

# SEASCAPE SURF ESTATES MANAGEMENT CORPORATION (“Association”)

## RULES AND PROCEDURES FOR ELECTIONS AND BALLOTING

### A. **Qualifications of Directors.**

In order to be eligible for election to the Board, a candidate/nominee (hereinafter “candidate” or “nominee”) for election must be a member of the Association for at least one year at the time of the nomination, subject to the following conditions set forth below which may result in disqualification of a candidate/nominee.

If title to a separate interest parcel is held by 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 these Election Rules and California state law.

#### **Disqualification:**

As permitted by California law and pursuant to these adopted Election Rules, the Association will disqualify a person from nomination as a candidate based on certain circumstances which are set forth below:

- The Association will disqualify a person from nomination for nonpayment of regular and special assessments, but the Association will not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party [Since the Association requires a nominee to be current in the payment of regular and special assessments, the Association also requires a director to be current in the payment of regular and special assessments.] A person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:
  - (1) The person has paid the regular or special assessment under protest pursuant to Civil Code Section §5658.
  - (2) The person has entered into a payment plan pursuant to Civil Code Section §5665.
- The Association will not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.
- The Association will disqualify a person from nomination as a candidate if the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.
- The Association will disqualify a nominee if that person has been a member of the association for less than one year at the time of the nomination.
- The Association will disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the association from purchasing the fidelity bond coverage required by Civil Code Section §5806 or terminate the association’s existing fidelity bond coverage.
- The Association will disqualify a nominee if a person has served the maximum number of terms or sequential terms allowed by the Association’s Governing Documents, if such restrictions exist in the Association’s Governing Documents.
- Disqualification requirements for nominees established pursuant to California law and/or these Election Rules shall be equally applied to all directors who must also comply with the same requirements.

**B. Procedure for Nomination of Candidates to the Board of Directors.**

- (1) Prior to the Association's Annual Meeting of Members, the Association (through its Management Company) will distribute to the Members a Request to Serve/Candidate's Statement Form to serve on the Board of Directors.
- (2) All individuals desiring to run for a position on the Board of Directors must complete the Request to Serve/Candidate's Statement Form and return the completed forms to the Management Company [or to the individual(s) specified on the forms] on or before the deadline date noted on the form or accompanying materials. Interested individuals who fail to submit a Request to Serve/Candidate's Statement Form by the specified deadline date will not have his/her name included in the election materials that are sent to the membership prior to the Annual Meeting of Members. However, individuals may be nominated from the floor at the Annual Meeting of Members and may receive write-in votes. Nothing in these Election Rules shall prevent any member from nominating them self for election to the board. Write-in candidates on ballots are permitted. However, write-in candidates are still subject to candidate qualification requirements and disqualification in the same manner as any other candidate or nominee.
- (3) The Candidate's Statement will be distributed to all Association Members, together with the election materials. The Association will not edit the content of the Candidate's Statement and the candidate/nominee is solely responsible for the content.
- (4) The Association shall provide general notice of the procedure and deadline for submitting a nomination at least 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.
- (5) The Association shall provide general notice of all of the following at least 30 days before the 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 or inspectors 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.
  - (4) Individual notice of the above paragraphs shall be delivered pursuant to Civil Code Section §4040 if individual notice is requested by a member.
- (6) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:
  - (1) The ballot itself is not signed by the voter but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.
  - (2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.

- (7) A quorum shall be required only if so stated in the Governing Documents or other provisions of law. If a quorum is required by the Governing Documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.
- (8) Cumulative voting is not permitted pursuant to the Association's Governing Documents. [See Bylaws, Article 3 – Board of Directors, at Section 3.3 – *Election and Term*].
- (9) Except for the meeting to count the votes required in subdivision (a) of Civil Code Section §5120, an election may be conducted entirely by mail unless otherwise specified in the Governing Documents.
- (10) In an election to approve an amendment of the Governing Documents, the text of the proposed amendment shall be delivered to the members with the ballot.
- (11) The Association shall hold an election for a seat on the board of directors in accordance with the procedures set forth in the Association's Governing Documents and California law at the expiration of the corresponding director's term and at least once every four years.

**C. Campaigning and Access to Association Media and Facilities.**

The Association has no obligation to provide any candidate or Member access to any Association media, newsletter, or internet website during a campaign for purposes that are reasonably related to that election. However, in the event any one candidate or Member is provided access to any Association media, newsletter, or internet website during a campaign (for purposes that are reasonably related to the election), the Association shall provide equal access to all candidates and Members advocating a point of view, including those not endorsed by the Board. The Association shall not edit or redact any content from these candidates'/Members' communications, but the Association may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.

The Association will ensure equal access to any Common Area meeting space (if any exists) during an election/campaign. Equal access will be granted at no cost to the 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/campaign.

Association funds shall not be used for campaign purposes in connection with any Association Board election. "Campaign purposes" include, but are not limited to, (i) expressly advocating the election or defeat of any candidate that is on the Association ballot or (ii) including photographs or featuring the name of any candidate in communications from the Board or the Association (excepting the ballot and ballot materials) within 30 days of the election. "Campaign purposes" do not include fees incurred by the Association to conduct the election or to comply with any duties of the Association imposed by law.

**D. Uncontested Election of Directors.**

If after the close of nominations, as provided for in Civil Code Section §5115(a), the number of Members nominated for the Board is equal to or less than the number of Directors to be elected, and the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector of elections, the Association acting through the Board may, but is not required to, consider the qualified candidates elected by acclamation if all of the conditions in Civil Code Section §5103 have been met.

**E. Inspector(s) of Election.**

**Appointment of Inspector(s) of Election**

Prior to the mailing of election or balloting/solicitation materials to the membership, the Board of Directors will appoint one or three independent third party or parties to act as Inspector(s) of Election to oversee and certify the results of the election/voting and to perform the duties as set forth below. The number of inspectors shall be one or three.

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 director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an inspector of elections.

The Inspector(s) of Election will be identified on the election or balloting/solicitation materials sent to the membership. Independent third-party Inspectors of Election will be compensated for their services. Members of the Association who are appointed to serve as Inspectors of Election shall not be compensated for their services.

If three Inspectors of Election are appointed, the three Inspectors of Election shall decide amongst themselves who shall be the Chief Inspector of Election and/or who shall be responsible for receiving the ballots from the membership and bringing the ballots to the open meeting of Members for tabulation. Further, unless otherwise specifically prohibited by law, the Inspector(s) of Election shall have the right to appoint and oversee additional persons to count and tabulate the ballots and verify the signatures as the Inspector(s) of Election deem appropriate provided the persons are independent third parties.

### **Duties of the Inspector(s) of Election**

The Inspector(s) 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 the ballots (and determine the location to which all mail-in ballots are to be returned).
- 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/ballots.
- f. Determine when the polls shall close, consistent with the Association's Governing Documents.
- g. Determine the tabulated results of the election or balloting.
- h. Report the tabulated results of the election or balloting to the Board of Directors within 10 days of the date the polls shall close.
- i. Perform any acts as may be proper to conduct the election or balloting in fairness to all Members and in accordance with California law and all rules of the Association (which are not in conflict with California law).
- j. Perform all duties impartially, in good faith, to the best of the inspector of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

### **F. Voting Procedures.**

- (1) Except for the election or removal of members of the Association's Board of Directors, a membership meeting shall not be required, unless required by the Association's Governing Documents. However, the Board may call a Special Meeting of the Members for Members to vote on other items which legally require a vote of the membership, including, but not limited to, an increase in assessments (pursuant to California Civil Code Section §5605, as amended from time to time), amendments of the Association's Governing Documents, or the grant of Exclusive Use Common Area property (pursuant to California Civil Code Section §4600, as amended from time to time).

- (2) The Association will require retention of, as association election materials, both a candidate registration list and a voter list. The voter list shall include 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 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.
- (3) The Association prohibits the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.
- (4) The Association prohibits the denial of a ballot to a person with general power of attorney for a member.
- (5) The Association requires the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.
- (6) The Association requires the inspector or inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:
  - (A) The ballot or ballots.
  - (B) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either of the following methods:
    - (i) Posting the election operating 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:"
    - (ii) Individual delivery.
- (7) The Association's Election operating rules adopted pursuant to California law shall not be amended less than 90 days prior to an election.
- (8) All Members are entitled to vote unless they were not a member at the time when ballots are distributed.
- (9) Pursuant to the Association's Governing Documents, Members shall be entitled to a single membership vote per Living Unit owned. Pursuant to the Association's Governing Documents, cumulative voting is not permitted. [See Bylaws, Article 3 – Board of Directors, at Section 3.3 – *Election and Term*]. Members may vote either in person, by proxy (as permitted by law and/or the Association's Governing Documents) and, in certain instances, by ballot by mail, as designated by the Board. A "secret ballot" as provided for by Civil Code Section §5115 shall not be interpreted to be a written ballot, as described in Section 7513 of the Corporations Code.
- (10) In any election or balloting/solicitation materials sent to the membership, the materials will indicate the following:
  - a. The voting power of each type of membership (if applicable).
  - b. The voting period (i.e., any deadlines for return of election/voting materials); and
  - c. The time and place where the ballots will be tabulated, including the time when the polls will open and close.
- (11) The Association may continue to use and accept proxies (as described in Section 7613 of the Corporations Code), as permitted by the Association's Governing Documents (including, but not limited to, the Bylaws) and if the proxies meet the requirements of the Association's Governing Documents and California law. A proxy shall not be construed or used in lieu

of a ballot. The proxy may be revoked by the member prior to the receipt of the secret ballot by the Inspector(s) of Election, as described in Section 7613 of the Corporations Code. However, the Association shall not be required to prepare or distribute proxies.

- (12) When ballots by mail are utilized, members may submit their ballots by mail during the voting period to the address designated in the election/voting materials up until the deadline for the return of the election/voting materials or up until any extensions of the deadline, as designated by the Board.
- (13) Once a secret ballot is cast, it shall be irrevocable.
- (14) Each secret ballot received by the Inspector(s) of Election shall be treated as a member present at a meeting, for purposes of establishing a quorum pursuant to the Association's Governing Documents.
- (15) The Board of Directors may authorize the postponement or extension of the tabulation of the ballots to another date and time (which shall be at a meeting open to the membership) if requested by the Inspector(s) of Election and upon a showing of good cause. The inability of the Inspector(s) of Election (or their designee) to complete the tabulation of the ballots **prior to 8:00 p.m. on the originally scheduled meeting date** shall constitute good cause for the postponement or extension of the tabulation of the ballots. In case of a postponement or extension of the tabulation of the ballots, the Inspector of Election shall retain custody of the ballots, until the postponed/extended date for the tabulation of the ballots. If three Inspectors of Election are appointed, the Chief Inspector of Election shall retain custody of all of the ballots until the postponed/extended date for the tabulation of the ballots.
- (16) The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector or Inspectors of Election or at a location designated by the Inspector or Inspector of Election (or the Chief Inspector of Election, if three inspectors are appointed) until after the tabulation of the vote, and until the time allowed by Civil Code Section § 5145 (or any superseding statute) for challenging the election has expired, at which time custody shall be transferred to the Association. If there is a recount or other challenge to the election process, the inspector or inspectors of election shall, upon written request, make the ballots available for inspection and review by an association member or the member's authorized representative.
- (17) Tie Votes: Should the number of votes cast for candidates result in a tie vote, the tie vote shall be broken by the following methods subject to the approval of the Inspector(s) of Election: (i) in a two-way tie – by the flip of a coin (provided the candidates agree) (ii) in a three-way [or greater] tie – by the random drawing of a name (provided the candidates agree) or (iii) a runoff election solely between the candidates who are tied for the open board position (only used where the candidates cannot agree on how to resolve the tie vote). In the case of a runoff election, nominations will not be re-opened, and write-in candidates will not be permitted. A runoff election will only be held where the candidates cannot agree to the “flip of a coin” method or the “random drawing of a name” method for resolving the tie vote.
- (18) All elections/balloting shall be conducted in accordance with the Association's Governing Documents and applicable laws.

- G. **Additional Election and Voting Procedure Information.** The above-stated Rules and Procedures do not contain all of the information concerning elections and voting procedures in the Association. Additional provisions pertaining to elections and voting procedures in the Association are contained in the Association's Governing Documents, including, but not limited to, the CC&Rs and the Bylaws, as well as California law. These documents can also apply and should be reviewed by all Members of the Association.

It is the intent of the Association to comply with the California Civil Code (and all applicable laws) concerning election and voting/balloting procedures. As a result, the above-stated Rules and Procedures for Elections and Balloting are hereby adopted by the Board of Directors of Seascape Surf Estates Management Corporation on Sept. 15, 2022 and shall be effective on and from Sept. 15, 2022.

Seascape Surf Estates Management Corporation

By: , President

By: , Secretary