

**BYLAWS**  
**OF**  
**BILTMORE PARK SWIM CLUB, INC.**

**ARTICLE ONE**  
**OFFICES**

The principle offices of the corporation shall be located at 1067 Columbine Drive, Asheville, North Carolina 28803. The Corporation may have such other offices, either within or without the State of North Carolina as the Board may determine from time to time.

**ARTICLE TWO**  
**MEMBERS**

**Section 1. Members.** Biltmore Farms, Inc., and every person (a) who shall own a residential lot subject to the residential requirements of either (i) the Master Declaration of Covenants, Conditions and Restriction for Biltmore Park recorded in Deed Book 1845 at Page 53 in the Office of the Register of Deeds for Buncombe County, North Carolina (hereinafter referred to as the “Master Declaration”), including lots located upon property which may subsequently be made subject to said Master Declaration pursuant to the provisions of the Master Declaration (hereinafter referred to as “Biltmore Park”) or (ii) Declaration of Covenants, Conditions, and Restrictions for Biltmore Park Subdivision recorded in Deed Book 1723 at Page 359 as amended to bring in new sections by Amendments recorded in Deed Book 1728 at Page 169 (Braeside, Section Two), Deed Book 1746 at Page 641 (Braeside, Section Three), and Deed Book 1767 at Page 93 (Braeside, Section Four) (herein after referred to as “Braeside”), and (b) who shall have joined the Swim Club and shall be current in the payment of all dues and assessments of such Swim Club shall be a Member of the Swim Club. The Swim Club shall charge owners in Braeside and in Biltmore Park equal dues.

By February 1 of each year, Swim Club shall send by mail to each resident of Biltmore Park and Braeside who is not then a member of Swim Club an application that may be completed and submitted to Swim Club for the purpose of becoming a member of Swim Club for that year. In no event shall Swim Club take any action that would cause or result in Swim Club becoming a club that allows members to acquire an equity interest in Swim Club or its assets. For the sake clarification, nothing in this Section I shall be interpreted to prohibit Swim Club from offering memberships to persons not residing in Biltmore Park on terms no more favorable to such persons than the terms on which memberships offered to residents in Biltmore Park and Braeside

This Section 1 of Article Two shall not be amended without the written consent of Biltmore Farms, Inc., its successors or assigns.

**Section 2. Voting Rights.** Until such time as Biltmore Farms, Inc., or its successors or assigns, shall no longer be liable for any indebtedness of the Swim Club (as guarantor of indebtedness or otherwise), Biltmore Farms, Inc., shall be the sole voting Member of the Swim Club and Members other than Biltmore Farms, Inc., shall be non-voting Members. After Biltmore Farms, Inc., is no longer liable for any indebtedness, each lot owner who is a Member of the Swim Club shall be entitled to one vote for each Lot in which they hold the required ownership interest. When more than one person or entity owns an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot. After becoming voting members, a majority of the Members present and voting at any meeting of the Swim Club at which a quorum is present shall decide all matters coming on for a vote at any meeting of the Members of the Swim Club. Provided that any Member of the Swim Club who shall not be current on dues, assessments or charges at the time of a meeting of the Members shall not be entitled to vote.

**Section 3. Transfer of Membership.** Membership in this corporation is not transferable or assignable except in conjunction with the transfer of an interest in the lot to which such membership is appurtenant and the election of the new lot owner to become a Member of the Swim Club.

**Section 4. Associate Members.** Associate Members are Members who do not own a residential lot in Biltmore Park subject to the Master Declaration. Associate Members shall have no vote and shall be subject to such further restrictions that the Swim Club may impose including termination of membership at the end of the year.

### **ARTICLE THREE MEETINGS OF MEMBERS**

**Section 1. Annual Meeting.** An annual meeting of the Members for the purpose of electing directors and for the transaction of such other business as may come before the meeting shall be held no later than the month of July in each year, on any day in that month as determined by the board. If the election of directors is not held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the Members as soon thereafter as may be convenient. Provided, however, if there shall be no business to come before the annual meeting except for the election of Directors such election may be conducted by mail and/or email in such manner as the Board shall determine in lieu of calling for and conducting an annual meeting.

**Section 2. Special Meetings.** Special meetings of the Members may be called by the President, the Board, or not less than twenty-five (25%) percent of the Members having voting rights, at the principal office of the Corporation or at such other place as the Secretary may designate. If no designation is made, the place of the meeting

shall be the principal office of the Corporation in the State of North Carolina, but if all of the Members shall meet at any time and place, either within or without the State of North Carolina, and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

**Section 3. Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of Members shall be delivered either personally or by mail to each Member entitled to vote at such meeting, not less than thirty (30) nor more than sixty (60) days before the date of such meeting by or at the direction of the President, or the Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by stature or by these Bylaws, the purposes for which the meeting is called shall be stated in the notice. Notices may be sent by email provided the Member provides an email address in writing to the Secretary with a request for the same. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States Mail addressed to the Member at his or her address as it appears on the records of the Corporation, with postage thereon paid. If emailed, the notice of a meeting shall be deemed delivered when sent to the email provided by the Member.

**Section 4. Classes of Voting Members.** Subject to the provisions of Article II regarding voting rights, there shall be one class of voting Members.

**Section 5. Action by Members.** Except as provided otherwise in the Articles (particularly Article Two, Section 1 and 2), the Declaration or these Bylaws, any act or decision approved by a vote of no less than a majority of all votes present or represented by a legitimate proxy at a duly held meeting of the Members at which a quorum is present shall be regarded as the act of the Members. Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Members shall be required in order for the Corporation to (1) file a complaint on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Property or any part thereof; or (2) assert a claim against or sue Declarant.

**Section 6. Informal Action by Members.** Any action required by law to be taken at a meeting of the Members, or any action that may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Members entitled to vote with respect to the subject matter thereof and filed with the Secretary of the Corporation to be kept in the corporate minute book.

**Section 7. Quorum.** Except as provided in the Declaration, Articles or these Bylaws, Members holding greater than twenty-five (25%) percent of the votes that may be case at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of the Members, a majority of the Members present may adjourn the meeting from time to time without further notice.

**Section 8. Proxies.** At any meeting of Members, a Member entitled to vote may vote by proxy executed in writing by the member or by his or her duly authorized attorney in fact. No proxy shall be valid after six (6) month from the date of its execution, unless otherwise provided in the proxy.

**Section 9. Waiver of Notice.** Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him or her of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

**Section 10. Order of Business.** The order of business at all annual meetings shall be as follows:

- A. Roll Call;
- B. Proof of Notice of Meeting;
- C. Adoption of Minutes of Previous Meeting;
- D. Reports of Officers;
- E. Reports of Committees;
- F. Appointment of Inspectors of Election;
- G. Election of Directors;
- H. Unfinished Business;
- I. Capital Expenditures Budget;
- J. General Operations Budget;
- K. New Business; and
- L. Adjustment.

The order of business of all special meetings shall be determined by the Secretary of the Corporation. Except as may be otherwise provided herein, the parliamentary conduct of all meeting of the Members shall be governed by the latest edition of Robert's Rules of Order.

## **ARTICLE FOUR BOARD**

**Section 1. Number, Tenure and Qualifications.** The number of directors shall be no less than three and no more than nine. Directors shall be elected at the annual meeting of Members or as otherwise provided in Article Three. The term of office of each director shall be two years beginning April 1st after their election and ending March 31st two years thereafter. Directors need not be residents of the State of North Carolina. An Associate Member shall be qualified to serve as a director. However, only one Associate Member can qualify

to serve at any particular time. During their term an Associate Member who is serving as a director is not subject to the provisions of Article Two Section 4 which allows his or her membership to be terminated. An Associate Member serving as a director is subject to Section 5 of this Article.

**Section 2. Nomination.** Nominations for the election of directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. In the event that the election is to held by mail and/or email the board shall provide the membership an opportunity to nominate other candidates. The Nominating Committee shall consist of at least three persons who shall be a Member or a member of the board. Members of the Nominating Committee shall be elected by the Board. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

**Section 3. Election.** Except as otherwise provided in this Article, directors shall be elected at the annual meeting of the Members and said election shall be by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles, these Bylaws and the Declaration. Cumulative voting is not permitted.

**Section 4. Term of Office.** Each director shall hold office for the term for which he or she was appointed or elected, or until his or her death, resignation, retirement, removal, disqualification or until his or her successor is appointed or elected and qualified. At all annual elections thereafter, director(s) shall be elected by the Members to succeed the director(s) whose term(s) then expire(s), and thereafter each director's term shall be two (2) years. Nothing herein contained shall be construed to prevent the election of a director to succeed himself or herself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

**Section 5. Removal and Vacancies.** A director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of death, resignation or removal of a director, his or her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his or her predecessor. The Members may elect a director at any time to fill any vacancy not filled by the directors.

**Section 6. Committees.**

A. Committees of Directors. The Board, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which shall consist of two or more directors, which

committees, to the extent provided in such resolution, shall have and exercise the authority of the Board in the management of the Corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board, or any individual director, of any responsibility imposed on it by law.

B. Other Committees. Other committees not having and exercising the authority of the Board in the management of the Corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the Corporation, and the President of the Corporation shall appoint the members thereof. Any member thereof may be removed by the person authorized to appoint such member whenever in his or her judgment the best interests of the Corporation shall be served by such removal.

**Section 8. Compensation.** Directors shall not receive any compensation for their services. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefore.

## **ARTICLE FIVE MEETINGS OF DIRECTORS**

**Section 1. Regular Meetings.** A regular meeting of the Board shall be held without any other notice than this Bylaw immediately after, and at the same place, as the annual meeting of Members. The Board may provide, by resolution, the time and place for holding additional regular meetings without other notice than such resolution. Additional regular meetings shall be held at the principal office of the Corporation in the absence of any designation in the resolution.

**Section 2. Special Meetings.** Special meetings of the board may be called by or at the request of the President or any two (2) directors, and shall be held at the principal office of the Corporation or at such other place as the directors may determine.

**Section 3. Notice.** Notice of any special meeting of the Board shall be given at least ten (10) days previously thereto by written notice delivered personally or sent by mail or facsimile transmission or email to each director at his or her address as shown by records of the Corporation. If mailed, such notice shall be deemed to be delivered where deposited in the United States mail in a sealed envelope so addressed, with postage thereon paid. If notice is given by facsimile transmission or email, such notice shall be deemed to be delivered when the facsimile transmission is sent. Any director may waive notice of any meeting.

The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice of waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

**Section 4. Quorum.** A majority of the Board shall constitute a quorum of the transaction of business at any meeting of the Board; but if less than a majority of the directors is present at any meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

**Section 5. Board Decisions.** The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the act of a greater number is required by law or by these Bylaws.

**Section 6. Informal Action by Directors.** Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

## **ARTICLE SIX POWERS AND DUTIES OF THE BOARD**

**Section 1. Duties of the Board.** The Board, for the mutual benefit of the Members and the Owners, shall have the following specific duties (without limitation of other powers and rights such Board may have):

- a. To maintain or cause to be maintained the Swim Club including, but not limited to, pool maintenance, repairs to the Clubhouse, planting, mowing, pruning, fertilizing, preservation, and replacement of the landscaping and the upkeep and maintenance of sidewalks, greenways, trails, pathways, foot bridges, walks, signage, lighting, irrigation, and other improvements in the Swim Club.
- b. To make available to each Member within ninety (90) days after the end of each year an annual report of the Corporation and, upon resolution adopted by the Board or upon the written request of the Members holding at least seventy-five percent (75%) of the eligible votes of the Corporation at such time, to have such report audited (at the expense of the Corporation) by an independent certified accountant, which audited report shall be made available to each Member within thirty (30) days after completion;

- c. To cause to be kept a complete record of all its acts and corporate affairs;
- d. To supervise all officers, agents and employees of the Corporation and to see that their duties are properly performed;
- e. To fix the amount of the Annual Dues and charges necessary to amortize the indebtedness of the Swim Club and pay its operating expenses and to send written notice of the Annual Dues to each Member;
- f. To procure and maintain adequate liability insurance covering the corporation and the directors and officers thereof and adequate hazard insurance on the property owned by the Corporation;

**Section 2. Powers of the Board.** The Board, for the mutual benefit of the Members and the Owners, shall have the following specific powers and rights (without limitation of other powers and rights such Board may have):

- a. To enter into agreements with the appropriate governmental authorities to enable the Corporation to improve and maintain the Swim Club or portions thereof;
- b. To make reasonable rules and regulations for the use and operation of the Pool and Clubhouse and to amend them from time to time;
- c. To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Swim Club and/or the corporation;
- d. To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Swim Club and/or the Corporation;
- e. Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Members at which quorum is present, all in accordance with the Bylaws, to borrow funds to pay costs of operation of the Corporation, which borrowings may be secured by liens on Corporate assets, if the Members see fit;
- f. To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Corporation;
- g. To sue or defend in any court of law in behalf of the Corporation;

- h. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property of the Corporation and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;
- i. To exercise for the Corporation all powers, duties and authority vested in or delegated these Bylaws or the Articles to the Corporation and not reserved to the Members by other provisions of these Bylaws or the Articles;
- j. To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;
- k. To employ a manager or firm to manage the affairs and property of the Corporation, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- l. To enter into agreements or contracts with builders regarding the construction of improvements on Swim Club property;
- m. To retain the services of legal and accounting firms;
- n. To bring an action at law against any Member who does not pay his or her dues;
- o. To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- p. To contract with any third party or any Member for performance, on behalf of the Corporation, of services which the Corporation is otherwise required to perform pursuant to the terms hereof, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Corporation
- q. To contract with any third party, including any property owners association, for the sharing of costs of maintaining the Swim Club property;
- r. To take any and all other actions and to enter into any and all other agreements as many be necessary or proper for the fulfillment of its obligations hereunder or for the operational protection of the Corporation.

Notwithstanding anything contained herein to the contrary, none of the above described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Members.

## **ARTICLE SEVEN OFFICERS**

**Section 1. Officers.** The officers of the Corporation shall be a President, one or more Vice-Presidents (the number thereof to be determined by the Board), a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of the Article. The Board may elect or appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the Board. Any two or more offices may be held by the same person, except the offices of the President and Secretary.

**Section 2. Election and Term of Office.** The officers of the corporations shall be elected annually by the Board at the regular annual meeting of the Board. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. New offices may be created and filled at any meeting of the board. Each officer shall hold office until his or her successor has been duly elected and qualified.

**Section 3. Resignation and Removal.** Any officer elected or appointed by the Board may be removed by the board whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. 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.

**Section 4. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the board for the unexpired portion of the term.

**Section 5. Duties.** The duties of the officers, unless otherwise stated by a resolution of the Board, are as follows:

a. **President.** The President shall be the principal executive officer of the Corporation, and subject to the control of the Board, shall supervise and

control the management of the Corporation. The President shall preside at all meetings of the board; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds, promissory notes and other written instruments and may co-sign all checks.

b. Vice-President. The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

c. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall keep the corporate seal of the Corporation and affix it on all papers requiring said seal, shall serve notice of meetings of the board and of the Members, shall keep appropriate current records showing the members of the Corporation together with their addresses, and shall perform such other duties as required by the Board.

d. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Corporation and shall disburse funds as directed by resolution of the Board, shall sign all checks and promissory notes of the Corporation, shall keep proper books of account, shall cause an annual report of the Corporate books to be made as provided in Article Seven, Section 1, Paragraph d of these Bylaws, and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## **ARTICLE EIGHT CONTRACTS, CHECKS, DEPOSITS, AND FUNDS**

**Section 1. Contracts.** The Board may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or may be confined to specific instances.

**Section 2. Checks, Drafts, or Orders.** All checks, drafts, or orders for the payment of money, notes, or other evidences or indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the board, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice-President of the Corporation.

**Section 3. Deposits.** All funds of the Corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board may select.

**Section 4. Gifts.** The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for any purpose of the Corporation.

## **ARTICLE NINE BOOKS AND RECORDS**

The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its members, Board, and committees having and exercising any of the authority of the Board, and shall keep at the principal office a record giving the names and addresses of the Members entitled to vote. All books and records of the Corporation may be inspected by any Member, or his or her agent or attorney for any proper purpose at any reasonable time.

## **ARTICLE TEN FISCAL YEAR**

The fiscal year of the Corporation shall begin on the first day of January in each year and end at midnight on the thirty-first day of December of each year.

## **ARTICLE ELEVEN DUES**

Each Member is obligated to pay the Annual Dues and charges as determined by the Board. Any Dues and charges which are not paid when due shall be delinquent. If Dues and charges are not paid by the due date, the Dues and charges shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less, plus such late charge as may be established by the Board, and the Corporation may immediately terminate such Member's membership and/or bring an action at law against the Member.

## **ARTICLE TWELVE WAIVER OF NOTICE**

Whenever any notice is required to be given under the provisions of Chapter 55A of the General Statutes of North Carolina, or under the provisions of

the Articles of Incorporation or these Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

### **ARTICLE THIRTEEN AMENDMENT OF BYLAWS**

Except as otherwise provided herein (particularly by Article Two, Sections 1 and 2), these Bylaws may be amended or repealed and new Bylaws may be adopted by the affirmative vote a majority of the directors then holding office at any regular or special meeting of the Board. The Board shall have no power to adopt a Bylaw: (1) prescribing quorum or voting requirements for action by Members or directors different from those prescribed by law; or (2) increasing or decreasing the number of directors, such matters requiring an affirmative vote of the Members. No Bylaw adopted or amended by the Members shall be amended or repealed by the Board, except to the extent that such Bylaw expressly authorizes its amendment or repeal by the Board.

### **ARTICLE FOURTEEN ARBITRATION OF DISPUTES**

In the event any dispute or controversy shall arise between the Corporation and any Member(s) which cannot be resolved between the parties, such matter shall be submitted for a final resolution to an arbitrator appointed by and acting under the rules and procedures of the American Arbitration Association. The award of such arbitrator shall be conclusive and binding upon the parties thereto a judgment thereon may be issued by any court of competent jurisdiction. In addition to the award of settlement, the arbitrator may assess any one or more of the parties to the controversy with cost of the arbitration proceeding.

### **ARTICLE FIFTEEN SEAL**

The corporate seal shall be the same  
As that impressed in the right margin of  
This Article Fifteen.

**ARTICLE SIXTEEN  
LIABILITY LIMITS AND INDEMNIFICATION OF DIRECTORS,  
OFFICERS AND OTHERS**

Neither Declarant, nor any Member, nor the Board, nor the Corporation, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Corporation (unless specifically agreed to) or for a tort of another Member, whether such other Member was acting on behalf of the Corporation or otherwise. Neither Declarant, nor the Corporation, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Declarant, the Corporation or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements, or portions thereof.

The Corporation shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Corporation shall indemnify any director or officer or former director or officer of the Corporation or any person who may have served at the request of the corporation as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him or her in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, Bylaw, agreement, vote of Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability.

The Corporation's indemnity of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Corporation or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article Sixteen or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

#### **SECRETARY'S CERTIFICATE**

This is to certify that the foregoing Bylaws of Biltmore Park Swim Club, Inc., have been duly adopted by the Board of said Corporation on this \_\_\_\_ day of \_\_\_\_\_, 2011.

IN WITNESS WHEREOF, the undersigned, duly and acting Secretary of the Corporation, has signed this Certificate and affixed the seal of the Corporation hereon dated the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Secretary