

RESTATEMENT OF BY-LAWS  
OF  
SHADOW BROOK SWIM CLUB

ARTICLE I  
Name

The name of the corporation is SHADOW BROOK SWIM CLUB, hereinafter referred to as the "Corporation."

ARTICLE II  
Definitions

Section 1. "Corporation" shall mean and refer to SHADOW BROOK SWIM CLUB, its successors and assigns.

Section 2. "Subdivided Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Corporation.

Section 3. "Declaration" shall mean that certain Declaration of Covenants, Conditions and Restrictions applicable to the Subdivided Property and recorded in the Office of the Recorder for the County of Santa Clara, State of California on May 3, 1968, in Book 8111 at page 526, on October 16, 1968, in Book 8299 at page 178, and on October 27, 1970, in Book 9101 at page 1, as the same may be amended or modified from time to time in accordance with the terms thereof.

Section 4. "Lot" means a single-family residential lot designated on any subdivision map relating to any of the real property described in Exhibit "A", as amended from time to time, or a Lot shown on such map that is not designated as a residential Lot but is used for residential purposes. The word "Lot" shall be deemed to include any improvements which may be constructed thereon from time to time; provided, however, that any property that is conveyed to the Corporation and used by it for recreational purposes shall not be deemed to be a Lot or Lots for the purposes of these restrictions.

ARTICLE III  
Membership

Section 1. The owner of a residential lot located upon the real property described in Exhibit "A" attached hereto and incorporated herein shall be a member in this Corporation. "Owner" means the holder or holders

of record title to a lot; provided, however, that if one holding record title has entered into a contract to sell his lot and such contract has been recorded, the purchaser thereunder shall be deemed the owner.

Section 2. The number of the memberships (which shall equal the number of residential lots located upon the real property described in Exhibit "A") shall not exceed 320.

Section 3. Any person claiming to be a member of this Corporation shall establish his right to membership to the satisfaction of the Secretary of this corporation.

Section 4. A membership shall terminate if a member ceases to be qualified for membership as set forth in Section 1.

#### ARTICLE IV Voting Rights

Section 1. This Corporation shall have only one class of voting membership as defined in Article III.

- a. The owner or co-owners of a residential lot shall be entitled to one (1) vote; provided, however, that the owners of more than one residential lot shall be entitled to one (1) vote for each residential lot owned.
- b. If the co-owners of a residential lot are husband and wife, either spouse who is presented at a meeting (in person or by proxy) may cast the vote to which they are entitled unless (i) written instructions to the contrary are given by either of them to the Secretary of this Corporation, or (ii) both appear (in person or by proxy) at a meeting and cannot agree on the manner in which their vote shall be cast. If condition (i) or (ii) occurs, each spouse shall be entitled to cast one-half of such vote.
- c. If the co-owners of a residential lot are not husband and wife, then the vote shall be cast in accordance with the consent of the majority of the co-owners. If only one co-owner is present at a meeting (in person or by proxy) he may cast the vote to which he and his co-owners are entitled, but if more than one co-owner is present at a meeting (in person or by proxy) and a majority of the co-owners so present cannot agree as to how the vote shall be cast, then no vote shall be deemed cast by the co-owners of said vote.

Section 2. Voting shall be in person or by written proxy signed by the member and delivered to the Secretary prior to the meeting. The proxy shall be valid only for the meeting specified. The proxy shall not be binding upon a purchaser of property from the grantor of the proxy. Voting for directors shall be cumulative.

Section 3. No member who is delinquent in the payment of an assessment for which he is liable shall be entitled to vote.

#### ARTICLE V Meetings of the Membership

Section 1. The regular fall meeting of the members shall be held on a week day evening in the month of September or October. The primary objective of this meeting is to elect new Directors and to review the past year. The spring meeting shall be held on a week day evening in the month of March or April. The primary objective of this meeting is to review the budget and plans for the forthcoming year.

Section 2. Special meetings of the members for any purpose may be called at any time by the President or by two (2) members of the Board of Directors. Upon the written request of members who have the right to vote, at least twenty-five (25%) percent of the voting power of the membership, the President or Secretary shall call a special meeting of the members to be held within fifteen (15) days of receipt of such request.

Section 3. Notice of any regular or special meeting shall be given in writing to the members by the Secretary at least seven (7) days, but not more than sixty (60) days, before the meeting. Notice may be given personally or by mail. If such notice is addressed to a member at the mailing address of his lot (or at such other address as he has given to the Secretary in writing) and deposited in the United States Mail with postage fully prepaid within one hundred (100) miles of the City of San Jose, California, such notice shall be deemed given on the day following such deposit. Notice of each annual or special meeting of the members shall specify a reasonable place, the date, and the hour of the meeting, and in the case of a special meeting, the general nature of the business to be transacted.

Section 4. At any meeting of the membership, twenty-five (25%) percent or more of the voting power, present in person or by written proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Members present at a duly called meeting at which a quorum is present in person or by written proxy may continue to transact business notwithstanding the fact that the departure from the meeting of members results in less than a quorum being present.

## ARTICLE VI Board of Directors

Section 1. The powers of the Corporation shall be vested in a Board of Directors consisting of six (6) persons. To qualify as a Director, one must be a member of this Corporation.

Section 2. The Board shall have the powers and duties set forth in these By-Laws and in the Declaration, and those which are conferred by law.

Section 3. At each regular fall meeting, the members shall elect a Board of Directors for the forthcoming year. Every member entitled to vote at any election may cumulate his votes and give one candidate a number of votes equal to the number of Directors to be elected, multiplied by the number of votes to which such members are otherwise entitled, or distribute his votes on the same principle among as many candidates as he thinks fit. The candidates receiving the highest number of votes up to the number of Directors to be elected shall be deemed elected.

Section 4. Members of the Board shall serve for a term of at least one (1) year and until the respective successors are elected, or until death, resignation, or removal, whichever is the earlier; and provided further that if any Board member ceases to be a member of the Corporation, his Board membership shall thereupon terminate. Any Board member may resign at any time by giving written notice to the President or Secretary.

Section 5. At any duly authorized meeting of the members, any one or more of the Directors may be removed with or without cause by a vote in accordance with Section 810 of the California Corporations Code, and a successor may then and there be elected to fill any vacancy thus or otherwise existing.

Section 6. Except as provided in Section 5, vacancies on the Board shall be filled by a majority of the remaining Board members though less than a quorum, and each Board member so elected shall hold office until his successor is elected by the owners. Upon tender of resignation by a Board member, the Board shall have the power to elect his successor to take office at such time as the resignation becomes effective.

## ARTICLE VII Meeting of Directors

Section 1. A regular meeting of the Board of Directors shall be held immediately following each regular meeting of the membership. No notice of this meeting shall be required.

Section 2. A special Board of Directors meeting between the outgoing Board members and the newly elected Board members shall be held immediately following the regular fall meeting of the members of the Corporation. The primary objective of this special Board meeting is to arrange for the transfer of responsibilities from the outgoing Board members to the newly-elected Board members. Complete transfer of responsibilities, records, and accounts shall be affected no more than thirty (30) days after election of the new Board.

Section 3. A regular meeting of the Board of Directors shall be held once a month at the time and place so chosen by the Board. No notice of any regular meeting of the Board of Directors shall be required.

Section 4. Special meetings of the Board of Directors shall be held when called by the President or by any two (2) Directors. Written notice of each special meeting of the Board of Directors shall be given each Director by personal delivery at least forty-eight (48) hours before the meeting, or by deposit in the United States mail, postage prepaid, addressed to each Director at his last known address, at least ninety-six (96) hours before the meeting. Each Director shall register his address for the mailing of notices with the Secretary of the Corporation.

Section 5. A majority of the duly qualified members of the Board shall constitute a quorum for the transaction of business.

Section 6. Meetings of the Board shall be held at the Corporation's principal office unless the Directors designate another place by resolution or unanimous written consent.

Section 7. The transactions of any meetings of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though [sic] had at a meeting duly held after regular call and notice if a quorum be present, and if either before or after the meeting each of the Directors not present signs a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

## ARTICLE VIII Powers and Duties of Board of Directors

Section 1. Subject to limitations of the Articles and By-Laws and of the California nonprofit corporation law, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be controlled by the Board of Directors. Without limiting the generality of the foregoing, the Directors shall have the power:

- a. To select and remove all officers, agents and employees of the Corporation, prescribe their powers and duties, fix their compensation and require from them security for faithful service.
- b. To conduct, manage and control the affairs of the Corporation and make such rules and regulations therefor as they may deem best.
- c. To do all acts necessary and proper to exercise the powers granted in Paragraph 7 of the Declaration of Covenants, Conditions and Restrictions.
- d. Contract and pay legal and accounting services necessary or proper in the operation of the Corporation.

Section 2. It shall be the duty of the Board of Directors to:

- a. Supervise all officers, agents, and employees of the Corporation, and to see that their duties are properly performed.
- b. Procure and maintain adequate fire, casualty, liability and other insurance, including indemnity and other bonds; and in obtaining such insurance the Directors shall adhere to the following minimum standards:
  - i. Fire insurance, with extended coverage and vandalism endorsements, shall be provided for the full insurable replacement value of the property owned by the Corporation.
  - ii. Public liability insurance shall be provided under which the coverage shall not be less than \$100,000.00 for any person injured, \$300,000.00 for any one occurrence resulting in bodily injury, and \$50,000.00 for property damage.
  - iii. A fidelity bond naming officers and all employees of the Corporation as principals, and the Corporation as obligee, shall be provided in an amount not less than \$10,000.00.
- c. To levy and collect assessments against the members and to enforce the collection of such assessments by suit at law or enforcement of the lien on the property of delinquent members, as more fully provided in the Declaration.
- d. Cause to have prepared an annual operating statement reflecting income and expenditures of the Corporation for its fiscal year with provision for distribution of a copy of said report to each member within ninety (90) days after the end of the fiscal year.

ARTICLE IX  
Pool and Recreational Facilities

Section 1. The swimming pool and related recreational facilities operated by the corporation are hereinafter referred to as "the pool".

Section 2. Except as provided in Section 3 herein below, the pool is for the exclusive use of the members and authorized guests as provided in Paragraph 7 of the Declaration.

Section 3. A member may assign his right to use the Pool and recreational facilities to a tenant residing in the dwelling erected upon said member's lot. Such assignment shall be effective upon filing with the Board of Directors a written notice thereof and a copy of the assignment agreement signed by the member and the tenant in such form as the Board shall from time to time prescribe; provided however, that such assigning member and his lot shall remain liable for the payments of the assessments on such lot in the same manner as if such assignment had not occurred.

ARTICLE X  
Officers

Section 1. The officers of this Corporation shall be a President, a Vice-President-Social, a Vice-President-Pool, a Recording Secretary, a Financial Secretary, a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. The officers of this Corporation, except such officers as may be appointed in accordance with Section 3 of this Article, shall be chosen annually by the Board and each shall hold office for at least one (1) year unless he shall sooner resign or shall be removed, or otherwise disqualified to serve. One officer shall hold office for two (2) years, the first year as Financial Secretary and the second year as Treasurer.

Section 3. The Board may appoint such other officers as the affairs of the Corporation may require, 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.

Section 4. Any officer may be removed from office either 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 Recording Secretary. Such resignation shall take effect at 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. Upon resignation or removal of an officer, the position shall be filled in the manner prescribed in the By-Laws for regular appointment to such office. The appointee to such vacated office shall serve the remainder of the term of the officer he replaces.

Section 5. **PRESIDENT.** The President shall preside over all meetings of the membership and the Board of

Directors. He shall sign as President, all written instruments that have first been approved by the Board of Directors. Subject to the advice and control of the Board of Directors, he shall have direction of the affairs of the corporation. He shall call meetings of the membership of the Corporation and the Board of Directors in accordance with the provisions of these By-Laws. Upon the expiration of his term, the immediate past president shall serve for one year as a special consultant to the newly elected Board of Directors and shall attend the meetings of the Board, in order to provide advice and counsel to the Board and to insure continuity of the activities of the Corporation.

Section 6. VICE-PRESIDENT-SOCIAL. All duties of the President shall, in his absence, inability or refusal to act, be performed by the Vice-President-Social. In addition he shall be primarily responsible for the social functions of the club.

Section 7. VICE-PRESIDENT-POOL. If both the President and the Vice-President-Social are absent or unable or refuse to act, then the Vice-President-Pool shall perform the duties of the President. The Vice-President-Pool shall also be responsible for the maintenance and operation of the pool owned by the Corporation.

Section 8. RECORDING SECRETARY. It shall be the duty of the Recording Secretary to keep the seal of the Corporation and to affix it to all papers requiring the same; to have custody of all records and papers of the Corporation, and to handle its correspondence; to serve all notices required by these By-laws; and record and file the minutes of all meetings. These minutes shall be published monthly to all officers of the Corporation, at least seven (7) days prior to any scheduled Board Meeting, and to any other requesting member of the Corporation; edit and publish a monthly newsletter to inform all members of the Corporation for any items of interest; request from each member of the Board a monthly input to the newsletter; distribute the newsletter to all members of the Corporation; and perform other duties prescribed by the Board.

Section 9. FINANCIAL SECRETARY. It shall be the duty of the Financial Secretary to collect, keep records of receipts, and deposit all funds of the corporation in such banks or financial institutions as the Board of Directors shall designate. Withdrawal of funds shall be subject to the signatures of such officers as may be designated by the Board. The Financial Secretary is to keep a record of the membership, their addresses and telephone numbers and to perform any other duties prescribed by the Board of Directors.

Section 10. TREASURER. The Treasurer shall be responsible for all disbursements, maintain adequate records, and render an annual financial report reflecting all receipts and disbursements. Copies of such report shall be available to the members. Disbursement of corporate funds shall be subject to the signatures of such officers as may be designated by the Board.

Section 11. No officer shall receive compensation for any service he may render to the Corporation. However, any officer may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE XI Assessments

As more fully provided in the Declaration, each member is obligated to pay to the Corporation the assessments therein specified. Any assessments which are not paid when due shall be delinquent. Delinquent assessments shall bear interest at the rate specified in the Declaration. Upon default in the payment of any such assessment, the Corporation may enforce the collection thereof by a suit at law against the owner obligated to pay the same or by recordation of a lien against the delinquent member's lot and foreclosure of said lien, and interest, costs, and reasonable attorney's fees of such action or proceeding shall be added to the amount of such delinquent assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the pool and recreational facilities or abandonment of his lot.

ARTICLE XII  
Principal Office

Section 1. The Board of Directors is hereby authorized to fix and change the location of the principal office of the Corporation for transaction of business within the County of Santa Clara.

Section 2. Records of the Corporation shall be maintained at the principal office, and shall be open to inspection at any reasonable time upon written demand by any member.

ARTICLE XIII  
Miscellaneous

Section 1. RULES OF PROCEDURE. In all matters of procedure not specifically governed by these By-Laws or by the Articles of Incorporation, the latest edition of Robert's Rules of Order shall govern.

Section 2. SEAL. This Corporation shall have a seal, circular in form, upon which shall be inscribed the following: "Shadow Brook Swim Club - California - Incorporated February 1, 1968".

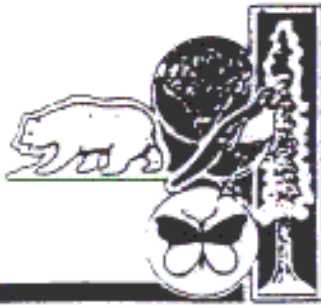
Section 3. AMENDMENTS. By-Laws may be adopted, amended or repealed by the vote or written consent of two-thirds (2/3<sup>rds</sup>) majority of members.

EXHIBIT "A"

THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF  
SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS:



- A. Lots 1 to 106 inclusive, as said lots are shown on certain map entitled, "TRACT NO. 4404", which map was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on January 29, 1968, in Book 232 of Maps, pages 51, 52, and 53.
  
- B. Lots 1 to 118 inclusive, as said lots are shown on certain map entitled, "TRACT NO. 4531", which map was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on October 10, 1968, in Book 243 of Maps, pages 27 and 28.
  
- C. Lots 1 to 100 inclusive, as said lots are shown on certain map entitled, "TRACT NO. 4617", which map was filed for record in the office of the County Recorder of the County of Santa Clara, State of California, on August 6, 1970, in Book 271 of Maps, pages 17 and 18.



State  
of  
California

OFFICE OF THE SECRETARY OF STATE

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

OCT 20 1986




*March Fong Eu*

Secretary of State

Recording requested by and  
when recorded returned to  
Shadow Brook Swim Club  
P.O. Box 20271  
San Jose, Ca. 95160

Amendment to the Restatement of By-Laws of Shadow Brook  
Swim Club, recorded in the County of Santa Clara with the  
Declaration of Covenant, Conditions and Restrictions, Document No.  
8977432, recorded on Oct. 9, 1986.

Date: May 4, 1988

  
Gale Infield  
Gale Infield - President  
Shadow Brook Swim Club

## AMENDMENT TO THE BY-LAWS OF SHADOW BROOK SWIM CLUB

I. There shall be two classes of members -

- a. Proprietary members
- b. Associate members

The number of associate memberships shall be determined and approved by the Board of Directors prior to an Application Opening date.

II. Definition -

- a. Proprietary members: Those members as defined in Article III of the current By-laws.

- b. Associate members: Defined as a homeowner, his or her spouse, and their unmarried children permanently living at home, approved by the Board of Directors on a first-come-first-serve basis, residing within the following boundaries:

The boundaries are and include: Mount Forest to the North, Camden Avenue to the East, the North side of Via Valiente to the South, and Almaden Expressway to the West.

### III. Associate Members have the following privileges and restrictions:

- Associate members have no voting rights and no participation in decisions of the corporation.
- The CC&R's of the corporation do not bind associate members.
- Associate members have the same pool privileges and restrictions as proprietary members.
- Associate members shall be deemed members upon signing a contract with the corporation and paying, in full, the assessed fee.
- Associate memberships are not transferable.
- Associate memberships shall be terminated, without reimbursement, for failure to comply with the rules and regulations of the Swim Club.

### IV. Fees

Associate Membership fees shall be established each year by the board of directors and approved by the Proprietary members at the Spring General Meeting. Fees shall be paid in full upon contract acceptance.

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SANTA CLARA )

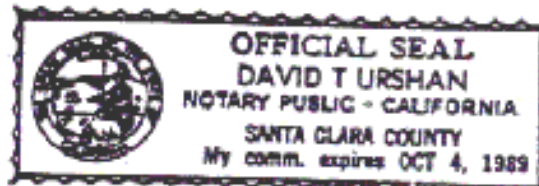
On this 4 day of May 1988, before me, the undersigned, a Notary Public in and for the County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared GALE INFELD (name of officer or agent of declarant) known to me to be the \_\_\_\_\_ (position of officer or fact or agency) of the corporation described in the executed within instrument, and also proven to me on the basis of satisfactory evidence to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws, C, C, & Rs, or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

*David T. Urshan*

Notary Public, State of California

My Commission Expires Oct 4, 1989



1155 Redmond Ave., #A, San Jose, CA 95120