

THIRD MENDED AND RESTATED
ARTICLES OF INCORPORATION OF
ROCHESTER SWIM CLUB ORCAS
EFFECTIVE AS OF _____,

2017

I, the undersigned officer of ROCHESTER SWIM CLUB ORCAS, a nonprofit corporation subject to the provisions of Chapter 317A Minnesota Statutes, do hereby certify that the Third Amended and Restated Articles of Incorporation hereinafter set forth were adopted by the unanimous vote of the directors of this Corporation, that the Corporation had and has no voting members at the time these Third Amended and Restated Articles of Incorporation were approved and adopted, and that these Third Amended and Restated Articles of Incorporation correctly set forth without change the corresponding revisions of the Articles as previously amended.

ARTICLE I.

The name of this Corporation is ROCHESTER SWIM CLUB ORCAS.

ARTICLE II.

The registered office of this Corporation is located at 720 27th Street NW Rochester, MN 55901.

ARTICLE III

This Corporation is organized and shall be operated exclusively for charitable and educational purposes, and in particular, the Corporation shall operate exclusively for charitable and educational purposes in regards to aquatic instruction, fitness and safety. The Corporation's specific purposes may include operating (i) an aquatic program that may include a competitive swimming program, (ii) an adult swimming program, (iii) a diving program, (iv) an instructional program for the teaching or development of swimming skills, and (v) such other swimming or aquatic-related

programs and activities as the Board of Directors may from time to time determine. In establishing and operating such programs, the Corporation may affiliate with one or more local, state, national or international organizations associated with or existing to promote any of the foregoing activities. Each of the separate programs so established and operated by the Corporation shall be governed and operated as a separate and individual entity with all assets becoming the property of the Corporation. This Corporation may receive and disburse funds or other property incident to or necessary for the accomplishment of the aforesaid purpose and any and all acts incidental to the transaction of the business of this Corporation or expedient for the attainment of the purpose stated herein.

ARTICLE IV

This Corporation shall have only such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise, and to own, hold, expend, make gifts, grants, and contributions of, and to convey, transfer, and dispose of any funds and property and the income therefrom for the furtherance of the purposes of this Corporation herein above set forth, or any of them, and to lease, mortgage, encumber, and use the same, and such other powers which are consistent with the foregoing purposes and which are afforded to this corporation by the Minnesota Nonprofit Corporation Act, as now enacted or as hereafter amended. All the powers of this corporation shall be exercised only so that this corporation's operations shall be exclusively within the contemplation of Section 501(c)(3) of the Internal Revenue Code of 1986.

All references in these Articles of Incorporation to sections of the Internal Revenue Code of 1986 include any provisions thereof adopted by future amendments thereto and any cognate provisions in future Internal Revenue Codes to the extent such provisions are applicable to this corporation.

ARTICLE V

This Corporation shall not afford pecuniary gain, incidentally or otherwise, to its members, if any. No part of the net income or net earnings of this Corporation shall inure to the benefit of any member, private shareholder or individual. No substantial part of its activities shall consist of carrying on propaganda or otherwise attempting to influence legislation. This Corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

Notwithstanding any other provision of these Articles, if at any time the Corporation is a private foundation within the meaning of Section 509 of the Internal Revenue Code of 1986, then during such time or times:

- a. This Corporation shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by Section 4942(a) of the Internal Revenue Code of 1986. For purposes of these Articles of Incorporation, the term “income” means, for each taxable year of this corporation, the distributable amount with respect to this corporation as defined in Section 4942(d) of the Internal Revenue Code of 1986.
- b. This Corporation may not engage in an act of “self-dealing” (as defined in Section 4941(d) of the Internal Revenue Code of 1986) that would give rise to liability for the

tax imposed by Section 4941(a) of the Internal Revenue Code of 1986.

- c. This Corporation shall not retain “excess business holdings” as defined in Section 4943(c) of the Internal Revenue Code of 1986) that would give rise to liability for the tax imposed by Section 4943(a) of the Internal Revenue Code of 1986.
- d. This Corporation may not make any investments that would jeopardize the carrying out of the exempt purposes of this Corporation, within the meaning of Section 4944 of the Internal Revenue Code of 1986, so as to give rise to liability of the tax imposed by Section 4944(a) of the Internal Revenue Code of 1986.
- e. This Corporation may not make a “taxable expenditure” (as defined in Section 4945(d) of the Internal Revenue Code of 1986) that would give rise to liability for the tax imposed by Section 4945(a) of the Internal Revenue Code of 1986.

Except as permitted by Minnesota Statutes, Section 317A.501, this Corporation shall not lend any of its assets to any officer or director of this Corporation or guarantee to any other person the repayment of a loan made to an officer or director of this Corporation.

Nothing herein shall be construed to establish or prohibit the payment of reasonable compensation to officers or directors of this Corporation for services actually rendered by them to this Corporation.

ARTICLE VI

The period of duration of this corporation’s corporate existence shall be perpetual.

ARTICLE VII

This corporation shall have no voting members. The Board of Directors may from time to time establish a class or classes of non-voting members upon such conditions and terms as it deems appropriate, or the Board may elect to have no members.

ARTICLE VIII

The management and direction of the business of this Corporation shall be vested in its Board of Directors. The number, term of office, powers, authorities and duties of the directors of this corporation, the time and place of their meetings, and such other regulations with respect to them as are not inconsistent with the express provision of these Articles of Incorporation shall be as specified from time to time in the Bylaws of this Corporation. Any action may be taken by the Board of Directors by written action signed by the number of directors that would be required to take the same action at a meeting of the Board of Directors at which all directors were present; provided that all directors shall be notified of the text of the written action prior to the signing by any of the directors. All directors shall be notified immediately of the effective date of any such written action that is duly taken.

ARTICLE IX

This corporation shall have no capital stock.

ARTICLE X

Except as set forth in Minn. Stat. §317A.257, Subd. 2, no director, officer or agent, if serving in such capacity without compensation, shall be civilly liable for any act or omission of that director, officer or agent if such act or omission

- (a) was in good faith;

- (b) was within the scope of the person=s responsibilities as a director, officer or agent;
and
- (c) did not constitute willful or reckless misconduct.

If the Minnesota Statutes hereafter are amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the amended Minnesota Statutes.

ARTICLE XI

These Articles of Incorporation may be amended from time to time by a majority vote of the then serving directors upon notice of the directors' meeting and notice of the amendment as specified from time to time in the Bylaws of the Corporation.

ARTICLE XII

This corporation may be dissolved in accordance with the laws of the State of Minnesota. Upon dissolution of this corporation any surplus property remaining after the payment of its debts shall be disposed of by transfer to one or more corporations, associations, institutions, trusts, or foundations organized and operated for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code of 1986, or to the State of Minnesota or any political subdivision or agency thereof for exclusively public purposes, in such proportions as the Board of Directors of this corporation shall determine. Notwithstanding any provision herein to the contrary, nothing herein shall be construed to affect the disposition of property and assets held by this corporation upon trust or other condition, or subject to an executory or special limitation, and such property, upon dissolution of this corporation, shall be transferred in accordance with the trust, condition or limitation imposed with respect to it.

IN WITNESS WHEREOF, I have hereunto set my hand this _____,
2017.

Todd Severson, Secretary

STATE OF MINNESOTA)
)ss
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this _____ day of _____,
2017 by Todd Severson, known to me to be the duly elected Secretary of the Rochester Swim Club
Orcas.

Notary Public