

# **HOLIDAY GARDENS HOMEOWNERS ASSOCIATION OPERATING RULES FOR ELECTIONS AND VOTING**

## **SECTION 1 - GENERAL**

These operating rules ("Rules") shall apply to all items legally requiring a vote of the membership as required by Civil Code section 5100, and any amendments thereto, including but not limited to, elections of directors, votes to remove one (1) or more directors, votes on assessments that legally require a vote, amendments of the governing documents, grants of exclusive use of common areas, and such other votes as the Board determines should be conducted by secret ballot.

## **SECTION 2 - RIGHT TO VOTE**

2.1 As described in these Rules, votes may be cast by members either in person, by proxy, or by mail-in ballot. The Association may not deny a ballot to any person who is a member of the Association at the time the ballots are distributed.

2.2 The Association may not deny a ballot to any person who has the general power of attorney for a member of the Association. Any person with a general power of attorney for a member must notify the Association and provide a copy of a valid general power of attorney to verify the person's right to vote on behalf of the member. If a ballot from a person with a valid general power of attorney which has been provided to the Association returns a ballot within the timelines established for the return of all ballots, the ballot shall be counted. (Civ. Code § 5105(g).)

2.3 The Association shall retain a voter list which shall include the name, voting power, and either the physical address of the voter's Unit, parcel number, or both ("Voter List"). The mailing address for the ballot(s) shall be listed on the Voter List if it differs from the physical address of the voter's Unit or if only the parcel number is used. The Association shall permit members to verify the accuracy of their individual information on the Voter List at least thirty (30) days before the ballots are distributed. The Association or member shall report any errors or omissions on the Voter List to the Inspector(s) of Election, who shall make the corrections within two (2) business days. (Civ. Code § 5105(a)(7).)

## **SECTION 3 - QUALIFICATION OF NOMINEES FOR DIRECTOR ELECTIONS**

3.1 Only persons who are members of the Association may be a nominee for election. 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 be a member for purposes of being a nominee for election to the Board.

3.2 No member may be a nominee if the member, if elected, would be serving on the Board at the same time as another member who holds a joint ownership interest in the same Unit and the other member is either properly nominated for the current election or an incumbent director.

3.3 No one who has been a member of the Association for less than one (1) year may be a nominee.

3.4 No member may be a nominee if that member discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if the member 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. The Association shall have no obligation to investigate the background or possible criminal history of any candidate.

3.5 A member who is more than thirty (30) days delinquent in the payment of regular and special assessments (not including nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party) is not qualified to be a nominee or to continue serving on the Board. A member shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:

3.5.1 The member has paid the regular or special assessment under protest pursuant to Civil Code section 5658.

3.5.2 The member has entered into a payment plan pursuant to Civil Code section 5665.

3.6 Prior to disqualifying any person from being a nominee, the Association must offer the person an opportunity to engage in internal dispute resolution pursuant to Civil Code section 5900 et seq.

#### **SECTION 4 - NOMINATION OF DIRECTORS**

4.1 The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a member.

4.2 The Association shall seek nominations for candidates for election by making available a "Candidate Nomination Form." All members desiring to run for a position on the Board of Directors or members who wish to nominate other members must complete the Candidate Nomination Form and return the completed Candidate Nomination Form and any accompanying materials to the Association within the time prescribed on the Candidate Nomination Form. If nominating another member, that nominee's written consent is required and must be returned with the Candidate Nomination Form.

4.3 The Association shall retain a candidate registration list and shall permit members to verify the accuracy of their individual information on the candidate registration list at least thirty (30) days before the ballots are distributed. The Association or member shall report any errors or omissions on the candidate registration list to the Inspector(s) of Election, who shall make the corrections within two (2) business days. (Civ. Code § 5105(a)(7).)

4.4 The Candidate Nomination Form submitted by each candidate may be posted on the Association's website, published in the Association's newsletter and/or posted on the Association's bulletin board(s). The Candidate Nomination Form submitted

by each candidate may be enclosed with the ballot for the election and mailed at least thirty (30) days prior to the meeting. Candidate Nomination Forms and accompanying materials that are received after the time prescribed on the Candidate Nomination Form may not be enclosed with the ballot for election nor will late Candidate Nomination Forms be posted on the Association's website, published in the Association's newsletter, or posted on the Association's bulletin board(s). The Association will not edit the content of these Forms, but will publish a general statement of non-responsibility for the content of all published Forms. Any candidate can request in writing that his/her Form not be published as provided herein and the Association will honor any such request received prior to the date of publication of all Forms if publication occurs.

4.5 Except as provided in Paragraph 4.4, no Candidate Nomination Form or other editorial or campaign material will be published in the Association's newsletter or other Association media.

4.6 Nothing in these Rules and Procedures is intended to disallow a member from nominating his or herself as set forth in Paragraph 4.2 above.

4.7 Nominations for election to the Board of Directors may not be made from the floor during the meeting of the membership or the Board.

## **SECTION 5 - USE OF COMMON AREA FACILITIES FOR CAMPAIGN PURPOSES**

5.1 In each election of Directors, the Board may hold a candidate's forum in the Community Pool. prior to the election where members will be provided an opportunity to meet and ask questions of the candidates. All candidates known to be standing for election will be invited to attend the forum. Attendance by the candidates is optional.

## **SECTION 6 - VOTING BY SECRET BALLOT**

6.1 Pursuant to Civil Code section 5100, elections regarding the following topics must be conducted by double envelope secret ballots pursuant to Civil Code section 5115: assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, the grant of exclusive use of common area, or any other topic expressly identified in the Association's operating rules. The Board has the right to determine whether other topics requiring a membership vote will be conducted using double envelope secret ballots.

6.2 The Association shall provide general notice of all of the following at least thirty (30) days before the ballots are distributed:

6.2.1 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.

6.2.2 The date, time, and location of the meeting at which ballots will be counted.

6.2.3 The list of all candidates' names that will appear on the ballot.

6.2.4 Individual notice of (1) through (3) above shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a member. (Civ. Code § 5115(b).)

6.3 Ballots may be submitted at any time from the members' receipt of the ballot until the announced deadline or any extension thereof as set by the Inspector(s) of Elections. Ballots returned by mail are to be returned to the address specified by the Inspector(s) of Elections and so noted in the balloting materials.

6.3.1 The Inspector(s) of Elections shall have the right to verify the member's information and signature on the outer envelope and to review the number of ballots collected prior to the deadline for voting and inform the Board of Directors of the number of ballots received. The Inspector(s) of Elections shall have the right to extend the voting deadline if there is an insufficient or possibly an insufficient number of ballots received. Voting envelopes shall not be opened as part of this review - only a review of unopened envelopes is allowed to verify the member's information and determine the total number of ballots returned.

6.3.2 Once cast, ballots cannot be revoked or changed, even if the member attends the meeting and seeks to change or withdraw his or her vote before the polls close.

6.3.3 The Board of Directors shall set a record date establishing those members entitled to vote on any ballot. Should the Board fail to set a specific record date, the record date shall be the date the ballot was posted in the United States mail unless specified otherwise in the Association's governing documents.

6.3.4 In accordance with the governing documents of the Association, members shall be entitled to one (1) vote per Unit, except in the election of directors where cumulative voting is allowed. Cumulative voting for directors shall be permitted in any secret ballot for the election of directors.

6.4 Ballots and two (2) pre-addressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered, or caused to be mailed or delivered by the Inspector(s) of Elections to every member at least thirty (30) days prior to the deadline for voting. For the election of directors, ballots and voting envelopes will also be distributed at the annual membership meeting. The Association shall generally use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including the following:

6.4.1 The ballot itself will not be signed by the voter, but will be inserted into an envelope that is to be sealed by the voter. This envelope is to be inserted into a second (outer) envelope that is sealed by the voter. In the upper left-hand corner of the second envelope, the voter must print and sign his or her name, address (either address within the community or mailing address), and unit number that entitles him or her to vote. The lack of a signature on the second envelope will not invalidate that ballot if the Inspector(s) of Elections is able to determine the identity of the member who submitted the ballot.

2005 AMENDED AND RESTATED

BYLAWS OF

HOLIDAY GARDENS HOMEOWNERS ASSOCIATION

*An Association for a Residential Condominium Development*

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**2005 AMENDED AND RESTATED**  
**BYLAWS OF**  
**HOLIDAY GARDENS HOMEOWNERS ASSOCIATION**

**ARTICLE 1 - NAME; LOCATION AND APPLICABILITY**

1.1 **Name; Nonprofit Mutual Benefit Corporation.** The name of the corporation is Holiday Gardens Homeowners Association ("*Association*"). The Association has been formed pursuant to the California Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8970) as a nonprofit mutual benefit corporation.

1.2 **Principal Office.** The principal office of the Association is located in San Diego, County, California. The Board shall have the full power and authority to change the principal office of the Association from one location to another in the County of San Diego, California. Any such change shall be adopted by a resolution of the Board and noted in the meeting minutes.

1.3 **Application.** These Restated Bylaws are applicable to the Association and all Owners, residents, tenants, employees, and other persons who use the facilities of the residential condominium development known as Holiday Gardens ("*Community*"), consisting of thirty nine Units, located in the City of Escondido, County of San Diego, State of California, as more particularly described as follows:

Lot 1 of Escondido Tract No. 253, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 8172, filed in the Office of the County Recorder of San Diego County, September 15, 1975

1.4 **Documents Being Replaced; Approvals.** These Restated Bylaws amend and restate, in their entirety, the Bylaws of Holiday Gardens Homeowners Association and any prior amendments thereto ("*Original Bylaws*"). In accordance with Section 1 of Article XIII of the Original Bylaws, these Restated Bylaws have received the approval of a majority of a quorum of the Members.

1.5 **Definitions.** Unless otherwise specified in these Restated Bylaws, the definitions set forth in Article 1 of the Restated Declaration of Restrictions for Holiday Gardens recorded on \_\_\_\_\_, 20\_\_ as File/Page No. \_\_\_\_\_ of Official Records of the County Recorder of San Diego County, apply to these Restated Bylaws.

1.6 **Membership Rights.** The qualifications for membership are set forth in Article 3 of the Restated Declaration and are hereby incorporated by reference.

AMENDED BYLAWS-HOLIDAY GARDENS



1.7 **Continuity of Life of Association.** If the Association should be dissolved as a corporation, an unincorporated association immediately and without further action or notice shall be deemed to exist and shall succeed to all rights and duties of the Association. The affairs of such unincorporated association shall be governed by the laws of the State of California and the Governing Documents.

## ARTICLE 2 - MEETINGS OF MEMBERS

2.1 **Place of Meetings; Conduct.** All meetings of the Members shall be held at a place designated by the Board. This meeting place shall be within the Community or as close to it as reasonably possible. If no meeting place is designated, the meetings shall be held at the principal office of the Association. Meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Board may adopt by resolution.

2.2 **Annual Meetings.** The annual meeting of the Members shall be held in the month of September on a date and time established by the Board, provided that adjournments of such meetings for lack of quorum or otherwise may be held as soon thereafter as practical.

2.3 **Special Meetings.** Special meetings of the Members may be called for any lawful purpose by a majority of a quorum of the Board, the President of the Association, or by a written request signed by Members representing at least five percent of the total voting power of the Association. If the special meeting is requested by the Members, it shall be held not less than thirty-five nor more than ninety days after receipt of the request by an Officer of the Association. Only that business stated in the notice of meeting given pursuant to Section 2.4 of these Restated Bylaws shall be transacted at the special meeting.

2.4 **Notice of Meetings.** The Secretary of the Association shall give written notice of any Members' meeting to each Member of record in accordance with the following:

- 2.4.1 Except as otherwise provided in this Article, the notice shall be given at least ten but not more than ninety days before the meeting, by first class mail, by personal delivery or Electronic Transmission.
- 2.4.2 The notice shall be addressed to the Member at the address appearing on the books of the Association, or the address supplied by the Member to the Association for this purpose.
- 2.4.3 The notice shall state the place, date, and time of the meeting and the means, if any, by which a Member may participate by

Electronic Transmission or electronic video screen. If Directors are to be elected at the meeting, the notice or proxy accompanying the notice shall include the names of all those who are nominees at the time the notice is given. The notice or proxy accompanying the notice shall also state those matters that the Board, at the time the notice is given, intends to present for action by the Members.

- 2.4.4 In the case of a special meeting which is called by Members, pursuant to Section 2.3 of these Restated Bylaws, the notice shall be given within twenty days after receipt of the request for the meeting. If that twenty day requirement is not satisfied, the Members who called the meeting may give the notice.
- 2.4.5 An affidavit of the mailing or other means of giving any notice of any Members' meeting may be executed by the Secretary, and if so executed, shall be filed with the corporate records or made a part of the minutes of the meeting. Such affidavit shall constitute prima facie evidence of the giving of notice.

2.5 **Waiver of Notice.** Attendance by a person at a meeting shall constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting which are required to be described therein if that objection is expressly made at the meeting.

2.6 **Voting Rights.** Members shall have the power to exercise their voting rights subject to the following provisions:

- 2.6.1 Each Unit shall be assigned one vote. In an election of Directors, each Unit shall be assigned one vote for each position on the Board to be filled at the election.
- 2.6.2 Fractional votes shall not be allowed. When there is more than one record Owner of a Unit (co-owners), all of the co-owners shall be Members, but only one of them shall be entitled to cast the single vote attributable to the Unit. Co-owners may designate in writing one of the co-owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Unit's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Unit on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote.

- 2.6.3 If no percentage of the voting power is specified in the Governing Documents or by California law for a particular action or decision by the membership, the approval by a majority of the votes cast when a quorum is established shall be required.
- 2.6.4 The Board may fix, in advance, a record date or dates for the purpose of determining the Owners who are entitled to exercise voting rights:
- (a) The record date for eligibility to vote shall not be fixed more than sixty days before the date of the meeting. If no record date is fixed, all Members who are otherwise eligible to vote as of the day of the meeting may vote.
  - (b) The record date for eligibility to vote by written ballots shall not be fixed more than sixty days before the day on which the first written ballot is mailed or solicited. If no record date is fixed, all Members who are otherwise eligible to vote as of the day of mailing or soliciting the written ballot shall be eligible to vote.
- 2.6.5 A Member's voting rights may be suspended by the Board in accordance with the provisions of Section 3.13 hereinbelow.

**2.7 Quorum.** At any meeting, the presence either in person or by proxy of Members entitled to cast votes equal to at least one-third of the total voting power of the Association shall constitute a quorum for any action except as otherwise provided in the Governing Documents or by law. At the Board's discretion, Members may, by Electronic Transmission or electronic video screen, participate, be considered present for quorum purposes and vote at a meeting of Members subject to the requirements of Corporations Code section 7510. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by at least a majority of Members required to constitute a quorum.

**2.8 Adjournment for Lack of Quorum.** If a quorum is not present at a duly called meeting, a majority of those Members present in person or by proxy may adjourn the meeting to a time not less than five days nor more than thirty days from the meeting date, but no other business may be transacted. Provided that the date, time and place of the adjourned meeting is announced at the original meeting, the adjourned meeting may be held without additional written notice. If no such announcement is made, or if the selected date is changed after adjournment, notice of the time and place shall be given to Members in the manner provided in Section 2.4 of these Restated Bylaws. The quorum for any adjourned meeting shall be twenty-five percent of the total voting power.

2.9 **Adjustment of Voting Power and Quorum.** For purposes of establishing a quorum and determining the total voting power of the Association, if a Member's voting rights are suspended as provided in the Governing Documents, the total voting power of the Association shall be reduced for the period of time for which the suspension is in effect by an amount equal to the number of Units for which membership voting rights have been suspended.

2.10 **Voting by Proxy.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance of its maker's membership, or upon receipt of written notice by the Secretary of the maker's death or judicially declared incapacity. The maker of a proxy may revoke it by delivering a written revocation to the Association, by executing a subsequent proxy and presenting it to the meeting, or by attending any meeting and voting in person.

2.11 **Voting by Written Ballot.** Any action that may be taken at a meeting of the Members, except the election of Directors by cumulative voting, may be taken without a meeting provided the following ballot requirements are satisfied:

2.11.1 The Association shall distribute a written ballot to every Member entitled to vote on the matter as provided in Section 2.6.4. The ballot shall be solicited in the same manner as provided in Section 2.4 of these Restated Bylaws for the giving of notice of meetings of Members. In addition to using a written paper ballot, the Association may establish reasonable procedures for voting by Electronic Transmission which shall also be considered voting by written ballot.

2.11.2 The ballot shall (1) set forth all items to be voted upon; (2) provide an opportunity to specify approval or disapproval of any proposal; (3) provide a reasonable time within which to return the ballot; (4) indicate the number of responses needed to meet the quorum requirement; and (5) state the percentage of approvals necessary to pass the measure submitted.

2.11.3 The proposed action shall be considered approved if:

(a) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action, and

(b) The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of ballots received in response to the ballot solicitation.

- 2.11.4 Once a written ballot is submitted to the Association, the Member submitting the ballot may not revoke it.
- 2.11.5 Any deadline stated for return of the ballots may be extended for successive reasonable periods with the approval of a majority of the Board. Notice of any extension must be sent to the Members within thirty days of the previously noticed deadline date.

### ARTICLE 3 - BOARD OF DIRECTORS

3.1 **Number; Qualification.** The affairs of this Association shall be managed and its duties and obligations performed by an elected Board of Directors, consisting of five persons. Members of the Board must be Members of the Association. No co-Owners of a Unit may serve on the Board at the same time.

3.2 **Nomination.** The Board of Directors shall establish reasonable nomination procedures for election to the Board.

3.3 **Qualifications of Candidates for Election.** Candidates for election must be Members in good standing. Good standing shall mean that all assessments must be current and the candidate's membership must not be subject to any suspension of membership rights arising out of any violations of the Association's Governing Documents.

3.4 **Election.** At each annual meeting of the Association, the Members shall fill, by election, all positions of Directors whose terms are due to expire. However, if an annual meeting is not held or does not include an election, the election may be held at a special meeting of Members called for that purpose. Voting for Directors shall be by secret written ballot. However, if the number of candidates equals or is less than the number of positions to be filled at the election, Members may elect the Directors by acclamation. At an election, the Member or the Member's proxyholder may give a single candidate a number of votes equal to the number of Directors to be elected multiplied by the number of Units the Member owns, or may distribute the Member's cumulated votes among any two or more candidates as the Member desires. The persons receiving the highest number of votes shall be elected. In the event of a tie vote between candidates for the fifth position on the Board, a run-off election may be conducted by written ballot pursuant to Section 2.11 herein.

3.5 **Term.** The terms of office of all members of the Board shall be staggered two year terms, with two terms expiring in odd-numbered years, and three terms expiring in even-numbered years. There shall be no limit to the number of consecutive terms to which a Director may be reelected. Each Director shall hold office until the election of his or her successor or until the Director's death, resignation or removal.

3.6 **Removal.** Directors may be removed as follows:

3.6.1 The Board may declare vacant the office of a Director on the occurrence of any of the following events:

- (a) The Director is declared of unsound mind by a final order of a court.
- (b) The Director is convicted of a felony.
- (c) The Director has failed to attend three consecutive regular meetings of the Board.
- (d) The Director ceases to be an Association Member.

3.6.2 One or more Directors may be removed prior to the expiration of their terms, without cause, at an annual or special meeting of the Members. Any removal without cause shall be approved by the vote of Members representing a majority of all Members. Notwithstanding the foregoing, unless the entire Board is removed from office by the vote of the Members, an individual Director shall not be removed prior to the expiration of his or her term of office except in compliance with Corporations Code section 7222 or any successor statute.

3.7 **Resignation of Directors.** Any Director may resign at any time by giving written notice to the Board, the President, or the Secretary, or by giving verbal notice at a Board meeting such that the resignation is recorded in the minutes of the meeting. Such resignation shall take effect on the date of receipt of such notice, or at any time later specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.8 **Return of Association Materials.** Upon resignation, removal or expiration of the Directors' terms, Directors shall return to the Association those Association materials in their possession.

3.9 **Filling Vacancies.** The remaining Directors shall fill any vacancy on the Board caused by the death, removal or resignation of a Director unless the vacancy is created by the removal of a Director by the Members. The Members shall vote to fill any vacancy on the Board created by the removal of a Director by the Members. A successor Director shall serve for the unexpired term of the Director he or she replaced. If the Board accepts the resignation of a Director which is scheduled to take effect at a future date, the Board may appoint a successor to take office when the resignation becomes effective, and the resigning Director may participate in the appointment of a successor.

3.10 **Compensation.** No Director shall receive any compensation for any service he or she may render to the Association; provided, however, that a Director may be reimbursed for actual out-of-pocket expenses incurred by the Director in the performance of his or her duties. Any expenses for travel outside of San Diego County must have prior approval of the Board.

3.11 **Powers and Duties.** The Board shall exercise for the Association all powers and duties vested in or delegated to the Board or the Association by the Governing Documents and the California Corporations Code governing nonprofit mutual benefit corporations. Said powers and duties shall be subject to the limitations of the Governing Documents, and shall include, but not be limited to, the requirements of Section 3.12 and the following:

- 3.11.1 Formulating Rules and Regulations for the use and operation of the Units, Exclusive Use Common Areas, Common Area, common facilities and facilities owned or controlled by the Association pursuant to Section 3.5.2 of the Restated Declaration.
- 3.11.2 Enforcing the applicable provisions of the Governing Documents and any other instruments governing the ownership, management, and control of the Community.
- 3.11.3 Initiating and executing disciplinary proceedings against Members for violations of provisions of the Governing Documents in accordance with procedures set forth in Section 3.13 herein.
- 3.11.4 Paying taxes and assessments that are, or could become, a lien on all or a portion of the Common Area.
- 3.11.5 Fixing and establishing the fiscal year for the Association, including the power to modify the fiscal year.
- 3.11.6 Contracting for casualty, liability, and other insurance on behalf of the Association.
- 3.11.7 Subject to the limitations set forth in Section 3.12 herein, contracting for goods and services for the Common Area and operation of the Association, and borrowing money, incurring indebtedness and executing promissory notes or other evidences of debt for the Association.
- 3.11.8 Creating committees pursuant to resolution adopted by a majority of the Board; provided that if a committee will exercise any power or authority of the Board, it shall consist of two or more Directors, and as many other persons as the Board may designate, to serve at the pleasure of the Board. No Directors need serve on any com-

mittee which does not exercise any power or authority of the Board (e.g., social committees). Committee members must be Association Members.

- 3.11.9 Delegating its authority, duties, and responsibilities to its Officers, employees, committees, or agents, including a community association manager. The term of any agreement with a manager shall not exceed one year, renewable by agreement of the parties for successive one year periods, and shall provide for termination by either party for cause with no more than thirty days' written notice, or without cause and without payment of a termination fee or penalty with no more than ninety days' written notice.
- 3.11.10 Authorizing the withdrawal of monies from the Association's reserve accounts, upon the signatures of two Directors.
- 3.11.11 Entering any Unit to perform necessary construction, maintenance, or emergency repair work for the benefit of the Common Area or the Association.
- 3.11.12 Filling vacancies on the Board, except for a vacancy created by the removal of a Director by Members.
- 3.11.13 Extending the time for return of ballots when an action is taken without a meeting pursuant to Section 2.11.5 herein, by majority approval of the Board.
- 3.11.14 Providing any Owner with the following documents within ten days of the mailing or delivery of a written request therefor and receipt of the costs to prepare and reproduce said documents:
  - (a) A copy of the Governing Documents.
  - (b) A copy of the most recent financial statement.
  - (c) A written statement from an authorized representative of the Association specifying (i) the amount of the Association's current assessments and fees; (ii) the amount of any assessments levied on the Owner's Unit that are unpaid as of the date of the statement; (iii) the amount of any monetary fines or penalties levied upon an Owner's Unit which are unpaid on the date of the statement; and (iv) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Unit.



- (d) A statement noting any change in the Association's current assessments and fees which have been approved by the Board, but which have not become due and payable as of the date disclosure is provided pursuant to this Section.
- (e) A copy of any notice previously sent to the Owner that sets forth any alleged violations of the Governing Documents that remain unresolved at the time of the request. The notice shall not be deemed a waiver of the Association's right to enforce the Governing Documents against the Owner or the prospective purchaser of the Unit with respect to any violation. This subsection shall not be construed to require the Association to inspect an Owner's Unit.
- (f) Any change in the Association's current assessments and fees which have been approved by the Board but have not become due and payable as of the date the statement is provided.

3.11.15 Being indemnified and defended by the Association against loss, liability or expense (including attorneys' fees) arising out of the performance of the Board's duties to the maximum extent permitted by law.

**3.12 Financial Documentation; Preparation, Reporting and Review Responsibilities.** With regard to the preparation, reporting and review of the Association's financial documentation, the Board shall have the following responsibilities:

3.12.1 Preparing a pro forma operating budget for each fiscal year, and distributing a copy thereof to each Owner not less than thirty and not more than ninety days prior to the beginning of the fiscal year. The budget shall comply with California Civil Code sections 1365 and 1365.2.5 or any successor statutes.

In lieu of the distribution of the pro forma budget, the Board may elect to distribute a summary of the budget to each Owner with a written notice that the budget is available at the business office of the Association or designated location and that copies will be provided upon written request and at the expense of the Association. The Association shall provide the copy to the Owner within five working days of the receipt of the Owner's written request.

3.12.2 Preparing and distributing an annual report, within one hundred twenty days after the close of each fiscal year, consisting of the following:

- (a) A balance sheet as of the end of the fiscal year.
- (b) An operating (income) statement for the fiscal year.
- (c) A statement of changes in financial position for the fiscal year.
- (d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized Officer of the Association that the statement was prepared without independent audit or review from the books and records of the Association.

3.12.3 Preparing and distributing to the Owners, within sixty days before the beginning of each fiscal year, the written notice regarding assessments and foreclosure described in California Civil Code section 1365.1(b).

3.12.4 Causing to be conducted, at least once every three years, a study of the reserve account requirements of the Community. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

As used herein, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

3.12.5 Reviewing the following on at least a quarterly basis:

- (a) A current reconciliation of the operating and reserve accounts of the Association.
- (b) The actual reserve revenues and expenses for the current year compared to the budget for the current year.
- (c) An income and expense statement for the operating and reserve accounts of the Association.

- (d) The most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

**3.13 Disciplinary Actions Against Owners.** In connection with the general power of enforcement, the Association may discipline Owners for violation of any of the provisions of the Governing Documents by one or more of the following: (1) suspending the Member's membership rights, including the Member's voting rights, right to run for a position on the Board, and right to use any Common Area recreational facilities, (2) imposing monetary fines, and (3) recording of a notice of noncompliance encumbering the Unit of the Owner, subject to the following limitations:

- 3.13.1 The accused Owner shall be given at least ten days' prior written notice of the intention of the Board to meet and consider imposition of a suspension, monetary fine, notice of noncompliance or any combination of these, with respect to any alleged violation.
- 3.13.2 In any matter relating to the disciplining of a Member, the Board shall meet in executive session if requested by that Member, or upon the Board's own decision. The Member subject to discipline shall be given an opportunity to be heard, orally or in writing, at the Member's discretion during that portion of the executive session.
- 3.13.3 Notwithstanding the foregoing, under circumstances involving conduct or a condition of the Unit that constitutes (a) an immediate and unreasonable infringement of, or threat to, the health, safety or quiet enjoyment of neighboring Owners; (b) a traffic or fire hazard; or (c) a threat of material damage to, or contamination, or destruction of, the Common Area, or other Units, the Board or its agents may undertake immediate corrective action and conduct a hearing as soon thereafter as reasonably possible, if either (1) requested by the offending Owner within five days following the Association's actions, or (2) on its own initiative.
- 3.13.4 The amount of any monetary penalties shall be established from time to time by the Board, and a schedule thereof shall be distributed to the Members by personal delivery or first class mail. Distribution of additional schedules is not required unless there are any changes to an existing schedule.
- 3.13.5 If the Board imposes discipline on a Member, the Board shall provide notification of the disciplinary action by either personal delivery or first-class mail to the Member within fifteen days following the action.

- 3.13.6 Any Owner's membership privileges may be suspended (a) for up to thirty days for any violation of the Governing Documents; and (b) during any period of time that the Owner is delinquent in the payment of assessments. Suspension of membership privileges shall include suspension of the right of a Member to vote at meetings of the Association, the right to run for a position on the Board, and the right to use any Common Area recreational facilities. Any such suspension shall not include suspension of the right of a sitting Board member to continue serving as a Board member.
- 3.13.7 Any notice of noncompliance shall identify the subject Unit, describe the nonconforming use, and specify the provision of the Governing Documents that is being violated. Upon the elimination of any nonconforming use, the Association shall execute and record an estoppel certificate, which shall reference any previously recorded notice of noncompliance, rescind said notice and confirm that the Unit is in compliance with all applicable Governing Documents provisions referenced in the notice of noncompliance.
- 3.13.8 Except as provided in Article 4 of the Restated Declaration relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Unit.

#### ARTICLE 4 - MEETINGS OF DIRECTORS

4.1 **Regular Meetings.** Regular meetings of the Board of Directors shall be held quarterly at a time and place fixed by resolution of the Board. The meeting place shall ordinarily be within the Community unless, in the judgment of the Board, a larger meeting room is required than exists within the Community. Any larger meeting room selected by the Board shall be as close as possible to the Community.

4.2 **Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by any two Directors other than the President. The meeting notice shall specify the time and place of the meeting and the nature of any special business to be considered.

4.3 **Meeting Notice to Board Members.** Regular meetings of the Board, described in Section 4.1 herein, may be held without notice to Board members if the time and place of the meetings are fixed by the Board. Regular meetings, if the time and place are not fixed by the Board, and special meetings of the Board shall be held upon four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone, including a voice messaging system or by Electronic Transmission to Board

members. Notice need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

4.4 **Organizational Meetings.** Immediately after the annual meeting, described in Section 2.2, herein, or as soon thereafter as reasonably practicable, the Board shall meet to elect the Officers of the Association and conduct any other business of the Association as the Board, in its discretion, shall determine is necessary.

4.5 **Emergency Meetings.** An emergency meeting of the Board may be called by the President, or by any two Board members if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required herein.

4.6 **Executive Sessions.** The Board may, with the approval of a majority of a quorum of the Board, adjourn a meeting and reconvene in executive session to meet with its legal counsel, or discuss and vote upon (a) litigation in which the Association is or may become involved, (b) matters that relate to the formation of contracts with third parties, (c) personnel matters, (d) Member disciplinary matters, (e) orders of business of a similar nature, and (f) to meet with a Member upon the Member's request regarding the Member's payment of assessments in compliance with Civil Code section 1367.1. The nature of any and all business to be considered in executive session shall first be announced in open session. In the event the executive session does not follow an open session, the Board may conduct an executive session if the nature of any and all business considered in such executive session is announced at the next regularly scheduled Board meeting. Nothing herein contained shall be construed to obligate the Board to first call an open meeting before meeting in executive session. An executive session which does not follow an open meeting may be called and noticed in the same manner as a special meeting or as an emergency meeting pursuant to Section 4.5 herein if required by the circumstances. Any matter discussed in executive session shall be generally noted in the minutes of the next meeting of the Board of Directors which is not an executive session.

4.7 **Quorum.** A majority of the number of the Directors then in office, so long as there is more than one such Director, shall constitute a quorum. If a quorum is present, the decision of a majority of the Directors present, excluding abstentions, shall be the act of the Board. Board members shall be considered present and may participate in a Board meeting through use of a conference telephone or electronic video screen as long as all Board members participating in the meeting are able to hear one another. Board members shall be considered present and may participate in a meeting through Electronic Transmission, other than conference telephone and electronic video screen, as long as each Board member participating in the meeting can communicate with all the other Board members in attendance concurrently.

4.8 **Adjournment.** A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four hours, notice of the adjournment shall be given, prior to the time

of the adjourned meeting, to the Directors who were not present at the time of the adjournment.

**4.9 Owner Attendance at Board Meetings; Notice.** Any Member of the Association may attend meetings of the Board except when the Board adjourns to executive session as provided in Section 4.6 herein. Members who are not on the Board may speak at any meeting, except executive sessions, subject to reasonable limitations established by the Board of Directors. Notice of the time and place of a Board meeting, except for emergency meetings and executive sessions, shall be communicated to Members not less than four days prior to the meeting. Notice may be given by posting the notice in a prominent place or places within the Common Area, by mail, by delivery to all Units in the Community, or by newsletter or similar means of communication.

**4.10 Action Without a Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the meetings of the Board. An explanation of the action taken shall be communicated to the Members by any means the Board deems appropriate.

**4.11 Meeting Minutes; Availability to Owners.** The Board shall keep accurate written minutes of its meetings, and shall retain them in the permanent records of the Association. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any Board meeting, other than executive session, shall be available to Members within thirty days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member upon request and upon reimbursement for the costs in making that distribution. Members shall be notified in writing at the time that the budget is distributed, or at the time of any general mailing to the entire membership, of their right to have copies of the minutes of meetings of the Board, and how and where those minutes may be obtained.

## ARTICLE 5 - OFFICERS

**5.1 Enumeration of Officers.** The Officers of this Association shall be a President, a Vice-President, a Secretary, and a Treasurer. The Board may appoint such additional Officers as it may, in its sole discretion, determine necessary or desirable. Any number of offices may be held by the same person except for the offices of (a) President and Treasurer, and (b) President and Secretary. Officers must be Board members.

**5.2 Appointment and Term.** The Officers shall be elected annually by the Board. Any vacancies shall be filled by the Board. Each Officer shall hold his or her office at the pleasure of the Board.

5.3 **Duties.** Unless otherwise delegated by the Board as provided in Section 5.4 herein, the duties of each Officer shall be as follows:

5.3.1 The President shall:

- (a) Preside over all meetings of the Members and of the Board.
- (b) Sign as President all deeds, contracts, and other written instruments that have been approved by the Board, unless the Board, by duly adopted resolution, authorizes the signature of a lesser Officer, or other person or entity.
- (c) Call meetings of the Board in accordance with any rules and notice requirements imposed by the Board and the Governing Documents.
- (d) Have, subject to the approval of the Board, general supervision, direction, and control of the affairs of the Association.
- (e) Discharge any other duties required of him or her by the Board.

5.3.2 The Vice-President shall:

- (a) Act in the place and in the stead of the President in the event of the President's absence, inability, or refusal to act.
- (b) Exercise and discharge any other duties required of the Vice President by the Board.

5.3.3 The Secretary shall:

- (a) Keep a written record of all Membership and Board meetings.
- (b) Serve all required notices of meetings of the Board and the Members.
- (c) Keep current records showing the names and addresses of all Members.
- (d) Sign as Secretary all deeds, contracts, and other written instruments that have been approved by the Board, if the instruments require a second Association signature and the

Board has not passed a resolution authorizing another Officer to sign in the place and stead of the Secretary.

5.3.4 The Treasurer shall:

- (a) Receive and deposit all of the funds of the Association in any bank or banks selected by the Board.
- (b) Be responsible for and supervise the maintenance of books and records to account for Association funds and other Association assets.
- (c) Disburse and withdraw Association funds in the manner specified by the Board.
- (d) Prepare and distribute the financial statements for the Association required by the Governing Documents.

5.4 **Delegation.** With Board approval, an Officer may delegate his or her powers and duties to any committee, employee or agent of the Association, including, but not limited to, a community association manager.

5.5 **Resignation and Removal.** The Board may remove any Officer from office either with or without cause. An Officer may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation shall take effect at the date of receipt of the notice or at any later time specified in the notice. Unless otherwise specified in the notice, acceptance of the resignation by the Board shall not be necessary to make it effective.

5.6 **Return of Association Materials.** Upon resignation, removal or expiration of the Officers' terms, Officers shall return to the Association those Association materials in their possession.

5.7 **Compensation.** An Officer shall not receive any compensation for any service he or she may render to the Association; provided, however, that any Officer may be reimbursed for actual out-of-pocket expenses incurred by the Officer in the performance of his or her duties. Any expenses for travel outside of San Diego County must have prior approval of the Board.

5.8 **Limitation of Powers.** No Officer may enter into any contract or incur any debt or other obligation for the Association without authorization of the Board of Directors.



## ARTICLE 6 - BOOKS AND RECORDS; INSPECTION RIGHTS

6.1 **Required Books and Records.** The Association shall maintain at its principal office:

- 6.1.1 Copies of the Governing Documents as last amended.
- 6.1.2 Adequate and correct books and records of account.
- 6.1.3 Minutes of the proceedings of its Members, of its Board, and of committees of its Board.
- 6.1.4 A membership register containing each Member's name, mailing address and voting rights.

6.2 **Member Inspection of Accounting Records and Minutes.** In accordance with Corporations Code section 8333 and Civil Code section 1365.2, the accounting books and records, Rules and Regulations, and minutes of proceedings of the Members, the Board and its committees, with the exception of minutes of executive meetings, shall be open to inspection upon the written demand on the Association by any Member at any reasonable time, for a purpose reasonably related to such Member's interests as a Member. Members may not inspect the minutes of executive meetings, primary work product such as cancelled checks and invoices, upon which the Association's books and records of account are based, Association contracts, information related to disciplinary matters, individual Unit files, or any other records except those specifically allowed herein or as allowed by the Board or by law. The Association may withhold or redact information if the release of the information is reasonably likely to lead to fraud in connection with the Association or identity theft. Information that is privileged by law may also be withheld or redacted.

6.3 **Member Inspection of Membership Register.** Subject to Section 6.4 and applicable law, Members may obtain copies of the membership register within ten days upon a written demand to the Association and payment of a reasonable charge. The demand shall state the purpose for which the list is requested.

6.4 **Denial of Inspection Request.** In accordance with section 8338 of the Corporations Code, the membership register is a corporate asset. The Association may deny a Member access to the membership register, including copies thereof, where the Association reasonably believes that the information will be used for a purpose not reasonably related to the Member's interest as a Member, or where the Association provides a reasonable alternative method of achieving the purpose identified in the written demand from the Member in accordance with section 8330(c) of the Corporations Code.

6.5 **Director Inspection of All Association Records.** Subject to any limitations imposed by law, every Director shall have the right to inspect all Association records and the physical properties owned or controlled by the Association at any reasonable time as provided by section 8334 of the Corporations Code.

6.6 **Removal of Records.** No Member or Director may remove the Association's copies of the Governing Documents, books and records of account, minutes, the membership register, or other records or documents from the Association's office or designated depository without the prior consent of the Board.

## ARTICLE 7 - NONLIABILITY AND INDEMNIFICATION

7.1 **Limitation on Liability of Association's Directors and Officers.** No Directors, Officers, committee members, or agents of the Association (collectively and individually referred to as the "Released Party") shall be responsible to any Owner, any member of an Owner's family, any of the Owner's tenants, guests, servants, employees, licensees, invitees, or any other person for:

7.1.1 Any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required by the Governing Documents, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and enforcement of the Governing Documents.

7.1.2 Any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Unit or Exclusive Use Common Area or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion, the elements or any other Owner or person within the Community, or by any other cause, unless the same is attributable to his or her own willful or wanton act or gross negligence. It is the intent of this Section to provide volunteer Directors and Officers with protection from liability to the full extent permitted by California Civil Code section 1365.7, or comparable superseding statute, and

to the extent this provision is inconsistent with said section, the Civil Code shall prevail.

**7.2 Indemnification of Association.** Each Owner shall be liable to the Association for any damage to the Common Areas caused by the negligence or willful misconduct of the Owner or his or her family, guests, invitees or lessees. Each Owner shall indemnify, hold harmless, and pay any costs of defense of each other Owner from claims for personal injury or property damage occurring or originating within any Unit owned by the indemnitor, provided that this protection shall not extend to any indemnitee whose gross negligence or willful misconduct caused or contributed to the injury or damage. This Section is not intended to be for the benefit of any insurer and shall not affect nor limit the duty of any insurer to pay any claim which would be payable by said insurer but for this Section.

**7.3 Indemnification by Association of Directors, Officers, Employees and Other Agents.** To the fullest extent permitted by law, the Association shall indemnify its Directors, Officers, committee members, employees, and other agents described in Corporations Code section 7237, including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in Corporations Code section 7237 and including an action by or in the right of the Association, by reason of the fact that such person is or was a person described by that section. "Expenses," as used in this Section, shall have the same meaning as in Corporations Code section 7237(a).

**7.4 Approval of Indemnity by Association.** On written request to the Board by any person seeking indemnification hereunder, the Board shall promptly determine in accordance with Corporations Code section 7237(e), whether the applicable standard of conduct set forth in Corporations Code section 7237(b) or section 7237(c) has been met, and if it has, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to the proceeding, the Board shall promptly call a meeting of Members. At that meeting, the Members shall determine under Corporations Code section 7237(e) whether the applicable standard of conduct set forth in Corporations Code section 7237(b) or section 7237(c) has been met, and if it has, the Members present at the meeting in person or by proxy shall authorize indemnification.

**7.5 Advancement of Expenses.** To the fullest extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a Director, Officer, employee or agent seeking indemnification under Sections 7.2 and 7.3 of this Article in defending any proceeding covered by those Sections shall be advanced by the Association before final disposition of the proceeding, on receipt by the Association of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the Association for those expenses.

7.6 **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of its Directors, Officers, committee members, employees or other agents against other liability asserted against or incurred by any Director, Officer, employee or agent in such capacity or arising out of the Director's, Officer's, employee's or agent's status as such.

## ARTICLE 8 - AMENDMENTS

These Bylaws may be amended by the vote or written consent of a majority of the voting power of the Association or as otherwise provided in Article 13 of the Restated Declaration.

**CERTIFICATE OF SECRETARY**

**OF**

**HOLIDAY GARDENS HOMEOWNERS ASSOCIATION**  
a California Nonprofit Mutual Benefit Corporation

I, the undersigned, do hereby certify that I am the duly elected Secretary of the Holiday Gardens Homeowners Association, a California corporation. The foregoing Amended and Restated Bylaws of said Association constitute the fully amended and restated Bylaws as approved by the membership of the Association.

DATED: Aug 17, 2005.

Mona Powers  
Secretary

6.4.2 The second (outer) envelope is to be addressed to the Inspector(s) of Elections, who will be tallying the votes. The envelopes are to be mailed or delivered by hand to the address specified by the Inspector(s) of Elections.

6.4.3 Balloting materials not completed in accordance with the instructions on or accompanying the balloting materials may result in the ballot being declared invalid, as determined by the Inspector(s) of Elections. The Inspector(s) of Elections shall have the right to count ballots submitted by members failing to complete all of the above requirements so long as all ballots with similar defects are treated equally and so long as the Inspector(s) are able to verify that only one (1) ballot per voting member has been submitted.

6.4.4 Only the official ballots distributed by the Association will be counted. Unofficial ballots will not be counted.

6.4.5 If a candidate whose name is on the ballot withdraws before the ballots are counted, the election will continue to go forward. However, the votes cast for a withdrawn candidate will not be counted.

6.5 Ballots shall be counted at a membership meeting or open Board meeting. Subject to reasonable restrictions established by the Inspector(s) of Elections to prevent interference with or intimidation of the Inspector(s) during the tabulation of the ballots, any candidate or other member of the Association may witness the counting and tabulation of the votes. No person observing the tabulation of the ballots may communicate with, interfere with, or in any way attempt to intimidate, harass or abuse the Inspector(s) or other person counting the ballots or assisting the Inspector(s).

6.6 Except as provided above, 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.

6.7 The candidate(s) receiving the highest number of votes shall be elected. In the event of a tie vote between candidates for the last position on the Board, a run-off election may be conducted by written ballot without a meeting pursuant to Section 2.11 of the Bylaws.

6.8 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 meeting and shall be available for review by members of the Association. Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all members or by posting it in the Common Area.

6.9 The Association election materials (returned ballots, signed voter envelopes, Voter List, proxies and the candidate registration list) will be retained by the Inspector(s) of Elections or the Inspector's/Inspectors' designee for one (1) year following the date the Inspector notifies the Board and the membership of the vote result, unless the Inspector is notified of some challenge to the election after the notification of the election result. In this case, the Inspector or its designee shall retain these documents for one (1) year from that later date. Thereafter, the Inspector(s) of Elections shall turn over those election materials to the Association or its designated agent. At the conclusion

of the three (3) year period established by Civil Code section 5210, those election materials may, at the option of the Board of Directors, be destroyed.

6.10 The mailed secret ballots described in these Rules, once received by the Inspector(s) of Elections, will serve to establish a quorum at any meeting of members.

## **SECTION 7 - PROXIES**

7.1 Voting by proxy will be permitted in accordance with the provisions of the Bylaws, although the Board of Directors need not prepare and distribute proxy forms with the election or voting materials. The Association will continue to honor proxies submitted in accordance with the Bylaws. Proxies submitted to and accepted by the Association must conform to the requirements of the law. Proxy holders will be given a secret ballot to complete. Proxies will not be counted as secret ballots.

## **SECTION 8 - INSPECTORS OF ELECTIONS**

8.1 The Board of Directors will appoint one (1) or three (3) Inspectors of Elections to oversee and certify the results of the voting. Inspector(s) of Elections are to faithfully perform their responsibilities so as to ensure that the announced results of the voting and/or election represent the true and honest votes of the members casting ballots.

8.2 Inspector(s) of Elections may not be Board members or a candidate for election or related to or reside with Board members or the candidates for election.

8.3 The Inspector(s) of Elections may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for compensable services other than serving as an Inspector of Elections.

8.4 Unless only outside consultants are engaged to serve as the Inspectors, at least one (1) Inspector of Elections shall be a member of the Association, although all Inspectors of Elections may be members of the Association if so appointed by the Board of Directors. If not members of the Association, Inspectors of Elections may be compensated for their services. Members of the Association shall not be compensated for serving as Inspectors of Elections.

8.5 The Inspector(s) of Elections shall do all of the following:

8.5.1 Deliver, or cause to be delivered, a copy of these Rules at least thirty (30) days before an election. Delivery of these Rules may be accomplished by either of the following methods: (1) posting them 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:" or (2) individual delivery.

8.5.2 Determine the number of memberships entitled to vote and the voting power of each;

8.5.3 Determine the authenticity, validity and effect of proxies;

- 8.5.4 Receive the ballots and determine the location to which all ballots are to be returned;
- 8.5.5 Hear and determine all challenges and questions to the balloting or election;
- 8.5.6 Count and tabulate all ballots;
- 8.5.7 Determine when the polls shall close;
- 8.5.8 Determine the results of the election or balloting;
- 8.5.9 Report the tabulated results of the election or balloting promptly to the Board of Directors; and
- 8.5.10 Perform such other acts as may be necessary to conduct the election or balloting in fairness to all members and in accordance with applicable law and all rules of the Association.

8.6 The Inspector(s) of Elections may appoint additional persons to assist in performing any of the above duties. Any such persons shall meet the qualifications for appointment as an Inspector of Elections.

8.7 The Board of Directors shall have the authority to remove and/or replace an Inspector of Elections at any time if an Inspector resigns or whenever the Board determines that an Inspector will not be able to perform his or her duties impartially in good faith, to the best of the Inspector's ability, as expeditiously as is practical, and in a manner that protects the interests of all members of the Association, or if the Inspector ceases to meet the qualifications to serve as described above.

8.8 Inspector(s) of Elections shall have the authority to consult with the Association's legal counsel in the event of uncertainties in the interpretation or application of Civil Code section 5100 et seq., these Rules, the Association's governing documents or as might otherwise be necessary to ensure a fair election that complies with the law and the governing documents. All such consultations shall be protected by the Association's attorney-client privilege and shall be kept confidential from all persons other than the Board of Directors. Note, however, that neither the Inspector(s) of Elections nor the Association's legal counsel shall disclose to others, including the Board, how a particular ballot was cast.

## **SECTION 9 - RECALL ELECTIONS**

9.1 To initiate the recall of one (1) or more directors or the entire Board, the Board must receive a petition signed by at least five percent (5%) of the Association's Members calling for a special meeting for the recall election. The recall petition signed by at least five percent (5%) of the Association's Members must also include the members' printed names and the addresses of their Units for verification purposes. Pursuant to Corporations Code 7510(e), a vote for a recall may also be initiated by the Board.

9.2 Upon receipt of a valid recall petition, the Board will promptly appoint an Inspector(s) of Elections.



9.3 Within twenty (20) days of the Board's receipt of a valid recall petition, the Board will notice the Members of and will set the time, date, and location of the special meeting to hold the recall election.

9.4 The special meeting must be held between thirty-five (35) and ninety (90) days of the Board's receipt of the petition.

9.5 Any recall election as well as any election for the replacement directors must be conducted by secret ballot according to Paragraph 6.1. In an effort to avoid recalled directors remaining on the Board until replacement directors are elected, the election for replacement directors will be held at the same time as the recall vote. As such, the members will vote on two issues: (i) the recall of directors, and (ii) the replacement of directors. The Inspector(s) of Elections will tabulate the votes on the replacement of directors immediately following the recall vote, if the recall is successful.

9.6 Generally, when there is a recall election, it is desirable and often necessary to include an election of replacement directors on the same ballot as the recall vote. If the recall election is successful in whole or in part, the Association cannot be left without a functioning Board until a later election can be conducted. Given the statutory notice requirements for an election as outlined in these Rules, if the election to fill any vacancies created by a removal vote is not conducted at the same time as the recall vote, the Association could be left without a Board to conduct the necessary and essential business of the Association, potentially causing great harm to the Association.

9.7 While Corporations Code section 7511(c) requires the Association to fix the date of the recall election not less than thirty-five (35) days, but not more than ninety (90) days after the Association's receipt of the request, the various notification requirements of Civil Code sections 5105(g)(4) and 5115(a)-(b) for the election of any replacement Directors make it difficult, if not impossible, for the Association to schedule the recall election meeting before the ninety (90) day deadline of Corporations Code section 7511(c). In an effort to meet the ninety (90) day deadline of Corporations Code section 7511(c), the Association may shorten the deadline to submit the Candidate Nomination Forms as needed to comply with the requirements of Corporations Code section 7511(c) for the recall election.

9.8 In order to curb a potential superfluous use of Association funds, a recall election may not be initiated against a Board member(s) if the targeted Board member(s)'s term expires within one-hundred (100) days from the date the Board received the recall petition unless the recall petition is petitioning to recall the entire Board.

9.9 The Association may facilitate the production of and pay for the cost of all recall election materials and the mailing of the same. If, however, a valid recall petition is received by the Board within twelve (12) months from the date of a prior recall election, whether the prior recall election was successful or not, the Association may facilitate the production of all recall election materials and the mailing of same, but the cost of the recall election will be borne by the petitioning party.

## **SECTION 10 - ELECTION CHALLENGES AND BALLOT RECOUNTS**

10.1 The Inspector(s) of Elections shall, upon written request, make the Association election materials (returned ballots, signed voter envelopes, Voter List, proxies and the candidate registration list) available for inspection and review by an Association member or the member's authorized representative should a member challenge the election or demand a ballot recount. Signed voter envelopes may be inspected but may not be copied pursuant to Civil Code section 5200(c).

10.2 Any recount will be conducted in a manner that preserves the confidentiality of the vote. To preserve the confidentiality of the vote, members will not be entitled to inspect the Inspector(s) of Elections' tabulation documents or notes submitted to the Association.

10.3 Should a professional Inspector(s) of Elections act as the Association's Inspector(s) of Elections, the member or members challenging the election or demanding a recount of the ballot will bear the costs charged by the professional Inspector(s) of Election as a result of the election challenge and/or ballot recount. A professional Inspector of Elections is defined as an Inspector of Elections who may be compensated for their services pursuant to Paragraph 8.4.

## **SECTION 11 - MISCELLANEOUS**

11.1 Other than the time frames set forth in Civil Code section 5100 et seq., the time frames stated in these Rules are guidelines, generally setting forth fair and reasonable procedures for the conduct of voting and elections. However, the failure of the Board or Inspector(s) to strictly adhere to these time frames will not invalidate any election or vote so long as the procedures used allow all members an equal opportunity to participate in the election or voting process and did not affect the results of the election.

At the discretion of the Board of Directors, the above Rules may be modified, delayed or repealed by the Board, in whole or in part, if the California State Legislature takes any action to change the content of Civil Code section 5100 et seq., which would affect said Rules.



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**Board of Directors  
Election Nomination Notice  
March 3, 2023**

**Deadline for Submittal - (April 2, 2023)**

If you would like to nominate yourself or another homeowner for a position on the Board of Directors, please complete and submit this form.

Three (3) Board of Directors seats are up for election, and newly elected Board Members will serve for a term of two (2) years. Board Members attend bi-monthly Board Meetings lasting approximately one to two hours and review/respond to email and phone communications between meetings.

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

MAIL TO:

Strategic HOA  
300 West Grand Ave, Suite 205  
Escondido, CA 92025

OR E-MAIL: [holidaygardens@strategichoa.com](mailto:holidaygardens@strategichoa.com)