

AGAVE AND SAGUARO HOMEOWNERS ASSOCIATION

Rules for Elections and Voting

1.0 Applicability of Rules.

- 1.1 **Specified Elections** – In accordance with California Civil Code §5100 et seq., these rules shall apply to elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600.

2.0 Access to Association Media.

- 2.1 **Definition of Association Media** – “Association Media” means the Association’s newsletters, internet websites and/or cable channels, or any other form of global communication with the Membership.
- 2.2 **Equal Access to Association Media** – All candidates and Members will be granted equal access to the Association’s media for purposes reasonably related to the election.
- 2.3 **No Alteration of Candidate Communications** – The Association shall not edit or change the content of any candidate’s message but may include a statement disclaiming responsibility for the content.

3.0 Access to Common Area Meeting Space.

- 3.1 **Equal Access to Common Area Meeting Space** – All candidates and Members shall be granted equal access to the common area meeting space, if any, at no cost, for purposes reasonably related to the election.

4.0 Number of Directors; Candidate Qualifications.

- 4.1 **Number of Directors** – The affairs of this Association shall be governed by a Board of Directors composed of five (5) persons, all of whom must be Members of the Association. If the Association’s Bylaws are amended to change the number of directors, the Bylaws take priority over these Rules in the event of a conflict.
- 4.2 **Causes for Disqualification from Nomination** – A person shall be disqualified from nomination as a candidate for election to the Board of Directors for any of the following causes:
- 4.2.1 **Nonmember** – The Association shall disqualify a person from nomination as a candidate for not being a Member of the Association at the time of the nomination. If title to a separate interest parcel 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 be a Member.

4.2.2 Nonpayment of Assessments – The Association shall disqualify a person from nomination for nonpayment of regular and special assessments but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The person shall not be disqualified for failure to be current in the payment of regular and special assessments if either of the following circumstances is true:

a. The person has paid the regular or special assessment under protest pursuant to Civil Code Section 5658.

b. The person has entered into and is in compliance with a payment plan pursuant to Civil Code Section 5665.

4.2.3 Criminal Conviction Affecting Fidelity Bond Coverage – The Association shall disqualify a nominee if that person discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the Association from purchasing the insurance required by Civil Code §5806 or terminate the Association’s existing insurance coverage required by Civil Code §5806 as to that person should the person be elected.

4.2.4 Joint Ownership – The Association shall disqualify a person from nomination as a candidate if the person, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest parcel and the other person is either properly nominated for the current election or an incumbent director.

4.3 Opportunity for Internal Dispute Resolution Prior to Disqualification – The Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution (“IDR”) pursuant to Civil Code §5900 et seq.

5.0 Nomination Procedures.

5.1 Nomination – Nomination of candidates for election to the Board of Directors shall be made in accordance with any nomination procedures described in the Associations’ Bylaws, as may be amended from time to time. Nomination of candidates from the floor of meetings is not permitted.

5.2 Candidate Nomination Form (“Form”) – In addition, candidates may be nominated for election to the Board by a Candidate Nomination Form. A Candidate Nomination Form will be provided or made available to each owner at such time that the Association provides notice of the procedure and deadline for submitting a

nomination in accordance with Section 6.1.1 or Section 6.2.1 below. Owners interested in serving as a director must complete and return a Form. Directors who want to serve again must complete and return a Form. Owners can nominate themselves or another person. Completed Forms must be returned by the deadline listed on the Form. Any candidate nominated by another person will be contacted to confirm that he or she agrees to be a candidate. Only those candidates who are qualified and have returned their Forms on time will be listed on the voting materials.

6.0 Election Timeline – Notices and Deadlines.

6.1 Standard Election Timeline – Minimum Requirements

- 6.1.1 At Least 30 Days Before Deadline to Change Preferred Voting Method** – At least 30 days before the deadline to opt out of voting by electronic secret ballot, the Association shall provide individual notice, delivered pursuant to Section 4040, of the items required by Civil Code 5105(i)(4). (See 8.12 of these Rules for Election and Voting.)
- 6.1.2 At Least 90 Days Before the Election** - Members are permitted to change their preferred method of voting from electronic secret ballot to written ballot or written ballot to electronic secret ballot no later than 90 days before an election.
- 6.1.3 At Least 30 Days Before Nomination Deadline** – The Association shall provide general notice of the procedure and deadline for submitting a nomination. Individual notice shall be delivered to any Member who has requested individual notice. This nomination notice shall only apply to elections of directors and to recall elections.
- 6.1.4 At Least 30 Days Before Ballots are Distributed** – For elections of directors and for recall elections, the Association shall provide general notice of the following:
1. 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.
 2. The date and time by which electronic secret ballots are to be transmitted to the internet-based voting system and preliminary instructions on how to vote by electronic secret ballot upon commencement of the voting period.
 3. The date, time, and location of the meeting at which ballots will be counted.
 4. The list of all candidates' names that will appear on the ballot.

5. Individual notice of the above paragraphs shall be delivered to any Member who has requested individual notice.
6. If the Association's governing documents require a quorum for an election of directors, a statement that the Association may call a reconvened meeting to be held at least 20 days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20 percent (or any lesser reduced quorum percentage stated in the Bylaws) of the Association's members voting in person, by proxy, or by secret ballot.

6.1.4.1 Verification and Correction of Candidate List and Voter List –

At least 30 days before ballots are distributed, the Association shall permit Members to verify the accuracy of their individual information on the candidate list, which shall include the names and addresses of individuals nominated as a candidate for election to the Board, and on the voter list maintained by the Association, which 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). The Association or Member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

- 6.1.5 At Least 30 Days Before Deadline for Voting –** The inspector or inspectors of election shall deliver individual notice of the electronic secret ballot to each Member 30 days before the election with instructions on how to obtain access to that internet-based voting system and how to vote by electronic secret ballot. For Members who have opted out of voting by electronic secret ballots or for whom the Association does not have an email address to vote by electronic secret ballot, the inspector or inspectors of election shall mail by first-class mail or deliver to every Member, or cause to be mailed by first-class mail or delivered to every Member, ballots and two pre-addressed envelopes with instructions on how to return ballots. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

1. The ballot itself is not signed by the voter but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's

name, and indicate the address or separate interest identifier that entitles the voter to vote.

2. The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The Member may request a receipt for delivery.

6.1.5 Delivery of these Election Rules – At least 30 days before an election, the inspector or inspectors of election shall deliver, or cause to be delivered, a copy of these Election Rules. Delivery of these Election Rules shall be accomplished by either of the following methods:

- a. Posting the Election Rules to an internet website and including 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:”

- b. Individual delivery.

6.1.6 Within 15 Days After Election – The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by Members of the Association. Within 15 days of the election, the Board shall give general notice of the tabulated results of the election to all Members.

6.2 Election by Acclamation – Additional Requirements to Seat Directors by Acclamation without Balloting in Uncontested Elections

6.2.1 Subject to Statutory Conditions – Notwithstanding the secret balloting requirement or any contrary provision in the governing documents, when, as of the deadline for submitting nominations, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the Association may, but is not required to, consider the qualified candidates elected by acclamation without balloting subject to the requirements of Civil Code §5103, including the following:

1. The Association must have held a regular (i.e., secret ballot) election for directors in the last three years.
2. The Association must provide individual notice of the election and the procedure for nominating candidates as follows:

- a. The Association must provide an “initial notice” at least 90 days before the deadline for submitting nominations. The initial notice must include the number of Board positions up for election; the deadline for submitting nominations; the manner by which to submit nominations; and a statement informing Members that if, at the close of nominations, there are the same number or fewer qualified candidates as there are open Board positions, then the Board may vote to seat the qualified candidates by acclamation without balloting.
 - b. The Association must provide a “reminder notice” between 7 and 30 days before the deadline for submitting nominations, which must include all of the same information as the initial notice plus a list of the names of all qualified candidates as of the date of the reminder notice.
3. The Association must provide, within 7 business days of receiving a nomination, (1) a written or electronic communication acknowledging the nomination to the Member who submitted the nomination and (2) a written or electronic communication to the nominee indicating either (a) that the nominee is a qualified candidate for the Board or (b) that the nominee is not a qualified candidate for the Board, the basis for the disqualification, and the procedure by which the nominee may appeal the disqualification. The Association may combine the written or electronic communication described in items (1) and (2) into a single written or electronic communication if the nominee and the nominator are the same person.
4. The Association must permit all candidates to run if nominated, except for nominees who have been properly disqualified for running.
5. The Association Board votes to consider the qualified candidates elected by acclamation at a Board meeting for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

7.0 Inspectors of Election.

- 7.1 Selection** – Before the deadline for nomination of candidates, the Board of Directors shall appoint one or three independent third parties as inspector or inspectors of election.

7.2 Individuals Who Can Act as Inspectors of Election – Independent third parties who can act as the inspector(s) of election include, but are not limited to, the following:

1. a volunteer poll worker with the county registrar of voters;
2. a licensee of the California Board of Accountancy;
3. a notary public; and/or
4. a Member of the Association who is not a director or a candidate for director or related to a director or to a candidate for director;

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 of elections.

7.3 Duties of Inspectors of Election

1. Determine the number of Memberships entitled to vote and the voting power of each.
2. Make corrections to the candidate list or voter list within two (2) business days after receiving a report from the Association or a Member of any errors or omissions to either list prior to the distribution of ballots.
3. Determine the authenticity, validity, and effect of proxies, if any.
4. Deliver, or cause to be delivered, to each Member of the Association, at least 30 days before an election, ballots and a copy of these Election Rules as described in Sections 6.1.4 and 6.1.5 above.
5. Receive ballots.
6. In an election utilizing electronic secret ballots, the inspectors of election shall ensure compliance with the requirement of Civil Code Section 5110(b)(4).
7. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
8. Count and tabulate all votes.
9. Determine when the polls shall close, consistent with the governing documents.
10. Determine the tabulated results of the election and promptly report the tabulated results of the election to the Board.
11. Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with California law and the Association's governing documents, including these Election Rules.

7.4 Good Faith of Inspector(s) of Election – An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

7.5 Appointment Power of Inspectors of Election – The inspector or inspectors of election shall have the power to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties who meet the requirements in Civil Code §5110(b).

7.6 Removal of Inspectors of Election – The Board of Directors may remove and replace any inspector of election prior to the tabulation of votes if an inspector resigns or if the Board reasonably determines that an inspector will not be able to perform his or her duties impartially and in good faith.

8.0 Voting.

8.1 Voting Power – Each Member of the Association has the right to cast one vote per separate interest owned for each matter submitted to owners for voting. Note that each director vacancy counts as one matter. The vote of the owners of each separate interest shall be exercised as the owners among themselves determine, but in no event shall more than one vote be cast on behalf of any separate interest with respect to any matter.

8.2 Cumulative Voting – The Association's Bylaws do not allow for cumulative voting for the election of directors. Article VII, Section 7.10 of the Association's Bylaws provides in pertinent part as follows: "No Member shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of votes to which such membership is entitled)."

8.3 Proxy Voting – So long as proxy voting is allowed by the Association's Bylaws, owners may assign their rights to vote to another Member by a proxy. To ensure secret voting, all proxies must have detachable voting directions which are to be kept by the person voting (the proxyholder). A proxy is not a ballot and shall not be construed or used in lieu of a ballot. The proxyholder must vote by a secret ballot. Proxies must comply with California law in order to be valid and may be revoked by the owner any time prior to the receipt of the ballot by the inspector of elections.

8.3.1 Definition of Proxy – "Proxy" means a written authorization signed by a Member or the authorized representative of the Member that gives another Member the power to vote on behalf of that Member.

8.3.2 Definition of Signed – "Signed" means the placing of the Member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the Member or authorized representative of the Member.

8.3.3 Distribution of Proxies – Proxies are not required to be sent out with any general mailings that include ballots. Proxies may be made available upon

request by a Member, but the Association shall not be required to prepare or distribute proxies.

- 8.4 No Denial of Ballots** – A ballot shall not be denied to a Member for any reason other than not being a Member at the time when ballots are distributed. If a person becomes a Member after the ballots were distributed, said Member may request a ballot if the previous owner of that separate interest did not return a ballot in that election. A ballot shall not be denied to a person with general power of attorney for a Member. The ballot of a person with general power of attorney for a Member shall be counted if returned in a timely manner.
- 8.5 Loss of Ballot** – If an owner loses his/her ballot prior to an election, they may request another ballot, along with the appropriate envelopes from the inspector(s) of election. The inspector(s) of election shall maintain a record of each request and, if it is determined that the owner voted twice, even by mistake, only one ballot will be counted.
- 8.6 Non-revocable Ballots** – Written ballots may not be revoked once they are submitted to the Inspector(s) of Election. Once written ballots are deposited in the U.S. mail to the Inspector(s) of Election, they are considered non-revocable. A vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an inspector or inspectors of elections. A vote made by electronic secret ballot shall not be revoked.
- 8.7 Secrecy of Ballots** – An owner who signs or otherwise marks his/her paper ballot with an identifying mark, waives his/her right to secrecy. The Association is not responsible for removing or redacting personal information that is added to the ballots by the owner.
- 8.8 Electronic Voting** – For the specified elections listed in Section 1.1 of these Rules for Election and Voting, except for an election regarding regular or special assessments, each Member who has provided a valid email address to the Association, shall cast his or her vote by electronic secret ballot for the election of directors, unless the Member opts out of voting by electronic secret ballot to vote by written ballot as provided herein. An electronic secret ballot and a written ballot shall contain the same list of items being voted on. If an association conducts an election to approve an amendment of governing documents by electronic secret ballot, the association may deliver, by electronic means, the text of the proposed amendment to those members who vote by electronic secret ballot, pursuant to Section 5105. The association shall also deliver a written copy of the text of the proposed amendment to those members upon request and without charge. If a member votes by written secret ballot, pursuant to Section 5105, the association shall deliver a written copy of the text of the proposed amendment to the member with the ballot. The electronic secret ballot may be accompanied by or contained in an electronic individual notice in accordance with paragraph (2) of subdivision (a) of Section 4040. The Association shall deliver individual notice of the electronic

secret ballot to each Member 30 days before the election and shall contain instructions on both of the following:

1. How to obtain access to that internet-based voting system.
2. How to vote by electronic secret ballot.

8.9 Preferred method of voting – Members may change their preferred method of voting from electronic secret ballot to written ballot or written ballot to electronic secret ballot must do so no later than 90 days before an election. A request to change a Member's preferred method of voting shall be delivered to the Association in writing.

8.10 Voting List – The Association shall maintain a voting list identifying which Members will vote by electronic secret ballot and which Members will vote by written ballot and include information on the procedures to opt out of voting by electronic secret ballot, as applicable, in the annual statement prepared pursuant to Section 5310.

8.11 Valid Email Address Required for Electronic Voting - A Member who votes by electronic secret ballot shall provide a valid email address to the Association. If the Association does not have a Member's email address required to vote by electronic secret ballot by the time at which ballots are to be distributed, the Association shall send the Member a written secret ballot.

8.12 Opt-Out of Voting Electronically - The Association shall provide individual notice, delivered pursuant to Section 4040, at least 30 days before the deadline to opt out of voting by electronic secret ballot, of all of the following:

1. The Member's current voting method.
2. If the Member's voting method is by electronic secret ballot and the Association has an email address for the Member, the email address of the Member that will be used for voting by electronic secret ballot.
3. An explanation that the Member is required to opt out of voting by electronic secret ballot if the Member elects to vote by written secret ballot.
4. An explanation of how a Member may opt out of voting by electronic secret ballot.
5. The deadline by which the Member is required to opt out of voting by electronic secret ballot if the Member elects to exercise that right.

The Association shall mail a written ballot 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.

8.13 Voting Period – The polls will open when the ballots are sent to the Members and will close at such time as determined by the Inspector(s) of Election after commencement of the meeting at which the ballots will be counted, or any adjournment thereof, or upon final collection of ballots for counting, whichever occurs first. Each ballot received by the inspector of election, including by a

member voting electronically, shall be treated as a member present at a meeting for purposes of establishing a quorum.

8.14 Counting and Tabulation of Ballots – All votes must be counted and tabulated by the inspector(s) of elections in public at a properly noticed open meeting of the board of directors or Members. Any candidate or other Member of the Association may witness the counting and tabulation of votes. 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, and shall not open or otherwise review any tally sheet of votes cast by electronic secret ballots before the time and place at which the ballots are counted and tabulated.

8.15 Custody and Retention of Ballots – The sealed ballots, signed voter envelopes, voter list, proxies, candidate registration list, and tally sheet of votes cast by electronic secret ballot shall at all times be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Civil Code §5145 for challenging the election has expired, at which time custody shall be transferred to the Association.

9.0 Recount or Challenge; Inspection of Association Election Materials.

9.1 Recount or Challenge – If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots and the tally sheet of votes cast by electronic secret ballot available for inspection and review by an Association Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

9.2 Inspection of Election Materials – The Association shall be required to retain as Association election materials the returned ballots, signed voter envelopes, any proxies, the voter list, the candidate registration list, and the tally sheet of votes cast by electronic secret ballot. Such election materials are subject to inspection and copying in accordance with Civil Code §5200, except that the signed voter envelopes may only be inspected and may not be copied.

10.0 Use of Association Funds for Campaign Purposes.

10.1 Association Funds Shall Not Be Used for Campaign Purposes – The Association funds shall not be used for campaign purposes in connection with any Association election of directors. 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.

10.2 Definition of Campaign Purposes – "Campaign Purposes" include, but are not limited to, the following:

1. Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
2. Including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot and ballot materials, within 30 days of an election.

11.0 Amendment of Election Rules.

- 11.1. Amendment** – The Election Rules may be amended in accordance with the procedures set forth at Civil Code §4360; provided, however, that the Election Rules shall not be amended less than 90 days prior to an election.

You may review an exact version of Civil Code Sections 5100-5145 as published by the State of California at <http://leginfo.legislature.ca.gov>