BRIGHTON ESTATES HOMEOWNERS ASSOCIATION

ELECTION PROCEDURE RULES

(Adopted May 5, 2020)

In accord with the provisions of California Civil Code Section §5105, as amended by Senate Bill 323 (effective January 1, 2020) Brighton Estates Homeowners Association ("Association") hereby adopts the following Election Procedure Rules ("Rules"). It is the intent of the Association in adopting these Rules to fully comply with California Civil Code Section §5105, as well as any other applicable provisions of the Davis-Stirling Act, as amended, the Californian Corporations Code, the Association's Declaration of Covenants, Conditions and Restrictions ("CC&Rs"), Bylaws and other previously adopted Rules and/or Policies (hereinafter collectively referred to as "Governing Documents"). However, in the event any conflict arises between these Rules and the Governing Documents, these Rules shall control based upon the mandatory language and provisions of California Civil Code Section §5105.

Rule No. 1. Nomination of Candidates.

Any Member may nominate himself or herself in writing for election to the Board of Directors ("self-nominate"). "Member" in this context means the person must be a record owner of a separate interest (e.g., an owner of a Parcel, Lot or Unit) within the Association at the time of nomination, regardless of any contrary definition of "Member" contained in the Governing Documents.

The Association shall disqualify a person from nomination as a candidate if that person is not a Member of the Association at the time of nomination, provided that before disqualification the person shall be provided an opportunity to engage in Internal Dispute Resolution ("IDR") with the Association.

Members shall be provided written notice of their right to self-nominate. Such written notice shall be distributed to the Members not less than thirty (30) days prior to the established deadline for self-nominations for election as a Director. Written nominations received after the established nomination deadline shall be considered invalid and will not be included on the written ballot distributed to the Members and described in Rule 11 below.

No "floor nominations" or verbal nominations shall be permitted at the meeting of Members when the ballots are counted, or any time. However, a candidate whose name does not appear on the written ballot distributed to the Members pursuant to Rule 11 below may receive and be counted as "write-in" votes on a ballot submitted by a Member-voter as set forth herein below.

Rule No. 2. Qualifications of Candidates.

Members are eligible to be a candidate for election as a Director **ONLY IF ALL** of the following apply to that Member:

(a) The Member is current in the payment of Regular and Special Assessments. [A Member shall be considered "current" if he or she has paid such assessments "under protest" pursuant to Civil Code Section 5658, or has entered into a Payment Plan of such assessments pursuant to Civil Code Section 5655. Unpaid fines, collection charges, late charges and costs of collection shall not disqualify a Member as a candidate for election as a Director.]

(b) The Member's ownership of his or her separate interest is not jointly held or concurrent with either a sitting Director or another candidate for election as a Director.

(c) The Member has not been convicted of a criminal offense that would, if the Member was elected as Director, prevent the Association from purchasing a Director fidelity bond or result in the termination of the Association's existing fidelity bond coverage.

(d) The Member has been a member of the Association for at least one (1) year.

Rule No. 3. Candidate/Member Access to Association Controlled Media.

The Association shall reasonably ensure that any nominated candidate or Member advocating an opinion, position or point of view is provided access to the Association's controlled media, including but not limited to newsletters, mailings and Association websites, during a campaign for purposes that are reasonably related to that election. Equal access shall be provided to all candidates, irrespective of whether a candidate is an incumbent or has been endorsed by the Board of Directors, and to any other Member advocating an opinion or point of view reasonably related to the election.

The Association shall not edit or redact the content of a candidate's or Member's communication but shall include a statement preceding each such communication clearly stating that the candidate or Member, and not the Association, is responsible for the content of the communication. By submitting a communication for publication in the Association's controlled media, each candidate and/or Member hereby agrees to indemnify and hold harmless the Association against any claim or action brought for libel or other tort based upon the content of the candidate's or Member's publication.

Rule No. 4. Candidate/Member Access to Association Common Area.

During an election, the Association shall reasonably ensure access to Association common area meeting space, if any exists and at no cost, to all candidates and to all Members advocating an opinion, position or point of view, including those not endorsed by the Board of Directors, for purposes reasonably related to the election. The Association

may establish reasonable limitations on the time, frequency and length of such meetings to reasonably ensure equal meeting space access to all candidates and Members and to not unreasonably disrupt or interfere with other non-election related Association activities.

Rule No. 5. Association Funds in Campaigns.

Association funds shall not be used for campaign purposes in connection with any Board of Director 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.

For the purposes of this Rule, "campaign purposes" includes, but is not limited to, the following: (1) Expressly advocating the election or defeat of any candidate that is on the Association election ballot. (2) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its Board, excepting the ballot, ballot materials, or a communication that is legally required, within 30 days of an election. A communication is not considered to be for a campaign purpose if the communication is one for which subdivision (a) of Civil Code Section 5105 requires that equal access be provided to another candidate or advocate.

Rule No. 6. Qualifications for Voting.

All Members of record at the time ballots are distributed are entitled to vote.

Another person may exercise a Member's right to vote pursuant to a valid written General or Special Power of Attorney, signed by the Member and notarized. A Member's right to vote shall immediately terminate when that person ceases to be a record owner of a separate interest in the Association.

If record title to a separate interest is held by a Trust or other legal entity that is not a natural person, the governing person or authority of that Trust or legal entity shall appoint a natural person to be the Member for purposes of these Rules.

Rule No. 7. Use of Secret Written Ballots, Election by Acclamation.

Notwithstanding any other law or provision of the Governing Documents, any Association election regarding assessments, election of Members to the Association Board of Directors, amendment of the Governing Documents, or the grant of exclusive use of Association Common Area property shall only be held by secret written ballot, as set forth in these Rules.

Unless the number of Members of the Association exceeds Six Thousand (6,000), there shall <u>not</u> be any "Election by Acclamation," whereby the election procedures described in

these Rules are suspended because the number of nominated candidates is equal to or less than the number of Directors to be elected.

Rule No. 8. Establishment of Quorum.

The satisfaction of the quorum requirements, as set forth in the Association's Governing Documents, shall be determined by the number of valid, timely written ballots received by the Inspector(s) of Election.

Rule No. 9. Inspector(s) of Elections.

The Association shall select an independent third party or parties to serve as the Inspector(s) of Election. The number of Inspectors of Elections shall be either one (1) or three (3).

For the purposes of this Rule, an independent third party includes, but is not limited to, a volunteer poll worker with the County Registrar of Voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a Member, but may not be a sitting Director or a candidate for Director or be related to a sitting Director or to a candidate for Director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services. Neither the Association's managing agent nor its employees may serve as an Inspector of Elections.

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

(1) Determine the number of memberships entitled to vote and the voting power of each.

(2) Determine the authenticity, validity, and effect of proxies, if any.

(3) Distribute and receive ballots.

(4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(5) Count and tabulate all votes.

(6) Determine when the polls shall close, consistent with the Governing Documents.

(7) Determine the tabulated results of the election.

(8) Perform any act(s) as may be proper to conduct the election with fairness to all Members in accordance with the Davis-Stirling Act, as amended, the Corporations

Code, and all applicable Rules of the Association regarding the conduct of the election.

The Inspector(s) of Elections shall perform all duties impartially, in good faith, to the best of his or her ability, and as expeditiously as practical. If there are three (3) 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 or written findings made by the Inspector or Inspectors of Elections is prima facie evidence of the facts stated in the report or findings.

Rule No. 10. Use of Instruction Proxies.

For purposes of this Rule, the following definitions shall apply:

(1) "Proxy" means a written authorization signed by a Member or the authorized representative of the Member that gives another Member the power to vote on behalf of that Member.

(2) "Signed" means the placing of the Member's name on the Proxy (whether by manual signature, typewriting, telegraphic transmission, electronic signature or otherwise) by the Member or authorized representative of the Member.

Proxies shall not be construed or used in lieu of the Association's ballot. The use of a Proxy shall be permitted or required only as set forth in the Association's Governing Documents. The Association shall not be required to prepare or distribute Proxies to the Members pursuant to this Rule.

Any instruction of a Member, given in a Proxy issued for an election, that directs the manner in which the Proxy holder is to cast the vote ("Instructional proxy") shall be set forth on a separate page of the Proxy that can be detached and given to the Proxy holder, who shall retain the Member's written instruction for a period of one (1) year, and make it immediately available upon the demand of either the Member giving the proxy or the Inspector(s) of Elections. The Proxy holder shall then cast the vote of the Member giving the Proxy by secret written ballot, as set forth in these Rules. There shall be no use of "quorum-only Proxies." All Instructional Proxies shall be subject to the provisions of California Corporations Code Section 7613.

Rule No. 11. Ballots, Voting Procedure.

After the expiration of the established self-nomination deadline described in Rule 1 above, the Association shall promptly distribute to the Members a written notice and list identifying all nominated candidates. This list/notice shall be distributed at least thirty (30) days prior to distribution to the Members of the ballots described hereinbelow. This list/notice shall also advise the Members of the relevant date, time and location of the election.

For a period of at least thirty (30) days prior to distribution of the ballots, Members shall have the right to inspect and make any appropriate corrections to the Association's Member-voter mailing list.

A ballot and two preaddressed envelopes with instructions on how to return the ballot shall be mailed by first-class mail or delivered by the Inspector(s) of Elections to every Member not less than thirty (30) days prior to the deadline for voting. At the same time, and in addition to the ballot, the Inspector(s) of Election shall also either distribute to the Members a copy of these Rules or post these Rules on the Association's website and give appropriate Member instructions to access the site. The Inspector(s) of Elections may delegate to the Association's managing agent the administrative task of distributing the ballots, envelopes and copies of these Rules to the Members. In order to preserve confidentiality, a Member-voter may not be identified by either name, address, or Lot, Parcel, or Unit number on the ballot.

The ballot itself shall not be signed by the Member-voter but shall be completed and inserted into an envelope that shall be sealed. This envelope shall then be inserted into a second envelope that is also sealed. In the upper left-hand corner of the second envelope, the Member-voter shall sign his or her name, indicate (print legibly or type) the Member-voter's name, and indicate the address or separate interest identifier that entitles the Member-voter to cast the ballot.

The second envelope shall be addressed to the Inspector or Inspectors of Elections, who shall count and record the votes. The second envelope may be mailed or delivered by hand to a location specified by the Inspector or Inspectors of Elections. The Member-voter may request a receipt for delivery of the second envelope. Upon the receipt of a ballot by the Inspector(s) of Elections, the ballot becomes irrevocable.

Each ballot received by the Inspector or Inspectors of Elections pursuant to this Rule shall be treated as a Member present at a meeting for purposes of establishing a quorum under the Association's Governing Documents. Subject to Rule 13 below, a noticed annual meeting of Members for the purpose of counting the ballots and votes may be held, but is not required to be held, for the purpose of establishing a quorum of Members.

Rule No. 12. Cumulative Voting.

The Association shall comply with the Governing Documents and California Corporations Code Section 7615 regarding the possible use of cumulative voting at any election of Directors. However, cumulative voting in favor of a candidate for Director must comply with Rule 11 herein, and shall not be permitted unless both of the following requirements have been met:

(1) The candidate's name appears on the printed ballot, having been placed in nomination prior to the distribution of ballots by the Association; and

(2) One or more qualified Member-voters has given notice (either written or verbal) at the last meeting of Members of Board of Directors meeting immediately prior to the distribution of ballots by the Association of his or her intent to cumulate votes.

If both foregoing requirements have been met, then all Members may cumulate their votes for any nominated candidate. In such instance only, the Association shall give all Members an appropriate written instruction regarding possible cumulative voting at the time the ballots are distributed.

Rule No. 13. Counting of Ballots.

All ballots/votes shall be counted and tabulated by the Inspector or Inspectors of Election in the presence of Members at a location conveniently available to Members at a properly noticed open meeting of the Board of Directors or of the Members. Any candidate or other Member of the Association may witness the counting and tabulation of ballots and votes. No person, including a Member of the Association or an employee of any management company of the Association, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated by the Inspector or Inspectors of Election.

The recording by audio or video means of the counting of ballots by anyone is strictly prohibited.

Rule No. 14. Election Results.

The results of the election shall be promptly reported by the Inspector(s) of Election to the Board of Directors of the Association. The results shall be recorded in the Minutes of the meeting of the Board of Directors at which the ballots/votes are counted and tabulated, or at the next meeting of the Board of Directors if the ballots/votes are counted and tabulated at a meeting of Members. The Minutes shall be available for review at no cost by any Member of the Association. Within fifteen (15) days after the election, the Association Board of Directors shall publicize the results of the election in a written communication directed to all Members.

Rule No. 15. Custody of Ballots and Election Materials.

The sealed ballots shall always be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) until after the tabulation of the vote, at which time custody shall be transferred to the Association. After tabulation, all election materials, including the candidate list, Member-voter list, ballots and all second envelopes

(described above in Rule 11) shall be stored by the Association in a secure place for not less than one (1) year after the date of the election. Ballots and second envelopes shall be stored and retained separately. In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots and election materials available for inspection and review by Association Members or their authorized representatives. Signed second envelopes may be inspected by a Member, but shall not be copied for any purpose. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

Rule No. 16. Judicial Enforcement of Election Procedures.

Any Member of the Association who desires to bring a civil action for declaratory or equitable relief for a violation of these Rules, including, but not limited to, injunctive relief, restitution, or a combination thereof, must do so within one (1) year of the date the Member's cause of action accrues. Upon a finding that the election procedures of these Rules were not followed, a court of competent jurisdiction may void any results of the election.

A Member who prevails in a civil action to enforce the Member's rights pursuant to these Rules shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars ($500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each Member of the Association equally. If the Association prevails in such civil action, it shall not recover any costs or attorneys' fees unless the court finds the Member's action to be frivolous, unreasonable, or without foundation.

A civil action brought by a Member with respect to either: (a) access to the Association's controlled media or Association common meeting area by a candidate or Member advocating a point of view; (b) the receipt of a ballot by a Member; and/or (c) the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in Small Claims court if the amount of the demand does not exceed the jurisdiction of that court.

Adopted this 5th day of May, 2020 by Resolution of the Board of Directors of Brighton Estates Homeowners Association.

Director:

Director:

Director:

Director:

Director: