

THE STERLING AND IVORY ASSOCIATION

SECTION 17

ELECTION RULES AND PROCEDURES

- 17.1 **Application of Rules:** These rules shall apply to any meeting of the membership or solicitation of membership approval by a ballot vote (i) regarding matters specified in California Civil Code Section 5100(a), and (ii) any other matter unless the Association's Board of Directors has elected to conduct such vote or solicit such member approval for such other matter in accordance with California Corporations Code Section 7513, in which case the provisions of (A) Corporations Code Section 7513, (B) the Association's Bylaws, and (C) other applicable provisions of the California Corporations Code will apply to the exclusion of these Election Rules and Procedures. The Election Rules contained herein are intended to be in compliance with Civil Code Section 5100 et seq. and should be interpreted as such.

The Association may choose to utilize electronic secret ballots in accordance with these Election Rules for any solicitation of membership approval, however, electronic secret ballots shall not be made available for an election regarding regular or special assessments.

- 17.2 **Membership Voting:** Pursuant to the Association's governing documents, the Association has the following voting classes:

- 17.3 **Class A Members:** Class A Members shall be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A membership as provided in Section 4.2.2 of the CC&Rs), and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) Person holds an interest in any Condominium, all such Persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Condominium.

- 17.4 **Class B Members:** Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Condominium owned by Declarant in a Phase for which Assessments have commenced. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

- (a) The second anniversary of the first close of escrow for conveyance to a First Purchase in a Phase covered by the most recently issued Public Report for any Phase of the Community; or
- (b) The fourth anniversary of the first conveyance of a Condominium to a First Purchaser covered by the original Public Report for the first Phase of the Community.

As long as Class B membership exists, no action by the Association that must have the prior approval of the Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Member, except as otherwise set forth in the CC&Rs. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

17.5 **Declarant Appointment Rights:** At the First Membership Election, Declarant shall appoint a majority of the Board and the remaining directors shall be elected by the Class A Members (excluding Declarant) by secret ballot in accordance with the requirements stated in Section 3.11 of the Association's Bylaws. The Class B Member(s) shall not be entitled to vote for directors at the First Membership Election.

17.6 **Record Dates:** In the absence of a specific resolution of the Board for any given election, the record date for determining the right of a Member to receive notice and to vote shall be the date that ballots are distributed, and shall include all separate interests reflected in the Association membership list as of such record date. Members may verify and update their individual information contained in the Association's records anytime up to the date ballots are distributed, and are encouraged to review their personal information by the deadline set for submitting nominations of candidates to ensure Members review their personal information at least thirty (30) days before the ballots are mailed. The voter list shall include for each separate interest: (1) name; (2) voting power; (3) the separate interest address, parcel number or both; and (4) the mailing address, if different. The candidate list shall include the name and address of individuals nominated as a candidate for election to the board of directors. The voting period shall start when ballots are distributed and shall close when the ballots are counted. The polls shall close for any Member vote as specified in the ballot materials or as determined by the Inspector(s) of Election at any Member meeting.

17.7 **Candidate Qualifications:** Prior to the First Membership Election (defined below), the Board shall consist of three (3) directors appointed by the Sole Incorporator at the direction of Declarant at the organizational meeting of the Association referred to in Section 3.4, which directors need not be Members of the Association. Concurrent with the First Membership Election, the Board shall be expanded to include five (5) directors, elected as provided in Section 4.5, which directors must be Members of the Association (other than (i) directors appointed/elected by Declarant which need not be Members, or (ii) a natural person appointed by and on the behalf of a legal entity Owner). The Board may, upon majority vote, elect to decrease the number of directors to three (3) directors: (i) upon the conveyance of the last Condominium owned by Declarant to an Owner under the authority of a Public Report; or (ii) at any time prior to such conveyance if the prior written consent of Declarant has been obtained.

Subject to Civil Code §5105, all Candidates for the Board must meet the following qualifications:

17.8 The Candidate must be an Owner or "directors appointed/elected by Declarant which need not be Members" (Bylaws 4.5). If title to a separate interest is held by a legal entity, such entity may appoint a natural person to serve or vote on such entity's behalf by delivering evidence of an appropriate written appointment to the Association;

17.9 The Candidate must be current in the payment of all regular and special assessments. (Consider defining "current"; e.g. For the purposes of these election rules, "current" means no regular or special assessment is past due by more than thirty (30) days, or such period of time as is specifically defined in the Association's collection policy)];

17.10 The Candidate may not hold a joint ownership interest in the same separate interest as any other candidate or incumbent director]; and

17.11 The Candidate is not eligible to run if the Association is aware or becomes aware of a past criminal conviction that would, if the Candidate were elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code §5806 or terminate the Association's existing fidelity bond coverage.]

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17.13 **Director Requirements:** To remain qualified to serve on the Board of Directors, an Owner who has been elected to the Board of Directors must:

17.13.1 Meet each and every of the requirements set forth immediately above to run as a candidate; and

17.13.2 Not fail to attend three (3) consecutive regularly schedule meetings of the Board, nor fail to attend more than six (6) meetings of the Board, regular or special, within any twelve (12) month period; and

17.13.3 Not fail to comply with a duly approved action of the Board; and

17.13.4 Not fail to comply with the Association's Governing Documents, having been provided proper notice and received a due process hearing at which the Board determines that a violation exists; and

17.13.5 Not fall more than three (3) months in arrears in the payment of monthly assessments; provided, however, that notwithstanding the foregoing, a director shall remain qualified in the event that (i) the nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party, or (ii) failure to pay monthly assessments if either of the following circumstances are true: (a) the director has paid the monthly assessment under protest pursuant to California Civil Code Section 5658, or (b) the director has entered into a payment plan pursuant to California Civil Code Section 5665; and

17.13.6 Not receive any type of monetary gain, or other gain such as services, products, gifts or gratuities of a significant value, which have been provided in relation to a director's service on the Board, and which is not disclosed. To remain qualified, disclosure must take place at an open meeting of the Board and be recorded in the minutes. Compensation for services duly approved by the Board and unrelated to duties as a director or officer of the Association, or reimbursement of expenses associated with service to the Community does not constitute unethical or detrimental behavior and are permissible; and

17.13.7 Not take any action considered to be grossly detrimental to the general safety, health and welfare of the Community and its Members; and

17.13.8 Not address fellow directors with abusive language in such a manner that causes distress and emotional harm. Abusive language is any language which causes humiliation or intimidation, or inflicts ridicule, coercion, threats or mental abuse, or other language of a punitive nature, or language which is prejudicial or grossly profane; and

17.13.9 Not refuse to (i) provide any information necessary for the Association to file and report any information to the Financial Crimes Enforcement Network ("FinCEN") of the United States Department of the Treasury that may be required under the Corporate Transparency Act ("CTA") with respect to such director as a beneficial owner, as may be required under the CTA, including any updates to information that is required under the CTA, and (ii) obtain a FinCEN identifier through FinCEN and provide any updates to information that may be required in connection with maintaining such FinCEN Identifier.

- 17.14 **Nominations:** Nomination for election to the Board may be made from any qualified Member. Any Member may nominate themselves as a Candidate. Every qualified Member returning a candidacy form by the deadline established in any candidate solicitation shall be included on the ballot and in any associated ballot materials. If the number of candidates on the ballot is less than the number of openings on the Board, nominations may be made from the floor at the annual meeting of the Members.

If the association opts to use electronic secret balloting for any particular vote, then nominations from the floor are prohibited.

- 17.15 **Solicitation Materials:** Every Candidate and Member shall have equal access to the Association mailings, newsletters, and website during a campaign, if any such access is provided, for the publication of viewpoints reasonably related to any issue presented for membership vote.

17.15.1 Content: The Association does not edit or redact any content provided by a Candidate or Member. The Candidate or Member creating such content, and not the Association, is responsible for any published statement.

17.15.2 Limitation on Publication Space Made Available: So long as each Candidate and/or Member is provided the same opportunities for publication, the Association may restrict the availability of any publication by limiting the printing space made available or the number of words that will be included from each Candidate or Member included in the publication. In the absence of any other limitations adopted by the Board for any particular matter, each Candidate and/or Member shall be limited to no more than 200 words for any one publication. The Board may, in its sole discretion, present a candidacy questionnaire with questions for all interested Candidates and/or Members to complete. If such a questionnaire is provided, then the Association will only print the answers to such questions and may impose a limitation upon the number of words for the response to any question presented.

- 17.16 **Availability of Meeting Space:** Access to common area meeting space shall be made equally available, at no cost, to all Candidates and/or Members desiring to use such space for any reason reasonably related to a membership vote. The Association may meet the requirements of this section by hosting a "Meet the Candidates Night", or other such special meeting, so long as every Candidate and/or Member is provided with an equal opportunity to participate in the event.

- 17.17 **Ballot Distribution:** A ballot shall be distributed to every Member reflected in the Association membership list on the date that ballots are distributed. Replacement ballots will be provided upon request to anyone who was a Member as of the date when ballots were distributed. The Association shall not deny a ballot to a person with general power of attorney for a Member. A ballot submitted by a person with general power of attorney for a Member, if valid and returned by the applicable deadline, shall be counted by the Association. At least thirty (30) days prior to any election, the Inspector(s) of Election shall deliver or cause to be delivered: (1) a ballot to each Member reflected on the voting list; and (2) a copy of these election rules. Delivery of these election rules may be accomplished by posting them on an internet website and including on the ballot the corresponding internet website address together with, in at least 12 point font, the phrase: "The rules governing this election may be found

here:".

17.18 **Electronic Secret Ballot**: Members may change their preferred method of voting from electronic secret ballot to written secret ballot or from written secret ballot to electronic secret ballot no later than ninety (90) days before an election. Electronic secret ballots shall contain the same list of items being voted on as written secret ballots. [Choose one of the following options: (1) **OPTING OUT OF ELECTRONIC VOTING**: The Association shall mail a written secret ballot only to a member who has opted out of voting by electronic secret ballot or for whom the Association does not have an email address required to vote by electronic secret ballot. (2) **OPTING INTO ELECTRONIC VOTING**: The Association shall send an electronic secret ballot only to a member who has opted into voting by electronic secret ballot.] The Association shall maintain a voting list identifying which members will vote by electronic secret ballot and which members will vote by written secret ballot. The Association shall include information on the procedures to [opt out of OR opt into] voting by electronic secret ballot in the annual statement prepared pursuant to Civil Code section 5310. Members voting by electronic secret ballot shall provide the Association with a valid email address.

17.19 **Proxies**: At all meetings of Members each Member may be present in person or by a representative, known as a proxy, duly authorized by an instrument in writing, executed by such Member and filed with the Secretary of the Association prior to the meeting to which it is applicable. Proxies shall specify the person or persons authorized to exercise the proxy and the length of time the proxy will be valid. Any proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval or disapproval between each matter or group of matters to be acted upon, and where the Member specifies a choice, the vote shall be cast in accordance with that choice. It is not mandatory that a candidate for election to the Board be specifically named in the proxy or written ballot. All proxies shall be revocable at any time by written notice to the Secretary of the Association or by attendance in person by such Member at the meeting for which such proxy was given and all proxies shall automatically cease when the ownership interest or interests of the Member entitling such Member to membership in the Association ceases. In any event, no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) years from the date of execution. Such powers of designation and revocation may be exercised by the guardian of any such Member's estate or by such Member's conservator, or in the case of a minor having no guardian, by the parent entitled to such minor's custody, or during the administration of any such Member's estate, by its executor or administrator where the latter's interest in such property is subject to administration in its estate.

17.20 **Inspector(s) of Election**: Prior to the presentation of any issue to the Members for a membership vote, the Board may appoint one (1) or three (3) Inspector(s) of Election. In the absence of a specific appointment by the Board, or in the event that an appointed Inspector is unable or unwilling to serve, then the Members in attendance at any duly held meeting of the Members at which a quorum is present may elect an Inspector or Inspectors to serve.

Any Inspector(s) of Election must be an independent third party. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as an Inspector(s) of Election. An Inspector may not be: (1) a Director; (2) a Candidate; (3) a Director's relations; or (4) a Candidate's

relations.

The Inspector(s) of Election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) of Election deem appropriate, provided that the additional persons satisfy the eligibility requirements for service as an Inspector of Election.

In the absence of a more specific determination by the Inspector(s) of Election, the Association's management company shall prepare and retain the association election materials (i.e., the candidate registration list, voter list, ballots, signed voter envelopes, and any proxies) for such period of time as is required by law.

Inspector(s) of Election shall perform all duties impartially, in good faith, to the best of their ability, as expeditiously as practical, and in a manner that protects the interest of all Members of the Association.

- 17.21 **Meeting Conduct:** Any counting of ballots shall be done at an open meeting of the membership or the Board of Directors. Any Candidate or Member may observe the count but shall stand at least five feet away from the Inspector(s) of Election. No person may harass, cajole, or otherwise interfere with the Inspector(s) of Election while the count is taking place. Persons not specifically authorized to do so may not touch any secret ballot or other election materials. All ballots will be made available for inspection by any Candidate or Member during regular business hours at the Association's management office once the meeting is concluded. Any person violating this section may be asked by the Inspector(s) of Election or the meeting chair to leave the meeting to prevent further disruption.