

**RESTATED BYLAWS**

**OF**

**HORIZONS - MARINA DISTRICT**  
**OWNERS ASSOCIATION**  
**(2022)**

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HORIZONS - MARINA DISTRICT OWNERS ASSOCIATION  
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RESTATED BYLAWS OF  
HORIZONS - MARINA DISTRICT OWNERS ASSOCIATION

**ARTICLE I - Recitals and Definitions**

**Section 1.1. Applicability of Bylaws.** Horizons - Marina District Owners Association ("Association") is a California nonprofit mutual benefit corporation and Common Interest Development subject to the (i) California Nonprofit Mutual Benefit Corporation Law comprised in California Corporations Code Sections 7110-8910 inclusive and (ii) Davis-Stirling Common Interest Development Act ("Act"). The Association was created for the overall purpose of managing a common interest condominium development subject to the provisions of the Association's Restated Declaration of Covenants, Conditions and Restrictions ("Declaration").

**Section 1.2. Definitions and Rules of Interpretation.** The rules of interpretation set out in the Declaration shall apply to these Bylaws unless the context otherwise requires. Terms not expressly defined herein shall have the same meaning as the defined terms set out in the Declaration. The terms below are defined as follows:

(a) **Board of Directors.** "Board of Directors" or "Board" means the board of Directors of the Association which acts as the governing body of the Association. Any member of the Board of Directors may be referred to as a "Director," "Board member" or "member of the Board" or any variation thereof intended to refer to a member of the Association's governing body.

(b) **Board Meeting.** "Board meeting" or "meeting of the Board" means either (i) a congregation in person, at the same time and place, of a sufficient number of Directors to establish a quorum of the Board, to hear, discuss, or deliberate upon any item of business that is within the authority of the Board or (ii) a teleconference, where a sufficient number of Director to establish a quorum of the Board, in different locations, are connected by electronic means, through audio or video, or both. A Board meeting shall otherwise comply with the requirements of California Civil Code Section 4090.

(c) **Candidate Qualifications.** "Candidate Qualifications" means any qualifications, conditions or circumstances affecting or relating to a candidate which would disqualify a candidate from running for the Board as are provided herein or as are included in any Election Rules adopted by the Board from time to time. Election Rules may add Candidate Qualifications as permitted by law but may not conflict with any qualifications as are provided herein. The provisions of these Bylaws shall supersede any conflicting provisions in the Election Rules or other rules of the Association.

(d) **City.** "City" means the City of San Diego, County of San Diego, State of California in which the Project is located.

(e) **Condominium.** Condominium (shown in lower case) means an estate in real property as defined in California Civil Code Section 4175 consisting of an undivided interest as tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Unit and any other separate interests in the project as are described in the Declaration or condominium plan or in the deed conveying the condominium.

(f) **County.** "County" means the County of San Diego, State of California in which the Project is located.

(g) **Declaration.** "Declaration" or "CC&Rs" means that Restated Declaration of Covenants, Conditions and Restrictions of the Association as the same has been recorded with the recorder of the County, and any amendments thereto.

(h) Election. “Election” or “Elections” (shown in lower case) means the procedure whereby the members vote in respect of any matter, issue, or proposal relating to the lawful business of the Association which by law or the governing documents requires membership approval and which may properly be presented to the members for approval by them.

(i) Election Rules. “Election Rules” means the operating rules pertaining, among other things, to the election of directors as such rules have been adopted by the Board in accordance with the requirements of Civil Code Sections 4340 and 5100 et. seq.

(j) Governing Documents. “Governing Documents” mean the Declaration, these Bylaws, and any other documents such as rules of the Association, articles of incorporation and the condominium plan which govern the operation of the Association or project.

(k) Inspector. “Inspector” means either the one (1) inspector of elections or three (3) inspectors of elections as the same have been selected by the Board pursuant to these Bylaws, the Election Rules and/or Civil Code Section 5110.

(l) Item of Business. “Item of business” (shown in lower case) means any action within the authority of the Board, except those actions that the Board has validly delegated to any other entity or persons, managing agent, officer of the association, or committee of the Board comprising less than a quorum of the Board.

(m) Member. “Member” (shown in lower case) means every person or entity entitled to membership in the Association as provided in Article 5 of the Declaration.

(n) Owner. “Owner” means, individually and collectively, as the context requires, a “Commercial Condominium Owner” (otherwise “Commercial Owner”) and/or a “Residential Condominium Owner” (otherwise “Residential Owner”).

(o) Project. “Project” (shown in lower case) means the physical area of the common interest development, including the Common Area, condominiums and all improvements thereon, which is governed by the Board and Association and is subject to the provisions of the Declaration.

(p) Secret Election. “Secret Election” (shown in lower case) means any election whereby the membership is required to vote by secret written ballot pursuant to Civil Code Section 5100. At the date these Bylaws were adopted, secret elections are required where the membership must vote in connection with (i) elections regarding assessments; (ii) the election and removal of directors; (iii) amendments to the governing documents; and (iv) the grant of exclusive use of common area pursuant to Civil Code Section 4600.

(q) Tabulation. “Tabulation” and any variation thereof, means the opening, counting, computation and recordation in writing of the ballots and votes received from members in connection with any election, whether or not such ballots and votes are determined by the Inspectors of election to be valid or invalid. The Tabulation shall be held at such place, date and time within the project as may be designated by the Board in the notice of the Board or members’ meeting at which the Tabulation will take place.

(r) Tabulation Meeting. “Tabulation Meeting” means the meeting of the Board or members at which the membership ballots are tabulated, and includes, where the context or circumstances so require, members’ meetings where voting at the meeting is permitted.

(s) Voting Power. "Voting Power" (shown in lower case) means the totality of the voting power of the Association (based on one vote per condominium) as at the relevant record date of any election. Due to the interests of the Commercial Owners and the Residential Owners, (and, if any, to the Owners of condominiums located in any Special Benefit Area) there are certain issues which may only be voted upon by such select groups of members as provided below:

- (i) Only Residential Owners may vote upon any matter relating to the allocation, increase or decrease of the Residential Assessment Component of the Common Expenses (except where Civil Code Section 5605 requires the approval of all Owners when this provision will not apply) or any matter requiring a vote of Owners relating to the Residential Common Areas or Recreational Facilities.
- (ii) Only Commercial Owners may vote upon any matter relating to the allocation, increase or decrease of the Commercial Assessment Component of the Common Expenses (except where Civil Code Section 5605 requires the approval of all Owners when this provision will not apply) or any matter requiring the vote of Owners relating to the Commercial Common Areas
- (iii) Except for changes that only apply to all condominiums Owners, the Association shall not, without the consent of a least seventy five percent (75%) of the Commercial Owners modify the categories or amounts for the Commercial Condominium Contribution set forth in the Base Budget, or the formula for allocating such amounts set forth in the Declaration.
- (iv) Where any action requires a vote of the membership but is expressly and only for the benefit of a Special Benefit Area, the approval of the prescribed percentage of only the Owners of condominiums located within that Special Benefit Area shall be required (except where Civil Code Section 5605 requires the approval of all Owners when this provisions will not apply).

(t) Written Ballot. "Written Ballot" (shown in lower case) means a form of ballot in writing which is mailed or otherwise distributed to every member entitled to notice of an election and which complies with the requirements of these Bylaws and applicable law.

## **ARTICLE II - Membership and Member Voting**

**Section 2.1. Members of the Association.** Entitlement to and the terms applicable to any membership shall be as provided in Article 5 of the Declaration. The Association has one class of voting membership.

**Section 2.2. Voting Requirements.** Subject to Section 2.1 above, only members as at the date of distribution of written ballots (or the record date for voting in such election if different from the date of distribution) shall be entitled to receive a ballot or to have their ballot counted in any election. Members are entitled to one vote per each condominium. Votes may not be split or cast on a fractional basis.

If more than one person or entity owns a condominium, all such Owners shall be deemed to be one member for voting purposes. Further, any one of the multiple Owners shall be entitled to exercise the voting rights of all Owners of that condominium provided that no more than one vote per condominium shall be counted for each issue which is subject to a membership vote. If any Owner exercises the voting rights of a particular condominium, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of

the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular condominium, their votes shall not be counted (except for quorum purposes) and shall be deemed void.

**Section 2.3. Membership Methods for Voting.** There are two main types of elections i.e., secret elections (as defined in above) where a double envelope balloting system is used to protect voter confidentiality and non-secret elections. For either type of election, the Board, in conjunction with the Inspectors, shall have the discretion to determine whether the voting at any election is to be conducted either (a) entirely by mail in or hand delivered ballot where the ballot must be received by the Inspectors by a fixed deadline which may be one or more days before the votes are counted or (b) voting by mail coupled with in person voting at a membership meeting where the votes will normally be counted at that meeting.

In all elections, a member is entitled to appoint an attorney in fact under a general or special power of attorney to vote on behalf of that member. If such an attorney in fact is appointed by a member, the attorney in fact will be entitled to receive a ballot in place of that member, and any vote cast by that attorney in fact will be counted if returned in a timely manner and such vote is otherwise valid. A member who is not a natural person but is instead a legal entity such as a corporation or LLC is entitled to designate a third party to receive a ballot and to have that third party cast a vote by ballot on the member's behalf.

**Section 2.4. Furnishing Evidence of Membership Having Granted Authority to a Third Party to Vote on the Member's Behalf.** The Association or any Board member or officer shall be entitled to require that any member provide to the Association, in a timely manner, a complete and true copy of any power of attorney or other written authority appointing or designating any third party to receive a ballot and/or cast a ballot on behalf of that member. Such power of attorney or other written authority must be signed by the member or, if the member is a legal entity who is not a natural person, by an officer or other person ostensibly authorized by the legal entity member to make such appointment or designation. The Association or its agent may, but is not required to, verify that any person purporting to have authority to sign on behalf of an Owner does have such authority.

**Section 2.5. Annual Election of Directors.** The membership shall elect Directors to the Board in accordance with Article 3 hereof. The candidates receiving the highest number of votes, up to the number of positions up for election, shall be elected to the vacant Director positions.

**Section 2.6. Special Elections of the Membership.**

(a) Persons Entitled to Call for an Election. A majority of members of the Board, the Board president, or five percent (5%) or more of the members may call for an election any time to consider any lawful business of the Association.

(b) Procedures for Calling for Elections Requested by Members. If an election is called by members other than the Board of Directors or the Board president, the request shall be submitted by such members in writing, specifying the specific nature of the matter or matters to be voted on and shall be delivered to the Association in accordance with Civil Code Section 4035. If any matter to be voted on includes a proposed change to the Declaration or Bylaws, the request must include the exact text of any additions, deletions or consequential changes proposed to the Declaration or Bylaws. The officer receiving the request shall, within twenty (20) days of receipt of the request, cause notice to be promptly given to the members entitled to vote that an election will be held with a Tabulation Meeting to be held not less than thirty-five (35) nor more than one hundred fifty (150) days following the receipt of the request for any election other than the election of any Director.

(c) If notice of the Tabulation Meeting is not given by or on behalf of the secretary within twenty (20) days after receipt of the request, the Members requesting the election may give the notice. Nothing contained in this section shall be construed as limiting, fixing, or affecting the time when a Tabulation Meeting may be held when the election is called by action of the Board of Directors or the Board president, or the right for the Board on behalf of the Association to require that the election be conducted entirely by written ballot as provided herein.

**Section 2.7. Voting by Ballot.** All elections, and whether the call for any election is made on behalf of the Board or by or on behalf of any member(s), may, subject to the Board's discretion, be conducted exclusively by the submission in advance of written ballots to the members at least thirty (30) days prior to the initially scheduled deadline for the receipt of returned ballots, provided that for elections other than those conducted as secret elections, the Board may, at its discretion, shorten the time period for the initial return of written ballots to as few as fifteen (15) days.

The time fixed for the return of written ballots or allowed for voting in any election may be extended or changed by the Board with the express or implied consent of the Inspectors. General notice shall be given to the membership of any change in the time allowed for voting prior to the commencement of any Tabulation. Once cast, a written ballot may not be revoked. A written ballot shall be deemed to have been cast when it is actually received by or on behalf of the Inspectors at any address where the election materials direct that written ballots are to be returned. For the purposes of the Bylaws, the Inspectors shall be conclusively presumed to have given implied consent if no written objection by the Inspectors is delivered to the Board within three (3) business days of notice of the change having been given to the Inspectors.

**Section 2.8. Membership Meetings.** All meetings of the members shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the Association may adopt. The president of the Board shall preside as chair at all meetings of the membership (unless the members shall vote otherwise). Notice of any membership meeting shall be given to the members in accordance with the provisions of California Corporations Code Section 7511.

**Section 2.9. Proxy Voting.** Voting by proxy shall not be permitted at any election.

**Section 2.10. Quorum Requirements.** Except as otherwise expressly required by Section 3.8(d) of these Bylaws or by law, no quorum shall be required for any election.

**Section 2.11. Election Procedures.** The Board, in its discretion, shall be entitled to adopt such reasonable procedures as it deems necessary or appropriate to assure fairness and certainty in an election, such as requiring that only written ballots of a certain type, from a certain source or in a certain form as provided by the Association are used in an election.

**Section 2.12. Inspector.** For every secret election, the Board will appoint (and remove as the Board deems appropriate) an Inspector or inspectors in accordance with the requirements of Civil Code Section 5110 as such provisions may be expanded upon by the Election Rules.

**Section 2.13. Reporting of Election Results.** The results of a Tabulation shall be promptly reported to the Board and recorded in the minutes of the next open meeting of the Board. Within fifteen (15) days of the Tabulation, the Board shall publicize the results of the election by posted written notice and by email to all members.

**Section 2.14. Conduct of Informational Meetings.** Nothing herein shall preclude the Association from also conducting informational or "Town Hall" meetings of the members in order to discuss any Association business, conduct a straw poll or to address other matters where it is considered beneficial to the membership to meet concerning any item of business or matter



reasonably related to the Association or project. No formal notice or other formalities shall be required in relation to such informational meetings nor need any minutes be created or approved. The chair of the meeting, as designated by the Board, shall have the sole discretion as to how such meeting shall be conducted.

**Section 2.15. Uncontested Election for Directors.** Directors may be deemed for all purposes to have been elected by the membership, without casting or counting ballots, if the number of candidates running for the Board for that election does not exceed the number of open seats when nominations are closed, provided that, in order for any deemed election to be permitted, such acclamation and procedures relating thereto must comply with Civil Code Section 5103.

### **ARTICLE III - Board of Directors**

**Section 3.1. General Board Powers.** Subject to the provisions of the California Nonprofit Mutual Benefit Corporation Law, the Act and other applicable law and any limitations contained in the Declaration, the Board shall have the powers provided by such applicable law and the business and affairs of the Association shall be vested in, and exercised by, the Association's Board of Directors. No right or power conferred on the Board in these Bylaws or by law shall be construed as a duty, obligation or disability charged upon the Board or any director. The Board shall have the right to delegate its powers or duties to any management company, committee or other persons or entities on such terms or conditions as the Board shall deem fit, provided that notwithstanding any such delegation, the activities and affairs of the Association shall at all times be subject to the ultimate direction and responsibility of the Board. Without prejudice to the generality of the foregoing, the Board shall have the following powers to:

(a) Exercise all powers vested in the Board under the Governing Documents and under the laws of the State of California.

(b) Appoint and remove all officers of the Association, committee members and Association agents and/or employees; prescribe and/or delegate any powers and duties and fix the compensation for such persons that are consistent with law, the Articles, and these Bylaws, provided that only one person per condominium may be appointed to serve on any particular committee at any one time.

(c) Subject to the Declaration, establish and/or dissolve such committees as it deems necessary or desirable from time to time in connection with the affairs of the Association.

(d) Fill vacancies on the Board of Directors or in any committee, except for a vacancy on the Board created by the removal of a Board member by action of the members, or the Board.

(e) Appoint such agents and employ or retain such employees, vendors, consultants or independent contractors, including attorneys and accountants, as it sees fit to assist in the operation of the Association, and to fix their duties and to establish their compensation.

(f) Incur or make capital expenditure or borrow money and incur loan indebtedness on behalf of the Association, including causing to be executed, in the Association's name, promissory notes or other evidences of debt and mortgaging, pledging or securing the same with any Association asset or security subject to compliance with the restrictions contained in the Declaration.

(g) Provide personnel to monitor activities within the project or other similar services, with the types, extent, nature, and hours of services to be determined from time to time by the

Board, if the Board considers it appropriate and in the best interests of the Owners to provide such service. Any services provided or contracted by the Association under this subsection are not intended to replace, or to supplement, in any manner, governmental law enforcement, fire, health or safety services and no references herein to such services shall be construed as a representation that the project or its Association offers enhanced security or other services for any purposes relating, supplemental or similar to governmental services for the benefit of Owners and residents.

(h) Permit utility suppliers or others to use portions of the Common Area as is reasonably necessary or desirable to the on-going operation of the project.

(i) Adopt Rules not inconsistent with the Declaration and these Bylaws relating to activities within and the use of the project;

(j) Maintain bank accounts for funds coming under the control of the Association;

(k) Levy assessments as provided in the Declaration;

(l) Enforce the Governing Documents by any method permitted by the Governing Documents or by law;

(m) Contract for and maintain any type of insurance or bond for the benefit of the Association as expressly provided for and not prohibited by the Declaration;

(n) Contract for, provide, purchase and pay for any maintenance, utility, landscaping or other services, materials, supplies, equipment and tools for the maintenance of or use within the Common Area or other areas maintainable or governed by the Association pursuant to the Governing Documents;

(o) Consistent with the requirements under the Declaration, enter at all reasonable times, by its officers or directors or its agents or independent contractors, any condominium when necessary in connection with maintenance, construction, inspection, or emergency repair as the Board deems reasonably necessary in order to carry out the Board's rights or duties under the Governing Documents;

(p) Pay taxes or assessments which could become a lien upon the entire project or any portion thereof, and to pay and discharge any lien or encumbrances levied against the entire project or any portion thereto;

(q) Prosecute or defend, in the name of the Association, any action affecting or relating to the project or any action in which all of the Owners have an interest in the subject thereof;

(r) Suspend the right of an Owner to use any recreational facilities within the project, or, as may be provided by the Rules, any other facilities or Improvements within Common Area which are not essential to using, or obtaining access to, an Owner's condominium, for a period not exceeding thirty (30) days for any violation of the Governing Documents, or until any such violation has been corrected, upon compliance with the requirements of Civil Code Section 5855, and to adopt and impose reasonable monetary fines for a violation of the Governing Documents provided that any imposition of monetary fines will also be subject to the due compliance with the requirements of Civil Code Section 5855;

(s) Dedicate or transfer all or any part of the project, excluding any separate interest, to any public agency, authority or utility and to grant permits, licenses, easements and use rights for utilities, cable television and internet services, maintenance and for other purposes over, upon,

under and across the project, excluding any separate interest unless the Owner thereof consents, as the Board deems to be reasonably necessary or desirable for the operation or benefit of the Owners as a whole.

**Section 3.2. Limitations on Board Powers.** Anything in Section 3.1 of this Article to the contrary notwithstanding, unless the members have approved such action by a vote or written ballot of members entitled to exercise a majority of the voting power of the Association, the Board may not:

(a) Fill any vacancy on the Board created by the removal of a director, which only Owners may fill; or

(b) Pay any compensation to any director or officer of the Association for services performed in the conduct of the Association's business; however, the Board may reimburse any such director or officer for expenses reasonably incurred by such director or officer in carrying on the business of the Association.

**Section 3.3. Number and Qualification of Directors.** The Board shall consist of seven (7) natural persons, six (6) of whom shall be elected by the Residential Owners and one (1) of whom shall be elected by the Commercial Owners. If all Commercial Condominiums are owned by the same Owner, that Owner shall be entitled to designate in writing a qualified person to fill the one (1) position on the Board which is to be held by a Director selected by the Commercial Owners, and no formal election of that Director will be required.

Each Director must be a member except as provided hereafter. If a member is not a natural person but is a legal entity such as a corporation or LLC, such member shall be entitled to designate in writing a natural person who may be nominated as a candidate for, and, if elected or appointed, may serve on the Board as if that natural person had been a member. Only one Owner per condominium shall be eligible to serve on the Board at any one time, and even if an Owner owns multiple condominiums Board service is still limited to only one Owner on behalf of all condominiums owned.

**Section 3.4. Annual Election of Directors.** An election of Directors shall be held during the month of October in each calendar year, or as soon thereafter as shall be practicable ("regular election of Directors") in order to ordinarily elect up to seven (7) directors in total.

**Section 3.5. Term of Office.** Persons elected to the Board shall serve for a term of two years until replacement directors have been elected. An election shall be held in any year that a director's term is scheduled to expire. Four (4) Directors will be elected in each even numbered calendar year and three (3) Directors will be elected in each odd numbered calendar year to serve for a term of two (2) years so that the Directors on the Board shall be elected to serve in staggered two (2) year terms. Any Director elected or appointed to fill a vacancy that remains or occurs after the regular election of Directors will hold office for the period of time the predecessor would have served had the position on the Board been filled by a vote of the membership or had the predecessor not prematurely vacated the office and until a successor director has been elected as a replacement.

**Section 3.6. Candidates for Director.**

(a) Nominations. Persons can become candidates for election to the Board of Directors in any reasonable manner determined by the Board or pursuant to the Election Rules. In all cases, the Association shall provide general notice to the membership of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for the receipt of nominations occurs. Individual notice of these matters shall be delivered pursuant to Civil Code

Section 4040 if individual notice is requested by a member. Subject to the requirements of these Bylaws and any Election Rules, a member who meets the requisite qualifications may nominate themselves as a candidate for the Board. Nominations from the floor of any members' meeting are not permitted.

(b) Additional Requirements for Candidacy. In order for a person to be eligible for nomination and election to the Board (and to serve on the Board) such person must meet the following Candidate Qualifications:

- (i) Not be delinquent in the payment of regular or special assessments, provided that if the candidate is a natural person who has been designated by a non-natural person entity Owner to be a member for the purposes of running for the Board, it is the non-natural person entity Owner who must not be delinquent in the payment of such assessments;
- (ii) Not serve, or run for election as a Director if, on election, Co-Owners of the same condominium(s) (or natural person designated by a non-natural entity Owner of that condominium) would be serving on the Board concurrently. Such Candidate Qualification includes not being a candidate when another Owner of the condominium (or natural person designated by a non-natural entity Owner of that condominium) has already been accepted for nomination as a candidate;
- (iii) Have been an Owner of a condominium (or be designated by a non-natural entity Owner who has been an Owner of a condominium) in the project for at least one year as measured from the date that the request for candidate nominations is sent out; and
- (iv) Not have a criminal conviction that would, if the candidate were elected, prevent the Association from purchasing the fidelity bond coverage required by Civil Code Section 5806 or result in the termination of the Association's existing fidelity bond coverage.

In the absence of compliance with these provisions, and subject to a Member's right to demand Internal Dispute Resolution in accordance with Civil Code Sections 5105(e) and 5900 et seq., all votes for such candidate shall not be counted or, if counted in error or otherwise, shall be deemed to be null and void. As provided in Section 3.8(c), this Section shall also apply to a sitting Director who fails to remain current in the payment of all regular and special assessments, (or if such Director was nominated by a non-natural entity Owner, if that Owner fails to remain current in the payment of all such assessments) who shall then be subject to removal from the Board by the majority of Directors who are current in such payments, after a due process hearing is held.

(c) The Association may at any time add director term limits to the Association's Election Rules for purposes of placing limitations upon an Owner's ability to run for and serve on the Board. Any addition of term limits to the Election Rules must comply with the procedure set forth in the Civil Code for the adoption of rules. Any term limits adopted shall only apply prospectively.

### **Section 3.7. Election of Directors.**

(a) Directors Elected by Secret Ballot. The regular election of Directors and any special election to fill a vacancy on the Board shall be conducted by secret election. Directors shall be elected to fill the number of positions on the Board then expiring.

(b) Conduct of Elections. The Board shall establish, and the Association shall provide in relation to any election of Directors, general notice of all of the following at least thirty (30) days before the ballots are initially distributed:

- (i) The date and time by which, and the physical address where, ballots are to be returned by mail or hand delivered to the Inspectors;
- (ii) The date, time, and location of the meeting at which ballots will be tabulated;
- (iii) The list of candidates' names that will appear on the ballot.

For any election other than an election of Directors, notice is only required to be given of the information set out in subsections 3.7(b)(i) and (ii) above. In all cases, individual notice of the above information will be delivered pursuant to Civil Code Section 4040 if individual notice is requested by a member.

(c) Determination of Election Results/Succession to Office. The candidates receiving the highest number of votes shall be elected as Directors and shall take office immediately following their election. In the event there is a tie vote between those candidates who receive the lowest number of votes necessary to qualify the candidate for election for the Board, the tie shall be broken by any method agreed to by the affected candidates (with the concurrence of the Board) or in default of agreement, by a coin toss. In the event that any candidate is determined to be unqualified to be a candidate and/or to serve on the Board of Directors, any votes for such persons will not be counted or, if counted in error or otherwise, will be deemed null and void.

(d) Cumulative Voting. Cumulative voting shall not be permitted in any election of Directors.

(e) Write-in Candidates. There shall be no write-in candidates permitted on the ballot for any election of Directors.

### **Section 3.8. Board Vacancies and Removal of Directors from Office.**

(a) Vacancies Generally. A vacancy or vacancies in the Board shall be deemed to exist on the occurrence of any of the following: (i) the death, resignation or removal of a Director under subparagraphs (c) and (d) of this section; (ii) the failure of the members, at any election at which any Director or Directors are to be elected, to elect the number of Directors necessary to fill all vacant positions on the Board.

(b) Resignation of Directors. Any Director may resign from the Board but only by giving written notice to the Board. Such resignation shall be effective (without any need for acceptance by the Board) on the date such written notice is actually received by the Board, unless the notice specifies a later time for the resignation to become effective. If the resignation of a Director is effective at a future time, the Board may appoint in advance a successor to take office when the resignation becomes effective.

(c) Authority of Board to Remove Directors. The Board shall have the power and authority to remove a Director and declare the office vacant if the Board discovers and determines that such director did not during the course of their candidacy, or does not, while serving as a Director, meet, or continue to meet, any Candidate Qualifications. The Board shall not have the power to remove from office any Director on the basis only that such person was appointed by the Board itself to fill a vacancy on the Board. Further, before any Board member is removed from office, such Board member will be provided with an opportunity to be heard at a hearing of

the Board which conforms with the requirements of Corporations Code Section 7341. In addition to any provisions contained in the Election Rules as to Candidate Qualifications, the Board, by a majority vote of the Directors who meet all of the required qualifications relating to serving directors, may declare vacant the office of any Director if the Director:

- (i) Fails (unless excused by the Board) to attend either (i) three (3) consecutive regularly scheduled meetings of the Board or (ii) five (5) regularly scheduled meetings of the Board within any twelve (12) consecutive month period;
- (ii) Fails to comply with a duly approved action or direction of the Board which the Board reasonably considers should have been complied with by the Director while serving in the capacity of a Director;
- (iii) Fails to comply with the Association's Governing Documents, including but not limited to the payment of regular and/or special assessments or other money owed or due to the Association (apart from the payment of fines, collection charges, late charges or costs levied by a third party).
- (iv) Receives any type of monetary gain, or other gain such as services, products, gifts or gratuities of a significant value (in the opinion of the Board) which have been provided in relation to a Director's service on the Board, and which has not been promptly disclosed to the Board at an open meeting of the Board, sanctioned by the Board and recorded in the minutes;
- (v) Takes any action considered (in the reasonable opinion of the Board) to be grossly detrimental to the general safety, health and welfare of the community and its members or which the Director knew, or should have known, would or might create significant legal liability to the Association or be substantially detrimental or adverse to the Association's financial or legal position;
- (vi) Unless previously authorized in writing by a majority of the Board, fails to keep confidential all confidential Board information, including but not limited to discussions and information received during Executive Session Board Meetings and information which is subject to attorney-client privilege and which privilege vests in the Association.

(d) Authority of Members to Remove Directors. Except as otherwise provided in subparagraphs (c) and (e) hereof, a Director may only be removed from office before expiration of the term by the affirmative vote of the members provided that a quorum of not less than twenty-five percent (25%) of the voting power of the membership is achieved by the initial deadline date for the return of ballots. Notwithstanding this provision, (but without prejudice to subparagraph (c) hereof), a Director elected by the Commercial Owners may only be removed by a vote of the Commercial Owners.

(e) Filling of Vacancies. Vacancies on the Board of Directors may be filled by a majority vote of the remaining Directors, though less than a quorum, or by a sole remaining Director unless the vacancy is created through removal of a Director by action of the members or Board, in which case the vacancy shall only be filled by a vote of the members. Notwithstanding the above, a vacancy of a Director elected or appointed by the Commercial Owners may only be filled by a vote or appointment of the Commercial Owners. Furthermore, the members may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors.

**Section 3.9. Annual Reports and Solicitations.** Not less than thirty (30) nor more than ninety (90) days before the end of the fiscal year, the Association shall prepare and distribute the reports and statements required by Civil Code Sections 5300 et seq. At least thirty (30) days prior to distributing said reports and statements, the Association shall solicit the member contact notice required by Civil Code Section 4041.

#### **ARTICLE IV - Board Meetings**

**Section 4.1. Place of Meetings.** Without prejudice to the right of the Board to hold Board meetings electronically in any manner which complies with the requirements of the applicable law, regular and special meetings of the Board may be held at any place within the project, the City or other reasonably convenient place which has been determined from time to time by the Board.

**Section 4.2. Regular Board Meetings.** Regular Board meetings shall be conducted monthly, or at such other periodic intervals, but not fewer than semi-annually, and at such times, as the Board determines is most suitable for the efficient and timely conduct of the Association's business.

**Section 4.3 Special Board Meetings.** Subject to applicable law, special Board meetings may be called and held at any place, date and time as selected by the president at his own instigation or upon request of any two Directors. Notice of such meetings shall be given to the Directors as provided in Section 4.5 below.

**Section 4.4. No Action Without a Meeting.** Except in an emergency, the Board shall not take action on any item of business outside of a Board meeting. Such action outside of a Board meeting must be unanimous and be recorded in the minutes of the next Board meeting.

**Section 4.5. Notice of Board Meetings to Directors.** Directors shall be notified of the date of any regular or special Board meeting at least four days in advance by first-class mail or forty-eight hours' notice delivered personally or by telephone, including a voice mail messaging system or by electronic transmission in accordance with the provisions of Corporations Code Section 20. The notice shall state the time, place, and, if a special meeting, shall include the purpose and details of any agenda applicable to the meeting. A majority of the Directors present, whether or not constituting a quorum, may adjourn any Board meeting to another time and place. Notice of adjournment to any other time or place shall be given to any Director who is not present at the time of the adjournment. Notice of a Board meeting need not be given to any Director who has signed a waiver of notice or a written consent to the conduct of the Board meeting or an approval of the minutes of the Board meeting (whether before or after the meeting), or who attends the Board meeting without protesting, either before or at the commencement of the meeting, the lack of adequate notice to that Director.

**Section 4.6 Notice of Board Meetings to Members.** Except for an emergency meeting, all members shall be given notice of the date, time and place of (i) all open Board meetings at least four (4) days before the date of the meeting and (ii) all executive session Board meetings at least two (2) days before the date of the meeting, such notice to be given by general delivery in accordance with Civil Code Section 4045. For purposes of this Article, an "emergency" meeting of the Board means a meeting held under circumstances that (i) could not have been reasonably foreseen by the Board; (ii) require immediate attention and possible action by the Board; and (iii) of necessity makes it impracticable to provide the notice as otherwise required herein.

#### **Section 4.7. Attendance at Board Meetings by Members.**

(a) Board Meetings Generally Open to Members With the exception of executive session Board meetings, any member may attend all meetings of the Board, (known as open Board meetings). However, no persons, other than Directors, may participate in deliberations or discussions of the Board or in any part of the meeting other than during members Open Forum (as defined below) except when expressly authorized by the Board or the Board chair. A person who is not a member may only attend and/or speak at an open Board meeting if such action is permitted by the Board chair or by the Board. No Board meeting may be recorded in any manner without the express consent or authorization of the Board or Board chair.

(b) Members' Open Forum. Subject to the provisions herein, any member may speak at any open meeting of the Board concerning the proper business of the Association. The Board has the right to determine what does or does not constitute such proper business. The Board or the chair shall be entitled to impose time limitations on communications by members and to designate a specific time or times for the commencement and termination of members' communications, which time or times shall be known as members Open Forum(s). The meeting chair may at any time during a Board meeting modify any limitations or timing of a members Open Forum, or impose any communication procedures, requirements or constraints, as the chair, in his reasonable discretion, deems appropriate.

**Section 4.8. Executive Session Board Meetings.** Provided that sufficient notice of the executive session has been duly given as required herein or by law, the Board shall be entitled to adjourn an open Board meeting at any time for purposes of convening or reconvening in executive session or to hold a separate executive session Board meeting on its own without also holding an open Board meeting. At an executive session Board meeting, the Board shall be entitled to discuss, and if thought fit, vote on (i) litigation; (ii) matters relating to the formation of contracts with third parties; (iii) member discipline; (iv) personnel matters; (v) a member's assessment payment plan; or (vi) any matter upon which the Board is obtaining legal advice from the Association's legal counsel, pursuant to the statutory and common law provisions pertaining to attorney-client privilege. A member who has requested to meet with the Board to discuss an assessment payment plan or who is subject to possible discipline shall be entitled to attend that portion of any executive session Board meeting which pertains to his assessment payment plan or disciplinary proceeding but excluding any time spent in deliberation and voting by the Board.

**Section 4.9. Board Quorum Requirements.** A majority of the number of Directors then in office, but not fewer than two, shall constitute a quorum for the transaction of business at any Board meeting. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors so that the quorum is no longer met, provided that any action taken is approved by at least a majority of the required quorum for that meeting, or such other number as is required by law.

**Section 4.10. Protocol at Board Meetings.** At each meeting of the Board, the president, or if the president is absent, the vice president, or in default, any Director chosen by a majority of the Directors present, shall act as chair and preside over the meeting. The secretary, or if the secretary is absent, the person whom the chair shall appoint, shall act as secretary of such meeting and keep the minutes thereof. The chair shall be entitled to impose such reasonable procedures as the chair may determine are necessary or desirable to promote and/or ensure the proper and fair conduct of the Board meeting.

### **ARTICLE V - Officers**

**Section 5.1. Officers.** The officers of the Association shall be a president, a vice president, a secretary and a treasurer. The Association may also appoint, at the discretion of the Board, other



officers or assistant officers in accordance with the provisions this Article. Any person may hold two or more offices, except that neither the secretary or treasurer may not serve concurrently as president, nor may the president and vice president be the same person.

**Section 5.2. Appointment and Removal of Officers.** The officers of the Association shall be chosen every year by majority vote of the Board at an open Board meeting held as soon as practical following the regular election of Directors, and each officer shall hold office until the end of that officer's term, or, if earlier, until such officer shall resign or shall be removed or otherwise disqualified to serve. Any officer may be removed and/or replaced at any time, with or without cause, by the Board.

**Section 5.3. Resignation of Officers.** An officer may resign at any time by giving written notice to the Board. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein. Any resignation will be without prejudice to the rights, if any, of the Association or that officer under any contract to which the officer is a party.

**Section 5.4. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

**Section 5.5. President.** The president shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the affairs and officers of the Association. The president shall preside as chair at all meetings of the Board. The President shall also preside as chair at all meetings of the membership (unless the members shall vote otherwise). The president shall, unless otherwise determined by the Board, have the general power and duties of management usually vested in the office of president of a corporation, together with such other powers and duties as may be prescribed by the Board or the Bylaws. The president shall use reasonable endeavors to ensure that orders and resolutions of the Board are carried out.

**Section 5.6. Vice President.** In the absence or disability of the president, the vice president shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice president shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or the Bylaws.

**Section 5.7. Secretary.** The secretary shall keep or cause to be kept at the principal office or such other place as the Board may order, a book of minutes of all meetings of Directors, with the time and place of holding the same, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board meetings, and the proceedings thereof. The secretary shall keep, or cause to be kept, appropriate current records showing the members, together with their addresses. The secretary shall give, or cause to be given, notice of all meetings of the Board and elections required by the Governing Documents or by law to be given, and shall have such other powers and perform such other duties as may be prescribed by the Board or by the Bylaws.

**Section 5.8. Treasurer.** The treasurer, or chief financial officer, shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books and records shall be open to inspection by any Director or member as provided by applicable law. The treasurer 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. The treasurer 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 treasurer 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 Bylaws.

## **ARTICLE VI - BYLAW AMENDMENTS**

**Section 6.1. Amendment of Bylaws by Members.** These Bylaws may be amended, restated or repealed, or new Bylaws adopted, by the affirmative vote or assent of fifty percent plus one (50% + 1) of the voting power of the Association. Any such amendment, restatement, repeal or adoption of these Bylaws shall become effective immediately on approval by the requisite members. The secretary of the Association shall certify adoption of any such action and a copy of said certificate and the relevant changes to the Bylaws shall be included in the Association's corporate records.

**Section 6.2. Amendment of Bylaws by Board.** These Bylaws may be amended by the majority of two thirds of the Board, but only as permitted herein, and for the following purposes:

- (a) To correct any printing, technical, typographical, clerical or grammatical error or omission in these Bylaws;
- (b) To make any change in the Bylaws to the extent only that such change is reasonably necessary to avoid any provisions of the Bylaws being in conflict with state or federal law, or to comply or accord with state or federal law.

If the Board approves an amendment authorized pursuant to subsection 6.2(b), the amendment shall not take effect until the following procedure has been implemented. The Board shall first give individual notice of such action to the Owners, which notice shall include the text of the proposed amendment and a written opinion from legal counsel that the proposed change duly complies with the applicable provision. An amendment shall be considered as ratified by the membership unless, within thirty (30) days after the date such notice was given to the Owners, the Owners entitled to cast ten percent (10%) of the votes in the Association sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall either resolve to rescind such proposed amendment or call a special election of the membership to vote on the proposed amendment. Unless a majority of a quorum of Owners reject the proposed amendment, the amendment shall be deemed as ratified.

CERTIFICATE OF SECRETARY

The undersigned, being the duly appointed secretary of the corporation known as Horizons - Marina District Owners Association hereby certifies that the above and foregoing restatement of the Bylaws were duly adopted by written ballot of the members of the Association on this 2 day of June, 2022, and that they now constitute the Bylaws of the Association.

HORIZONS - MARINA DISTRICT OWNERS ASSOCIATION  
a California nonprofit mutual benefit corporation

By   
Secretary