the Board and the affirmative vote of a Majority of a Quorum of the Members.
- 11.2 Record of Amendments. When an amendment or a new Bylaw provision is adopted, it shall be placed in the appropriate place in the minute book of the Association together with a certificate signed by the Secretary stating the date on which it was approved by the Board and whether at a meeting or by unanimous written consent of the directors, and the date on which it was approved by the Members.

## **ARTICLE 12                    MISCELLANEOUS**

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- 12.1 Conflict in Governing Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.
- 12.2 Amendments to Referenced Statutes; Time for Performance. References in the Bylaws to particular statutes, including sections of the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever these Bylaws state a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.

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CERTIFICATE OF  
AMENDED AND RESTATED BYLAWS OF HOMEOWNERS OF CRESTMONT  
ASSOCIATION

I, the undersigned, hereby certify that:

I am the Secretary of Homeowners of Crestmont Association.

The foregoing AMENDED AND RESTATED BYLAWS OF HOMEOWNERS OF CRESTMONT ASSOCIATION were duly approved by the requisite vote of the Members of the Association on the 12 day of 1, 2021.

Executed this 5 day of December, 2021

  
Secretary