

THE MASTERS GROUP

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**NOTICE OF RESOLUTION ADOPTING
FAIRWOOD PARK II HOMEOWNERS ASSOCIATION
ELECTION RULES**

(Notice mailed to members via 1st Class Mail)

September 4, 2020

All Members
Fairwood Park II Homeowners Association
San Jose, CA 95136

Pursuant to California Civil Code Section 4360(c), on September 1, 2020, the attached Resolution Adopting Fairwood Park II Homeowners Association Election Rules was adopted by the Board of Directors in accordance with California Civil Code Sections 4360 and 5105.

**RESOLUTION ADOPTING
FAIRWOOD PARK II HOMEOWNERS ASSOCIATION
ELECTION RULES**

WHEREAS, Civil Code §5100(a)(1) requires that certain member votes (including election and recall of directors, elections regarding assessments legally requiring a vote, amendments to the governing documents requiring an owner vote, and the grant of exclusive use of common area under Civil Code §4600) be conducted through the use of a secret ballot voting process as described in Civil Code §§5115-5145;

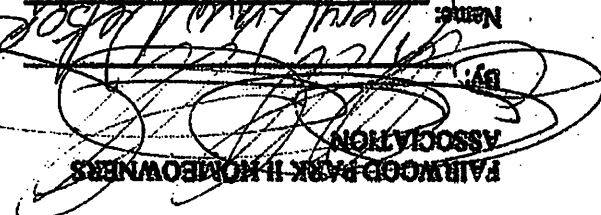
WHEREAS, Civil Code §5105 requires the Association to adopt rules in accordance with the statutory procedures set forth in Civil Code §§5100-5145; and

WHEREAS, the election procedures set forth in Civil Code §§5100-5145 control to the extent that the election procedures set forth in any other Fairwood Park II Homeowners Association governing documents are in conflict with those statutory procedures;

NOW, THEREFORE, BE IT RESOLVED, that the Fairwood Park II Homeowners Association adopts the Election Rules that are attached to this Resolution as Exhibit A and incorporated herein by this reference; and

FURTHER RESOLVED, that the President and the Managing Agent of the Association be, and they hereby are, authorized, empowered, and directed to take such further actions as they deem necessary and appropriate to implement the purposes and effect of these resolutions and to further have the authority to modify these procedures solely to conform to any subsequently enacted emergency legislation that directly affects the content or protocols of the accompanying Election Rules as such procedures will apply to the election and recall of directors, elections regarding assessments legally requiring a vote, amendments to the governing documents requiring an owner vote, and the grant of exclusive use of common area under Civil Code §4600.

Date: September 1, 2020

FAIRWOOD PARK II HOMEOWNERS ASSOCIATION
BY: 
Name: David L. Lopez
Its: President/Secretary
Board Member

**EXHIBIT A
FAIRWOOD PARK II HOMEOWNERS ASSOCIATION
ELECTION RULES**

Pursuant to Civil Code §5105, FAIRWOOD PARK II HOMEOWNERS ASSOCIATION (“Association”) hereby adopts the following Election Rules (“Rules”). The Rules shall be used in elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use common area pursuant to Civil Code §4600, and govern elections held by secret ballot, unless subsequently enacted legislation warrants modification or amendment. These Rules shall not be amended less than ninety (90) days prior to an election.

1. Equal Access to Association Media. All candidates and Members advocating a point of view shall be provided equal access to any Association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election. Equal access shall be provided to all candidates and Members advocating a point of view, including those not endorsed by the Board of Directors (“Board”), for purposes that are reasonably related to the election. The Association shall not edit or redact any content from these communications but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content. The Association may adopt limitations on the length and size of such communications so long as such limitations are equally applied to all Members. (Civil Code §5105(a)).

2. Equal Access to Association Meeting Areas. All candidates and Members shall have equal access to Common Area meeting spaces during a campaign. There shall be no cost for this access and it shall be available to all candidates, including those who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election. (Civil Code §5105(a)).

3. Prohibition on use of Association Funds for Campaign Purposes. Association funds shall not be used for campaign purposes in connection with any Association Board election. Funds of the Association shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the Association imposed by law. “Campaign purposes” include, but are not limited to: (a) expressly advocating the election or defeat of any candidate that is on the Association election ballot; and (b) including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot, ballot materials, or a communication that is legally required, within thirty (30) days of an election. This is not a campaign purpose if the communication is one for which subdivision (a) of §5105 requires that equal access be provided to another candidate or advocate. (Civil Code §5135(a)).

4. Minimum Qualifications for Candidacy. In accordance with the “Bylaws of Fairwood Park II Homeowners Association”, certified by the Secretary in or about December 8, 1986 (“Bylaws”), Civil Code §5105 and any superseding statute, to be eligible to be a candidate for election to the Board of Directors, the following applies:

(a) Candidates must be a Member of the Association as defined by Civil Code §4160.

(b) If title to a separate interest 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 member elections governed by these Rules.

(c) No Member shall be disqualified from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with §5900) of Chapter 10 of the Civil Code.

(d) Candidates for election to the Board of Directors must be current in the payment of regular and special assessments. A person shall not be disqualified from nomination for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. Notwithstanding the foregoing, a person may not be disqualified as a candidate for election to the Board of Directors for failure to be current in payment of regular or special assessments if the person has paid the regular or special assessment under protest pursuant to Civil Code §5658 or the person has entered into a payment plan pursuant to Civil Code §5665, or if any Director is not current in payment of assessments.

(e) Only one person from the same separate interest may be a candidate where another person holds a joint ownership interest in the same separate interest parcel and is either properly nominated for the current election or an incumbent director.

(f) Candidates for election to the Board of Directors must be a Member of the Association for not less than one year prior to nomination.

(g) Candidates for election to the Board of Directors are disqualified if that nominee discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if the nominee was elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code §5806 or terminate the Association's existing fidelity bond coverage.

5. Nominations for Election to the Board of Directors.

(a) 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 of said procedure and deadline shall be delivered pursuant to Civil Code §4040 if a member requests individual notice.

(b) Any Member of the Association who satisfies the qualifications set forth in the Bylaws and these Rules may nominate himself or herself for election to the Board by notifying the Board or its Association manager, if any, in writing prior to the election for which the Member intends to stand as a candidate by the deadline that the Association has published for receipt of nominations. All written self-nominations must be received by the applicable deadline in order to allow the Association to comply with the requirements of Civil Code §§5100 through 5135.

(c) The Board of Directors shall appoint a nominating committee to assist the Board in its efforts to advertise an upcoming election; educate interested Members regarding the duties, obligations, and standards for service as a director; advise the Board as to improvements or alterations in election procedures; and assist in identifying as many interested and qualified candidates as possible up to the number of positions to be filled.

6. Voting Eligibility. There is one class of voting Membership. With respect to voting in elections subject to these Rules, the following shall apply:

(a) No Member shall be denied a ballot for any reason other than not being a Member at the time when ballots are distributed.

(b) No person with a valid general power of attorney for a Member shall be denied a ballot. The ballot of a person with general power of attorney for a Member shall be counted if returned in a timely manner.

(c) As "Association Election Materials" (hereafter defined), the Association shall retain both a candidate registration list and a voter list. The voter list shall include the name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest

or if only the parcel number is used. The Association shall permit Members to verify the accuracy of their individual information on both lists at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions to either list to the Inspector(s) of Elections who shall make the corrections within two (2) business days.

(d) On each matter submitted to a vote of the Members, each Member shall be entitled to cast one vote for each Unit owned by such Member. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

(e) Every Owner of a Unit within Fairwood Park II Homeowners Association is a Member of the Association. The Owner of a Unit shall automatically, upon becoming the Owner of the Unit, be a Member of the Association, and shall remain a Member of such Association until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease.

7. Election Documents.

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

(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s) of Elections.

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

(3) The list of all candidates' names that will appear on the ballot if the ballot is for the election of Directors.

(4) Individual notice of the above paragraphs shall be delivered pursuant to Civil Code §4040 if a member requests individual notice.

(b) The Inspector(s) of Elections shall deliver, or cause to be delivered, at least thirty (30) days prior to the start of an election subject to these Rules, to each Member, both of the following documents:

(1) The ballot or ballots.

(2) A copy of these Rules. Delivery of the Rules may be accomplished by either posting the 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" or by individual delivery.

(c) "Association Election Materials" shall mean returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Association Election Materials shall be a part of the "Association records" under Civil Code §5200; however, signed voter envelopes may be inspected but may not be copied.

8. Proxy Voting. Subject to these Rules and pursuant to Civil Code §§5105 and 5110 and Article III, Section 3.5 of the Bylaws, each Member may vote by proxy. The Association shall have the option, but shall not be obligated, to distribute proxies. All proxies shall be in writing and shall be filed with the Secretary of the Association. For elections conducted by secret ballots, proxies shall not be construed or used in lieu of a ballot. Any instruction given in a proxy issued for an election being conducted by secret ballot that directs the manner in which the proxyholder is to cast the vote shall be set forth on a

separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the Member's vote by secret ballot. The proxy may be revoked by the Member prior to the receipt of the ballot by the Inspector(s) of Elections as described in Corporations Code §7613. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of the Member's Unit, or upon receipt of written notice by the Secretary of the Board of the death or judicially declared incompetence of a Member prior to the counting of the vote, or upon the expiration of eleven (11) months from the date of the proxy.

9. Cumulative Voting. If a Member gives notice at a meeting prior to preparation and distribution of ballots of the Member's intention to cumulate votes, then each Member entitled to vote at any election of directors when two or more positions are to be filled shall have the right to cumulate his or her votes by giving one candidate a number of votes equal to the number of directors to be elected, multiplied by the number of votes to which the Member is entitled, or by distributing his or her votes on the same principle among as many candidates as he or she desires. Those candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected. The form of secret ballot that is distributed to the Members in an election of directors shall be formatted to permit cumulative voting in the election.

10. Election of Directors. The Association shall have three (3) Directors. Directors shall be elected by secret ballot in accordance with Civil Code §§5100 through 5135, and these Rules. Members may cast, with respect to each position on the Board to be filled, one vote for each Unit owned. The persons receiving the greatest number of votes shall be elected until the Board positions are filled. If two or more candidates receive the same number of votes for the last open position on the Board, a runoff election shall be conducted in accordance with Civil Code §§5100 through 5135 and these Rules. The term for all Directors shall be one (1) year. Unless vacated sooner, each Director shall hold office until the Director's term expires and a successor is elected. The Association shall hold an election for a position on the Board of Directors in accordance with the procedures set forth in Civil Code §§5100 through 5145 at the expiration of the corresponding Director's term as described in the Bylaws and these Rules and at least once every four years.

11. Duration of the Voting Process. The secret ballot voting procedures of Civil Code §5115(c) specify that ballots must be sent to all eligible Members by mail or personal delivery not less than thirty (30) days before the deadline that is established for the tender of ballots. Voting commences when the ballots are mailed or delivered. Written ballots must be returned or hand-delivered to the designated Inspector(s) of Elections at the location, and by no later than the date and time, specified per notice under Civil Code §5115(b) and on the ballot. Because State law requires that the Association utilize a double-envelope ballot system and that the sealed ballots be mailed or delivered by hand to a location specified by the Inspector(s) of Elections, any ballots that are sent to the Inspector(s) of Elections by facsimile transmission or e-mail will not be counted.

12. Use of Secret Ballots and Ballot Completion Requirements. Ballots used in the election of Directors and other elections governed by Civil Code §5100(a), must be secret ballots that do not identify the voter by name, address, or lot number. The secret ballots, together with two pre-addressed envelopes with instructions on how to return ballots, must be mailed by first-class mail or delivered by the Association to every Member of the Association not less than 30 days before the deadline for voting. The unsigned ballot must be inserted into an envelope ("Ballot Envelope") that is sealed, and this sealed Ballot Envelope must then be inserted into a second envelope ("Address Envelope") that is sealed. In the upper left-hand corner of the Address Envelope, a space or lines must be presented where the voter can print and sign his or her name, address, and Unit number. The Address Envelope must be addressed to the Inspector(s) of Elections who will tally the votes. The Address Envelope (containing the ballot and the Ballot Envelope) may be mailed or delivered by hand to the location specified by the Inspector(s) of Elections for the return of ballots, and the Member may request a receipt for delivery of the ballot.

13. Supervision of Election Process; Appointment of Inspector(s) of Elections. To ensure secrecy of ballots and fairness in the conduct of Director elections and other elections governed by Civil Code §5100(a), the Board of Directors must appoint an independent third party or parties to serve as the Inspector(s) of Elections. Civil Code §5110(a) specifies that the number of Inspector(s) of Elections shall be one or three. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as an Inspector(s) of Elections. An Inspector(s) of Elections shall perform all duties impartially, in good faith, to the best of the Inspector(s) 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(s) of Elections is prima facie evidence of the facts stated in the report.

Without limiting the foregoing, the Inspector(s) of Elections shall do all of the following:

- (a) Determine the number of Memberships entitled to vote and the voting power of each.
- (b) Determine the authenticity, validity, and effect of proxies, if any.
- (c) Receive ballots. Sealed ballots, the signed voter envelopes, voter list, proxies, and candidate registration list must at all times be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) of Elections 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 of the ballots shall be transferred to the Association.
- (d) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- (e) Count and tabulate all votes.
- (f) Determine when the polls close, consistent with the Governing Documents.
- (g) Determine the tabulated results of the election.
- (h) Perform any acts as may be proper to the conduct of the election with fairness to all Members and in accordance with the Association rules pertaining to the conduct of elections and Civil Code §§5100-5145.

14. Appointment of Persons to Assist Inspector(s) of Elections. The Inspector(s) of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) of Elections deem appropriate, provided that the persons are independent third parties. Independent third parties include, but are not limited to, volunteer poll workers with the county registrar of voters, licensees of the California Board of Accountancy, or notary publics. An independent third party may be a Member but may not be a director or a candidate for director or be related to a director or to a candidate for director. As noted above, an independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an Inspector(s) of Elections.

15. Indemnification of Inspector(s) of Elections and Liability Insurance. Members of the Association who serve as Inspector(s) of Elections shall be deemed to be agents of the Association in their capacity as Inspector(s) of Elections, for purposes of Corporation Code §7237. As provided in Corporations Code §7237(i), the Association shall have the power to purchase and maintain insurance on behalf of any Association agent against any liability asserted against or incurred by the agent in his or her capacity as an agent of the Association or arising out of the agent's status and duties as such, whether or

not the Association would have the power to indemnify the agent against such liability under pertinent provisions of the Corporations Code.

16. Requirements for Counting and Tabulation of Ballots. The designated Inspector(s) of Elections must count and tabulate the votes in public at a properly noticed open meeting of the Board of Directors or the Members. Any candidate or other Member of the Association may witness the counting and tabulation of the votes. No person, including a Member of the Association or an employee of the Association's management company, if any, shall open or otherwise review any ballot before the time and place at which the ballots are counted and tabulated

17. Announcement of Results of Election. The results of the election shall be promptly reported to the Board of Directors of the Association, 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 (as specified in Civil Code §4045) to the Members of the tabulated results of the election.

18. Retention of Ballots. After tabulation, election ballots, the signed voter envelopes, voter list, proxies, and candidate registration list shall be stored by the Inspector(s) of Elections at a secure location designated by the Inspector(s) of Elections until the time allowed by Civil Code §5145 for challenging the election has expired, at which time custody shall be transferred to the Association. In the event of a recount or other challenge to the election process, the Association shall, on written request, make the ballots available for inspection and review by Association Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

19. Conflict with Corporations Code. In the event of a conflict between Article 4 of the Davis-Stirling Common Interest Development Act and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 [commencing with §7110] of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of Article 4 shall prevail.

20. Definitions. Any capitalized term or terms used in these Rules carry the same meanings as set forth in the Fairwood Park II Homeowners Association Declaration (CC&Rs) and the Bylaws.

21. Conflict. In the event of a conflict between these Rules and any provision in the governing documents as defined by Civil Code §4150, these Rules mandated by statute shall control.