EVANSWOOD ESTATES HOMEOWNERS ASSOCIATION
ELECTION RULES

The following Election Rules are adopted in accordance with California Civil Code Section 5100, *et seq.*, and pursuant to the authority of the Association's governing documents, and are intended to comply with California Civil Code Section 5105. They are to apply to elections regarding (1) assessments legally requiring a vote, (2) election and removal of directors, (3) amendments to the governing documents, (4) grants of exclusive use of common area property pursuant to California Civil Code Section 4600, and (5) any other matter requiring a vote of the Members. Unless the context clearly indicates otherwise, capitalized terms used herein shall have the same meaning as in the Association's governing documents.

Section 1. Elections Regarding Selection of Directors.

This Section 1 shall apply to elections regarding selection of directors.

A. **Nomination of Candidates to Appear on the Ballot**. In addition to any nomination procedures set forth in the Association's Bylaws (except as noted below), persons shall become candidates for election to the Board of Directors as follows: No less than 60 days before the Association mails out the ballot packets, the Association shall send a notice to all Members inviting eligible Members to become or nominate candidates for election to the Board (the "Candidate Solicitation Notice"). The Candidate Solicitation Notice shall state all of the following:

1. Interested Members must notify the Association, in writing, that they would like to be or nominate a candidate;

2. Persons nominated by a Member must submit a written acceptance of such nomination;

3. The written notification of desire to be or nominate a candidate (and, if applicable, the written acceptance of a nomination) and the Election Statement must either be mailed or hand delivered to the Association at the address shown on the Candidate Solicitation Notice, and must be received by the Association no later than 5:00 p.m. on the date that is 30 days after the date the Candidate Solicitation Notice was mailed to the Members, and it is each Member's responsibility to confirm that his or her written notification and Election Statement were received by the Association.

Each person nominated by a Member who wishes to be a candidate must submit a written notification to the Association stating his or her consent to become a candidate. Any such written notification must either be mailed or hand delivered to the Association at the address shown on the Candidate Solicitation Notice and must be received by the Association no later than 5:00 p.m. on the date that is 30 days after the date the Candidate Solicitation Notice was mailed to the Members. It is each Member's responsibility to confirm that his or her written notification and the consent of his or her nominee, if required, were received by the Association.

B. **Qualifications for Candidacy and Election to the Board.**

Candidates must be Members of the Association or, if title to a Lot is held by a legal entity which is not a natural person, be appointed by the governing authority of that legal entity. The Association may disqualify a person from nomination as a candidate pursuant to any of the following:

1. A nominee (or the entity appointing the nominee) must be current in the payment of regular and special assessments, which are consumer debts subject to validation. A person shall not be disqualified for failure to be current if the person has entered into a payment plan pursuant to Civil Code Section 5665 or if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Civil Code Section 5900, *et seq.*

2. The person, if elected, would be serving on the Board at the same time s another person who holds a joint ownership interest in the same separate Lot as the person and the other person is either properly nominated for the current election or is an incumbent director.

3. The person (or the entity appointing such person) has been a Member for less than one year.

4. The person discloses, or if the association is aware or becomes aware of a past criminal conviction that would, if the person was elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code Section 5806 or terminate the Association's existing coverage.

C. **Access to Association Media and Common Area Meeting Space.** The Association shall ensure that the legal requirements set forth in California Civil Code Section 5105 are met by implementing the following:

1. Candidates and Members advocating a point of view may, but are

not required to, submit a Election Statement which shall not exceed one side of a single 8½ x 11 inch page and which shall be reasonably related to the election. All Election Statements must be received by the Association prior to 5:00 p.m. on the date that is 30 days after the date the Candidate Solicitation Notice was mailed to the Members. The Association shall not edit or redact any content from the Election Statements. By submitting an Election Statement, the author accepts full responsibility for the content thereof and agrees to indemnify the Association and its agents and representatives for any and all damage arising from and related to any such content. No other access to Association media, newsletters or internet web sites shall be provided to any candidate or Member advocating a point of view during a campaign for purposes that are reasonably related to the election.

2. Access to common area meeting space, if any exists, shall be provided during a campaign to all candidates and Members advocating a point of view for purposes reasonably related to the election, at no cost, subject to procedural rules as may be adopted by the Board to assure orderly use of such meeting space.

D. **Content of Ballots.** Each candidate's name nominated shall be included on the official ballot form pursuant to Section 1, subparagraph A, listed in alphabetical order by last name. The ballots shall further state all of the following:

1. The number of directors to be elected;

2. The date and time the balloting period will close;

3. The Board shall have the power to extend the balloting period if sufficient ballots have not been received to establish a quorum.

E. **General Notice of Election.** Not less than 30 days before ballots are distributed, the Association shall provide general notice of the following:

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

2. The date, time and location of the meeting where the ballots will be counted.

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

F. **Distribution of Ballot Packets.** Not less than 30 days prior to the date scheduled for the close of the balloting period, the Inspector of Elections shall cause the Association to mail, via first-class U.S. mail, one ballot packet to each Member. Each ballot packet shall contain all of the following:

1. One official ballot;

2. Black-and-white copies of all Election Statements timely received by the Association;

3. A statement specifying that the Association was not permitted to edit or redact any content from the Election Statements and thus the author of each Election Statement, and not the Association, is responsible for the content of his or her Election Statement;

4. Two sealable envelopes--a smaller (inner) envelope and a larger (outer) envelope; and

5. Instructions on how to vote using the two-envelope system.

The smaller envelope shall have no distinguishing markings.

The larger envelope shall be pre-addressed to the Inspector of Election at the address specified by the Inspector of Election, and shall contain all of the following:

- blank lines in the upper lefthand corner for the voter to print and sign his or her name, address and Lot number that entitles him or her to vote and date of signing; and

- the following statement above the signature line:

I hereby authorize the Inspector of Election to submit this envelope as my proxy for quorum purposes only at the Association's Annual Membership Meeting, unless this box is checked [ ].

A ballot shall not be denied to any person for any reason other than the person not being a Member at the time ballots are distributed. A ballot shall not be denied to a person with a general power of attorney for a Member and the ballot of a person with a general power of attorney for a Member shall be counted if returned in a timely manner.

G. **Rules Regarding Voting Using the Two-Envelope System.**

1. The ballot shall not be signed.

2. Once completed, the (unsigned) ballot must be inserted into the smaller envelope and the envelope must be sealed. This sealed envelope containing the completed ballot must then be inserted into the larger (outer) envelope and the envelope must be sealed.

3. In the upper lefthand corner of the larger sealed envelope, the voter must print and sign his or her name, address and Lot number that entitles him or her to vote and the date of signing.

4. The Inspector of Elections has the power to invalidate any ballot if the ballot or either envelope does not comply with subparagraphs 1 through 3, above.

5. Once a ballot is cast, it cannot be revoked. A ballot is deemed "cast" when it is received at the location(s) designated by the Inspector of Election.

6. The sealed envelopes shall remain in the custody of the Inspector of Election, or at a location designated by the Inspector of Election, at all times prior to completion of the tabulation process.

7. Unless prohibited by the Inspector of Election, the Association shall be entitled to maintain a log of all envelopes received (the "Envelope Log") and to put all envelopes in the order designated by the Inspector of Elections. The envelopes shall not be opened until the Inspector of Elections instructs them to be opened.

H. **Balloting Period.** The balloting period shall begin on the date the Ballots are distributed and shall close at the time the vote is called for at the Meeting. Ballots may be delivered to the Inspector of Elections at any time up until that time. Ballots received after that time will not be accepted or counted unless the Board shall extend the time in order to obtain a quorum.

I. **Inspector of Election.**

1. *Appointment and Term.* Prior to sending the General Notice of Election (subparagraph E above), the Board shall appoint an Inspector of Election. The Inspector of Election shall serve at the pleasure of the Board

until he or she resigns, is discharged by the Board, or submits the completed written "report of Inspector of Election" to the Board as required by Section 1, subparagraph K, below.

2. *Qualifications.* The Inspector of Election shall be an independent third party other than a member of the Board or a candidate for the Board or be related to a member of the Board or a candidate for the Board; an independent third party may not be a person, business entity, or a subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as an inspector of elections.

3. *Duties and Powers.* The Inspector of Election 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;

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;

g. Determine the result of the election; and

h. Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with California Civil Code and Corporations Code and all applicable rules of the Association regarding the conduct of the election that are not in conflict with California Civil Code Sections 5100, *et seq.*

The Inspector of Election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical and in a manner that protects the interests of all Members of the Association.

J. **Opening of Envelopes / Counting and Tabulation of Ballots.**

1. No envelope containing a ballot may be opened prior to the time at which the ballots are to be counted and tabulated.

2. The envelopes shall be opened and the ballots shall be counted and tabulated in public, at a properly noticed Board meeting which may, but need not, be scheduled to take place concurrently with the Annual Membership Meeting.

3. Only the Inspector of Elections shall open the envelopes and count and tabulate the ballots.

4. Members may witness the opening of the envelopes and the counting and tabulation of the ballots.

K. **Election Results.**

1. The Inspector of Election shall promptly report the election results to the Board. The Board shall record the results in the minutes of the next Board meeting by attaching the Report of Inspector of Election as an exhibit to such minutes and shall make the results available for review by Members.

2. Within 15 days following the close of the balloting period, the Board shall publicize the election results in a communication directed to all Members.

L. **Custody, Storage and Retention of Ballots.**

1. The sealed ballots, signed voter envelopes, voter list, proxies and candidate registration list shall at all times be in the custody of the Inspector of Elections or at a location designated by the Inspector until after the tabulation of the vote and until the time allowed by Civil Code Section 5145 for challenging the election has expired at which time custody shall be transferred to the Association.

2. In the event of a recount or other challenge to the election process, the Inspector shall, upon written request, make the ballots available for inspection and review by Members or their authorized representatives. Any

recount shall be conducted in a manner that preserves the confidentiality of the vote.

Section 2. Elections Regarding Other Specific Matters.

This Section 2 shall apply to elections regarding (i) Assessments, (ii) amendments to the governing documents, (iii) grants of exclusive use common area property pursuant to California Civil Code Section 1363.07 and (iv) other matters on which the vote of the Members is required.

A. **Access to Association Media and Common Area Meeting Space.** The Association shall ensure that the legal requirements set forth in California Civil Code Section 5105 are met by implementing the following:

1. If the Association provides access to Association media, newsletters, or Internet Web sites during a campaign to any Member advocating a point of view for purposes that are reasonably related to the election, then all Members advocating a point of view for purposes that are reasonably related to the election shall have equal access to the forum provided. The Association shall not edit or redact any content from these communications; however, the Association may include a statement specifying that the Member, and not the Association, is responsible for the content of the communication, and that the Association was required by law to publish the communication verbatim, regardless of content.

2. Access to common area meeting space, if any exists, shall be provided during a campaign to all Members advocating a point of view for purposes reasonably related to the election, at no cost, subject to procedural rules as may be adopted by the Board to assure orderly use of such meeting place.

B. **Content of Ballot.** Each ballot shall contain:

1. The identification of the matter that is the subject of a pending Member vote;

2. A statement that the balloting period will close at such time and on such date established by the Board, which shall be not less than 30 days from the date the ballot packets are mailed to the Members; and

3. A statement that the Board shall have the power to extend the balloting period if sufficient ballots have not been received to establish a quorum.

C. **Distribution of Ballot Packets.** Not less than 30 days prior to the date established by the Board for the close of the balloting period, the Association shall mail, via first-class U.S. mail, one ballot packet to each Member. Each ballot packet shall contain all of the following:

1. One official ballot;

2. Two sealable envelopes--a smaller (inner) envelope and a larger (outer) envelope; and

3. Instructions on how to vote using the two-envelope system.

4. In an election to approve an amendment of the governing documents, the text of the proposed amendment.

The smaller envelope shall have no distinguishing markings. The larger envelope shall be pre-addressed to the Inspector of Election at the address specified by the Inspector of Election. The larger envelope shall contain blank lines in the upper lefthand corner for the voter to print and sign his or her name, address and Lot or Unit number that entitles him or her to vote.

D. **Rules Regarding Voting Using the Two-Envelope System.** See Section 1, subparagraph G of these Election Rules.

E. **Balloting Period.** See Section 1, subparagraph H of these Election Rules.

F. **Inspector of Election.** See Section 1, subparagraph I of these Election Rules.

G. **Opening of Envelopes/Counting and Tabulation of Ballots.** See Section 1, subparagraph J of these Election Rules.

H. **Election Results.** See Section 1, subparagraph K of these Election Rules.

I. **Custody, Storage and Retention of Ballots.** See Section 1, subparagraph L of these Election Rules.

Section 3. General Election / Voting Provisions.

A. **Qualifications for Voting.** Only Members shall be entitled to vote.

B. **Voting Power of Memberships.** Each Member shall be entitled to cast one vote for each Lot owned by such Member.

C. **Proxies.**

Because voting in elections regarding (1) assessments, (2) selection of directors, (3) amendments to the governing documents and (4) grants of exclusive use of common area property (collectively, the "Secret Ballot Topics") are to be conducted by secret ballot in accordance with California Civil Code Section 5115 and these Election Rules, proxies are not permitted in connection with elections regarding secret ballot topics.