

# KELLOGG TERRACE CONDOMINIUM ASSOCIATION

## AMENDED AND RESTATED ELECTION AND VOTING RULES

(California Civil Code Section 5100 et seq.)

### 1. INTRODUCTION

These Amended and Restated Election and Voting Rules (“Rules”) establish certain procedural rules for conducting membership meetings and implementing the relevant provisions of the Association's Bylaws, the California Civil Code, the California Corporations Code, and California law concerning membership elections and membership voting on Secret Ballot topics (as defined below). To the extent any of the following rules are inconsistent with the Association’s Bylaws, Articles of Incorporation, CC&Rs (collectively, “Governing Documents”), or California law, the Governing Documents or California law, as the case may be, shall control. These Rules shall become operative upon publication to the Members.

### 2. EQUAL ACCESS

If any candidate or member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and Members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall not edit or redact any content from these communications; provided, however, the Association shall not be responsible or liable for the content of any such communications, and the Association may include a statement in the communication specifying that the candidate or member, and not the Association, is responsible for the content.

Equal access to common area meeting space, if any, shall exist during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election.

### 3. USE OF ASSOCIATION FUNDS FOR CAMPAIGN PURPOSES PROHIBITED

Association funds shall not be used for campaign purposes in connection with any Association Board election. Funds of the Association shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the Association imposed by law. As set forth in Civil Code Section 5135, for the purposes of this section "campaign purposes" include, but are not limited to, the following:

(a) Expressly advocating the election or defeat of any candidate that is on the Association election ballot.

(b) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its board, excepting the ballot and ballot materials, within 30 days of an election, provided that this is not a campaign purpose if the communication is one for which subdivision (a) of Civil Code Section 5105 requires that equal access be provided to another candidate or advocate.

4. **NUMBER OF DIRECTORS, QUALIFICATIONS, TERM OF OFFICE, CUMULATIVE VOTING**

The Board shall consist of five (5) persons. The term of office for directors is one (1) year. Cumulative voting shall be used in the election of directors (Bylaws Article 4, Section 4.2). Pursuant to Civil Code section 5105(b), (c)(1), each person serving as a director must comply with the following qualifications at all times while serving on the Board:

(a) Must be an Owner of a Unit in the Association; and if title is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to serve as the Member of the Association on the entity's behalf for purposes of seeking to serve on the Board of Directors;

(b) Must be current in the payment of regular and special assessments, but not including nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party (e.g., management, or a collection firm); provided, however, a director shall remain qualified to serve if he/she has paid the regular or special assessment under protest pursuant to Civil Code section 5658, or has entered into a payment plan pursuant to Civil Code section 5665 concerning such delinquency; and

(c) Must not serve on the Board at the same time as another person who holds a joint ownership interest in the same Unit is serving on the Board.

5. **CANDIDATE QUALIFICATIONS**

Pursuant to authority under Civil Code section 5105(c), the following persons are NOT qualified for nomination as a candidate to serve on the Board; provided, however, the Association shall provide any such nominee the opportunity to engage in internal dispute resolution (IDR) pursuant to Civil Code section 5900:

(a) Any nominee who is not a member of the Association.

(b) Any nominee who has been a member of the Association for less than one year.

(c) Any nominee who, if elected, would serve on the Board at the same time as another person who holds a joint ownership interest in the same Unit as the nominee and the other person is either properly nominated for the current election or is an incumbent director.

(d) Any nominee who discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if the nominee was elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code section 5806 or terminate the Association's existing fidelity bond coverage.

(e) Subject to the conditions below, a nominee for a Board seat, and a director during his or her Board tenure, must be current in the payment of regular and special assessments. A nominee shall be disqualified from nomination for nonpayment of regular and special assessments, but may not be disqualified for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party (e.g., management, or a collection firm). Notwithstanding the foregoing under

this subdivision (e), the nominee shall not be disqualified for failure to be current in payment of regular and special assessments if any of the following circumstances are true:

- (i) The nominee has paid the regular or special assessment under protest pursuant to Civil Code section 5658; or
- (ii) The nominee has entered into a payment plan pursuant to Civil Code section 5665.

**6. NOMINATION AND PRE-BALLOT DISTRIBUTION PROCEDURES PURSUANT TO CIVIL CODE SECTION 5115.**

(a) Notice of Nomination Procedures. At least 30 days before any deadline for submitting a nomination, the Association shall provide general notice (i.e., by posting pursuant to Civil Code section 4045) of the procedure and deadline for submitting a nomination for election to the Board of Directors; provided, however, individual notice shall be delivered to any Member pursuant to Civil Code section 4040 if Member has requested such individual notice.

(b) Nomination Procedures. A candidate for election to the Board shall be entitled to nominate himself or herself, or may be nominated by another Member, for election by submitting his/her name as a candidate using the candidacy form prescribed by the Association, provided the form is received by the date prescribed, and provided further that any candidate who is nominated by another Member must give his/her written consent to the nomination for it be effective. In addition, nominations (including self-nominations) to be elected to the Board may be made from the floor of any meeting of the Members at which directors are to be elected; provided, however, only those who give their consent to be nominated may be nominated. "Write-in" candidates on the secret ballot are not permitted.

(c) Candidate Statements. Each candidate may submit a written statement not to exceed one side of one 8-1/2" x 11" page, which statement shall be reasonably related to the election, and may advocate a point of view concerning the election. Timely received candidate statements will be included with the Association's mailing of the Notice and Ballot materials. The Association will not edit or redact these statements but may include a statement specifying that the candidate is responsible for the content.

(d) Notice of List of Candidates and Ballot Information. At least 30 days before ballots are distributed to the Members, the Association shall provide the following information by general notice (i.e., by posting pursuant to Civil Code section 4045); provided, however, individual notice shall be delivered to any Member pursuant to Civil Code section 4040 if Member has requested such individual notice:

- (i) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections;
- (ii) The date, time, and location of the meeting at which ballots will be counted; and
- (iii) The list of all candidates' names that will appear on the ballot. In the Notice and on the Secret Ballot, candidates will be listed in alphabetical order by last name, then by first name if candidates have the same last name. Incumbents may be identified by an asterisk., but this practice shall not be mandatory.

(e) Verification of Information on Candidate Registration List and Voter List. Members shall be permitted to verify the accuracy of their individual information on the candidate registration list and voter list (i.e., the list containing the name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both) at least 30 days before the ballots are distributed. The Association or Member shall report any errors or omissions on either list to the inspector(s) who shall make the corrections within two business days.

7. **DELIVERY OF SECRET BALLOTS AND ELECTION RULES (DELIVERY REQUIRED AT LEAST 30 DAYS BEFORE AN ELECTION)**

At least 30 days before an election, the Inspector(s) of election shall deliver, or cause to be delivered (e.g., the Inspector(s) may cause the Association's managing agent to deliver), to each Member both of the following documents:

- (a) The ballot or ballots; and
- (b) A copy of these Rules. Delivery of these Rules may be accomplished by either of the following methods:
  - (i) Posting the election operating rules to an internet website and include the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:"; or
  - (ii) Individual delivery, as described in California Civil Code section 4040.

8. **VOTING POWER OF EACH MEMBERSHIP, VOTER QUALIFICATIONS, AND QUORUM REQUIREMENTS**

(a) Voting Power. Each Membership shall be entitled to one (1) vote per Unit, and, in the case of election of directors, one (1) vote for each director position open for election. Cumulative voting shall be used in any election of directors (Bylaws Article 4, Section 4.2).

(b) Voter Qualifications. In accordance with procedures under the Bylaws, California Corporations Code, and California Civil Code, the Board of Directors may fix a date in the future as a record date (i) for the determination of the Members entitled to notice of any meeting of Members, and (ii) for Members entitled to vote at any meeting of Members; provided, however, pursuant to Civil Code section 5105(g)(1), the Association shall not deny providing a ballot to a Member who was a Member at the time the ballots were distributed (i.e., the Association shall not suspend Member voting rights on a Secret Ballot Topic). If the Board does not fix a record date for determining Members entitled to vote, any person who can establish that he/she/it is a Member on the day of the meeting by producing a copy of a grant deed conveyance of a Unit to such person recorded in the Office of the Orange County Recorder, and who otherwise is eligible to vote, shall be entitled to vote at the meeting.

(c) Legal Entity Owners. If title to a Unit is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to serve as the Member of the Association on the entity's behalf for purposes of voting on Secret Ballot Topics as provided herein and for all other purposes under Civil Code sections 5100 through 5145.

(d) General Power of Attorney. A person with general power of attorney for a Member shall be entitled to vote on behalf of said Member, provided the general power of attorney is submitted to the Association prior to the date the ballots are counted (so that the Association has notice of the existence of the general power of attorney), or submitted to the inspector of elections prior to the inspector completing of the counting of ballots and provided the ballot was timely returned prior to the closing of the polls.

(e) Quorum Requirements. Unless otherwise provided in the Association's governing documents or required by law, the presence in person, by proxy, or by secret ballot of Owners representing at least one-third (1/3) of the voting power of the membership of the Association shall constitute a quorum for the transaction of business at all Member meetings. If a meeting is adjourned due to lack of a quorum, then any such rescheduled meeting shall be not less than five (5) days nor more than thirty (30) days from the original meeting date, and the quorum requirement shall remain at least one-third (1/3) of the voting power of the membership of the Association.

## **9. SECRET BALLOT PROCEDURES APPLICABLE TO VOTING & PROXY USE**

Membership voting regarding assessments, election or removal of members to the Board of Directors, amendments to the governing documents, the proposed grant of exclusive use of common area pursuant to Civil Code Section 5100, and any other matters the Board determines to submit to a secret ballot vote pursuant to these Election Rules (hereinafter "Secret Ballot Topics") shall be conducted through secret ballot procedures in compliance with Civil Code Section 5100 et seq.

A Member may cast his or her vote on a Secret Ballot Topic in person at a meeting, provided the Member casts the vote using a secret ballot in compliance with Civil Code Section 5100 et seq. In the event the required quorum is not attained at an initial or adjourned meeting at which secret ballots will be used, and in the event the meeting is adjourned to another date, all secret ballots cast shall carry over until quorum is attained.

In instances, if any, where proxies are used in connection with Secret Ballot Topics, in order to be counted the proxy must (a) identify a proxyholder (who must be a member in attendance at the meeting for which the proxy is given), (b) contain voting instructions, (c) be dated and signed by the Member in good standing giving the proxy, and (d) any instruction given in a proxy that directs the manner in which the proxyholder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder must cast the Member's vote by secret ballot in accordance with any instructions the Member provides. The Inspector(s) of Election shall be entitled to invalidate any proxy or other document purporting to cast a Member's vote used in connection with Secret Ballot Topics that does not comply with these Rules and applicable law, including the secret ballot procedures set forth in Civil Code Section 5100 et seq.

The Association may distribute "three year" proxies for quorum purposes only prepared in accordance with California law. Such proxies shall be used solely for quorum purposes and shall not be used for purposes of voting. The Association may otherwise distribute proxies in its discretion.

## **10. VOTING AND COUNTING OF BALLOTS/PROXIES**

All votes shall be counted and tabulated by the Inspector(s) of Election in public at a properly noticed open meeting of the Board of Directors or at a properly noticed meeting of the Members. Any candidate or other member of the Association may witness the counting and tabulation of the votes from a

reasonable distance, as determined by the Inspector(s) of Election. Members may not interfere with the counting and tabulation of the votes, and the Inspector(s) of Election may order any person the Inspector(s) of Election determine(s) to be interfering with the counting and tabulation of votes to leave the area. In accordance with the holding of Chantiles v. Lake Forest II Master Homeowners Association (1995) 37 Cal. App. 4<sup>th</sup> 914, only the Inspector(s) of Election and the Association's legal counsel shall be permitted to inspect the proxies during the voting process (in those instances in which proxy voting is permitted) in order to protect the Members' privacy rights.

No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

- (a) Unless otherwise provided in the Notice of Meeting or the Ballot solicitation, as applicable:
  - (i) The voting period for Secret Ballot Topics shall commence when the first ballot is mailed or delivered to an Association Member, and shall end at such time as the Inspector(s) of Election determine(s) the polls close;
  - (ii) With respect to voting at membership meetings on topics other than Secret Ballot Topics, the voting period shall commence at the meeting at such time as the chairperson declares the voting period open and shall end at such time as the Inspector(s) of Election shall determine the polls close; and
  - (iii) With respect to voting through a mail-in ballot on matters other than Secret Ballot Topics, voting shall commence when the first ballot is mailed or delivered to an Association Member and shall end at such time as is specified on the ballot.
- (b) A ballot shall be irrevocable upon the Association's or Inspector's receipt of the ballot.
- (c) All questionable proxies and ballots are to be separated for a determination of validity by the Inspector(s).
- (d) If the number of votes cast on a ballot or proxy exceeds the number of permissible votes, the ballot or proxy, for voting purposes, shall be invalid and shall not be counted, but shall be counted for quorum purposes only.
- (e) When a voting box for a candidate is "checked" or otherwise marked by a non-numerical symbol (e.g., an "X"), and it is the only box "checked" or marked, all of the member's votes shall be counted for that candidate. When fewer boxes are "checked" or marked by a non-numerical symbol on the ballot than the number of directors to be elected, the count shall be one vote per "check" or mark not to exceed the number of authorized votes. No fractional votes permitted.
- (f) If votes are cast on a proxy, but the Member failed to check the box indicating that the proxy is to be voted in accordance with the Member's instructions, the votes cast shall be counted as marked by the Member, provided there are no conflicting instructions on the proxy and the proxy is otherwise valid.
- (g) Other business at an Annual or other membership meeting, such as approval of minutes,

motions to close registration, motions to cease balloting, motions to adjourn, and other motions permitted pursuant to parliamentary procedures under a recognized system of parliamentary procedure may be conducted by a show of hands, voice vote or other recognized method, including a roll call vote.

## **11. INSPECTORS OF ELECTION**

(a) Inspector of Elections Committee of the Association. In accordance with Civil Code Section 5110, the Board of Directors shall appoint either one (1) or three (3) independent third parties to serve as Inspector(s) of Election. An “independent third party” includes, but is not limited to, (a) a volunteer poll worker with the county registrar of voters, (b) a licensee of the California Board of Accountancy, (c) a notary public, or (d) a member of the Association who is neither a director, a candidate for election as a director, nor related to a director or candidate for election as director. An Inspector of Election, and any person appointed by an Inspector of Election to assist in verifying signatures or in counting and tabulating votes, 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 of elections.

The person(s) the Board of Directors appoint(s) to serve as Inspector(s) of Election for any particular election shall be appointed as members of an Association Inspector of Elections Committee for that particular election and shall serve for a term from the date of appointment until the time allowed by Civil Code section 5145 for challenging the election has expired (i.e., within one year of the date that the inspector or inspectors of elections notifies the board and membership of the election results or the cause of action accrues, whichever is later). The Board of Directors may appoint different person(s) as Inspector(s) of Elections for any subsequent election that may occur during the term of a previously appointed Inspector of Elections Committee for a prior election, in which case, said different person(s) appointed as Inspector(s) of Elections for such subsequent election shall constitute a separate Inspector of Elections Committee specifically for that said subsequent election. For example, (i) Inspector(s) of Election appointed for the Association’s annual meeting in 2021, shall be members of the Inspector of Elections Committee for the 2021 Annual Meeting; (ii) Inspector(s) of Election appointed for the Association’s annual meeting in 2022, shall be members of the Inspector of Elections Committee for the 2022 Annual Meeting; and (iii) Inspector(s) of Election appointed for any other election (e.g., special assessment vote or amendment to CC&Rs or Bylaws vote) during any particular annual meeting year, shall be members of a separate Inspector of Elections Committee for that particular vote (e.g., Inspector of Elections Committee for the Special Assessment Vote; Inspector of Elections Committee for the CC&R Amendment Vote, etc.).

A vacancy in an Inspector of Elections Committee shall be deemed to exist in the case of death, resignation, removal, or judicial adjudication of mental incompetence of an appointed Inspector of Elections, and any such vacancy shall be filled by vote of the Board of Directors.

(b) Inspector of Elections Duties. The Inspector(s) of Election shall perform the duties set forth below and shall sign a report or certificate evidencing the voting results. The decision of a majority of the Inspectors shall control. To the extent permitted by law, the Inspector(s) may appoint additional person (who are independent third parties) to assist the Inspector(s) in registration, verifying signatures, and counting and tabulating votes.

(i) Pursuant to Rule No. 7 above, deliver or cause to be delivered at least 30 days prior to an election the ballot or ballots and a copy of the Rules;

- (ii) Determine the number of memberships entitled to vote and the voting power of each;
- (iii) Confirm the number of memberships represented at the meeting;
- (iv) Confirm the existence of a quorum;
- (v) Receive and determine the authenticity, validity, and effect of proxies and ballots;
- (vi) Hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (vii) Count and tabulate all votes;
- (viii) Determine when the polls shall close, consistent with Governing Documents;
- (ix) Determine the tabulated results of the voting;
- (x) Perform any acts as may be proper to conduct the balloting or election with fairness to all Members.
- (xi) If an Inspector(s) is/are unwilling to, unable to, or does not, perform his/her duties as stated in these rules, or becomes ineligible to be an Inspector at any time after appointment, the Board may remove such Inspector(s) without notice, and may appoint another person to serve as Inspector(s) in his/her place.

**12. CUSTODY OF BALLOT MATERIALS/ ANNOUNCEMENT OF RESULTS**

Members shall return their sealed secret ballots in accordance with the procedures set forth in the instructions mailed to the Members, or as may otherwise be determined by the Inspector(s). The Sealed ballots, signed voter envelopes, voter list, proxies (if any), and candidate registration list (“Ballot Materials”) shall at all times shall be in the custody of the Inspector of Elections whether held at the Inspector of Election’s office, at a location designated by the Inspector of Elections (which may be the Association’s management company ,in care for the Inspector(s) of Elections), until after the tabulation of the vote. After the tabulation of the ballots, the Inspector(s) of Elections shall continue to retain custody of the Ballot Materials until the time allowed by Civil Code section 5145 for challenging the election has expired (i.e., within one year of the date that the inspector or inspectors of elections notifies the board and membership of the election results or the cause of action accrues, whichever is later), at which time custody shall be transferred to the Association; provided, however, unless the Inspector(s) of Elections otherwise provide(s), the Inspector(s) of Elections shall retain custody of the ballots at the designated location of the Association’s management company.

The results of the election shall be promptly reported to the Board of Directors of the Association and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by Members of the Association. Within 15 days following the election, the Board shall publicize the results of the election in a communication directed to all Members. In the event of a recount or other challenge to the election process, the Inspector(s) of Elections shall, upon written request, make

the ballots available for inspection and review by Association Members or their authorized representatives. Any recount of ballots shall be conducted in a manner that shall preserve the confidentiality of the vote. The Association shall retain, as association election materials (see Civil Code section 5200(a)(13)), both a candidate registration list and a voter list. The voter list shall include the name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used.