



OPEN MEETING

REGULAR MEETING OF THE UNITED LAGUNA WOODS MUTUAL  
GOVERNING DOCUMENTS REVIEW COMMITTEE

Thursday, February 20, 2020 – 1:30 P.M.  
Laguna Woods Village Community Center, Sycamore Room  
24351 El Toro Road, Laguna Woods, CA 92637

**NOTICE & AGENDA**

1. Call to Order
2. Acknowledgment of Media
3. Approval of the Agenda
4. Approval of the Report from January 16, 2020
5. Chair's Remarks
6. Member Comments (Items Not on the Agenda)
7. Response to Member Comments

Reports:

None

Items for Discussion and Consideration:

- |  |                  |
|--|------------------|
| 8. Review and Discuss Election Rules                     | Blessilda Wright |
| 9. Review Group for Operating Rules                      | Andre Torng      |
| 10. Review and Discuss Recognition Agreement for Lenders | Pamela Bashline  |
| 11. A member guide to United governance                  | Andre Torng      |

Concluding Business:

12. Committee Member Comments
13. Future Agenda Items
  - a. Discuss standardizing Village-wide working groups which aren't specific to certain Mutual a uniformed structure and scope of work
  - b. Requirements for heirs to become members
  - c. Appeals Policy
  - d. Roles, responsibilities and protocols
  - e. Mission, vision, and strategic directives
  - f. Review and Discuss Committee Advisor Qualification Procedure and Policy
14. Date of next meeting: March 20, 2020
15. Adjournment

Andre Torng, Chair  
Francis Gomez, Staff Officer





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Thursday, January 16, 2020 – 1:30 PM  
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24351 El Toro Road, Laguna Woods, CA 92637

**MEMBERS PRESENT:** Andre Torng - Chair, Juanita Skillman, Manuel Armendariz, Sue Margolis, and Reza Bastani

**MEMBERS ABSENT:** None

**ADVISORS PRESENT:** Bevan Strom and Mary Stone

**ADVISORS ABSENT:** None

**OTHERS PRESENT:** Dick Rader, Elsie Addington, Neda Ardani, Cash Achrekar, and Robert Hartley, Esq. of Beaumont Tashjian

**STAFF PRESENT:** Francis Gomez, Pamela Bashline, and Debbie Ballesteros

**CALL TO ORDER**

Andre Torng, Chair, called the meeting to order at 1:29 p.m.

**ACKNOWLEDGEMENT OF PRESS**

The Media was not present.

**APPROVAL OF THE AGENDA**

Chair Torng would like to add 'Delegation of Commitments and Actions' as agenda item 8.5 to the agenda.

President Margolis moved to approve the agenda as amended. Director Armendariz seconded the motion.

By unanimous vote the motion carried.

**APPROVAL OF MEETING REPORTS**

President Margolis made a motion to approve the November 21, 2019 meeting report as presented. Director Armendariz seconded the motion.

By unanimous vote the motion carried.

## **CHAIR'S REMARKS**

Chair Torng stated there is a full agenda for today's meeting, Legal Counsel is present to discuss the Election Rule Policy regarding new legislation that came into effect, and wished everyone a Happy Lunar New Year.

## **MEMBER COMMENTS ON NON-AGENDA ITEMS**

Dick Radar commented on the operating rules and Co-Occupancy Policy.

## **RESPONSE TO MEMBER COMMENTS ON NON-AGENDA ITEMS**

The Committee responded to Member comments.

## **REPORTS**

None

## **ITEMS FOR DISCUSSION AND CONSIDERATION**

### **Review and Discuss Election Rules**

The Committee reviewed the Election Rules Policy. Mr. Hartley, Legal Counsel, stated that the policy is current and in compliance with new legislature. The Committee members commented and asked questions.

President Margolis made a motion to send the policy back to Legal Counsel to re-review with the current Bylaws. Director Bastani seconded the motion.

By unanimous vote, the motion passed.

### **Delegation of Commitments and Actions**

The Committee reviewed the Delegation of Commitments and Actions.

Director Bastani made a motion to deny making changes to the Delegation of Commitments and Actions. Director Armendariz seconded the motion.

By a motion of 3-2-0 (Director Torng and President Margolis opposed) the motion passed.

### **Review and Discuss Sales or Lease Policy and Procedure**

The Committee reviewed the Sales or Lease Policy and Procedure. The Committee members commented and asked questions.

### **Review and Discuss Recognition Agreement for Lenders**

The Committee reviewed the Recognition Agreement for Lenders. The Committee tabled this matter to another meeting.

### **How the word 'Charter' is currently used**

This topic was taken off the agenda as Director Anthony Liberatore was not present.

### **Establish Review Group for Operating Rules**

The Committee discussed Establish Review Group for Operating Rules. The Committee members commented and asked questions.

The Committee appointed Director Skillman as Lead for the group and the members are: Chair Torng, Maggie Blackwell, John Beckett, and Neda Ardani.

### **Committee Member Comments**

None

### **Future Agenda Items**

- Discuss standardizing Village-wide working groups which aren't specific to certain Mutual a uniformed structure and scope of work
- A member guide to United governance
- Requirements for heirs to become members
- Appeals Policy
- Tax abatement
- Roles, responsibilities and protocols
- Mission, vision, and strategic directives
- Review and Discuss Committee Advisor Qualification Procedure and Policy

### **Date of next Meeting**

The next meeting is scheduled for Thursday, February 20, 2020 at 1:30 p.m. in the Sycamore Room.

### **Adjournment**

With no further business before the Committee, the Chair adjourned the meeting at 3:12 p.m.



Andre Torng, Chair  
United Laguna Woods Mutual





## **MEMBERSHIP ELECTIONS POLICY**

Adopted May 14, 2013 RESOLUTION 01-13-90  
Revised March 10, 2015 RESOLUTION 01-15-33  
Revised September 13, 2016 RESOLUTION 01-16-97  
Revised XXXX, 2020 RESOLUTION 01-XX-XX

### **1. Definitions**

- a. "Corporation" shall refer to the United Laguna Woods Mutual Corporation.
- b. "Election Records" shall include returned ballots, signed voter envelopes, the Candidate Registration List and the Voter List. The Candidate Registration List means the list of qualified candidates existing as of the close of nominations. The Voter List may include: the name, voting power and either the physical address of the Member's separate interest or the parcel number, or both; and the mailing address of the Member (if different from the physical address or if the parcel number is used).
- c. "Secretary" shall mean an elected member of the Board of Directors who has been elected as a Corporate officer as Secretary.
- d. "Authorized Agent" shall refer to a Staff member appointed by the Board of Directors.
- e. "Inspector(s) of Elections" shall refer to an independent third party appointed by the Board of Directors to perform duties and acts to facilitate voting and elections as set forth herein.
- f. "SOP" shall mean and refer to this policy, known as the Membership Elections Policy.
- g. "Submit" shall refer to delivery of a document to the Authorized Agent at the Corporate address: 24351 El Toro Road, Laguna Woods, California.
- h. "Qualified Member" shall mean a member qualified to nominate himself or herself as a candidate for the Board of Directors as set forth herein.
- i. "VMS" shall refer to Village Management Services, Inc.

### **2. Nomination Process**

- a. Qualifications. Only "Qualified Members" are eligible for candidacy to the Board. All candidates seeking to run in any Election of Directors shall meet the following criteria in order to be considered a Qualified Member for purposes of this SOP:
  - i. Shall be Members of record as defined under Bylaws, Article II, Section 4(h).

- ii. Shall not be shown on the books of account of the Corporation to be more than thirty (30) days delinquent in payment of any sums due to the Corporation under his or her Occupancy Agreement or otherwise, and who has been given notice thereof and the opportunity for a hearing concerning the delinquency (Bylaws, Article VI Section 2(b)). Note, this does not include non-payment of collection charges, late charges, fines, fines renamed as assessments, costs levied by a third party, or if the Member has (1) paid under protest per California Civil Code § 5658; (2) has entered into and is current in a payment plan (defined as a signed written agreement between the Board and the Owner) per § 5665, and is current and in compliance with all terms thereof; or (3) if the Member has not been provided the opportunity to engage in Internal Dispute Resolution (“IDR”).
  - iii. While a candidate for the Board and during their term as a Director, if elected, the Candidate must have been a member of United for at least one (1) year.
  - iv. Candidates and Directors may not have been convicted of a crime that would either prevent the Corporation from purchasing fidelity bond coverage or terminate the Corporation’s existing coverage.
  - v. Members may not serve at the same time as another person who holds joint ownership in the same separate interest who is either already nominated or an incumbent director.
- b. In addition to the foregoing qualifications, the Board strongly discourages Members from running for the Board where the candidate or the candidate’s spouse has a conflict of interest with the Corporation, financial or otherwise, or engages in business transactions with the Corporation. Further, such conflicts must be immediately disclosed to the Board of Directors upon its occurrence pursuant to United’s Bylaws.
- c. Any Member may nominate any Qualified Member as a candidate, including himself or herself, by submitting a written application and candidate statement to the Secretary or Authorized Agent of the Corporation that states his or her intention to run for the Board of Directors which must be returned to the Secretary by the closing date stated, which deadline must be at least ninety (90) days before the date the ballots for the election of directors are scheduled to be tabulated. No nominations for the Board can be made after the closing date.

**\*\*EXCEPTION:** Should California Civil Code § 5105 be amended at any time in such a way that nomination by petition as provided for in California Corporations Code Section 7521 (b) is allowed, the previous statement shall be replaced by the following: “Any Member who satisfies the qualification of directors (Bylaws, Article VI, Section 2) may nominate himself or herself by submitting a petition signed by Members representing one hundred (100) current memberships to the Secretary of the Corporation at least sixty (60) days before the annual meeting.”



- d. Any committee established by the Board to assist the Board shall submit a final report of all candidates to the Board upon the close of nominations.
- e. Each candidate shall submit to the Secretary or Authorized Agent a statement of background and qualifications not to exceed two hundred fifty (250) words in length by the closing deadline.
  - i. The following are guidelines for the preparation of the statement of candidate's background and qualifications:
    - 1. The statement may include: education, business background, civic, social, and community activities;
    - 2. "Activities" may include organized events, clubs, hobbies or any unique activity;
    - 3. Date and place of birth shall be considered optional information Length of residency in United; and
    - 4. Statement of personal philosophy (optional).
- f. Each candidate for a Director position is responsible to directly forward their candidate statement, electronically, to the Inspector of Election and Corporate Secretary and is solely responsible to ensure the accuracy of the information and transmission of the candidate's statement. Once the candidate's statement is submitted, as set forth herein, it is irrevocable and cannot be changed or modified. ***United is not responsible for the content of any candidacy statement***
- g. Any candidate or spouse of a candidate who has a direct or indirect financial interest in any business organization or who is a director, officer or employee of any business, or agency of any county, state or federal government (other than a charitable organization), incorporated or otherwise, which engages in business transactions with the Corporation, shall disclose such relationship to the Board of Directors at the time of their self-nomination.
- h. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected as directors and shall take office immediately following their election. Any tie vote shall be broken by lot, which may include any method of randomly deciding the issue as agreed by the candidates or adopted by the Board, including without limitation drawing names or straws, or use of a coin, die or other object, or a lottery, or any other random selection process.

### 3. **Eligibility to Vote**

- a. Only persons approved for Membership by the Board of Directors and to whom a membership certificate has been issued (or the Member's successor trustee and/or power of attorney (California Civil Code § 5105(g)(2).)) shall be entitled to vote (see Bylaws, Article II Section 4(h)- (i)). This provision shall not be construed to prohibit any Member from receiving a ballot, pursuant to California Civil Code § 5105(g)(1).

- b. Single Memberships in which two or more Members have a joint or undivided interest shall have only one (1) vote (Bylaws, Article V, Section 8(a)(ii)) and only one such Member may run for, and serve on, the Board at any one time.
- c. Record Date:
  - i. The record date for determining those Members entitled to receive Notice of a meeting of the Members shall be fifteen (15) days prior to the day that the notice of the meeting is mailed (the "Record Date for Notice");
  - ii. The record date for determining those Members entitled to vote by secret ballot shall be sixty (60) days prior to the day that the secret ballots are mailed (the "Record Date for Secret Ballots");
- d. The inspector(s) of elections shall tabulate the ballots for the election of directors at the Annual Meeting of the Members. The ballots for the vote to approve assessments, elections of directors to fill a vacancy not filled by the Board, amendments to governing documents and/or granting the exclusive use of common area to a Member shall be tabulated by the inspector(s) of election at a duly noticed (regular or special) meeting of the Members or Board. The Board of Directors shall determine the date, time and place of said Board meeting.

4. **Notice Requirements (Senate Bill 323)**

- a. General notice of the procedure and deadline for submitting a nomination shall be issued at least 30 days before the nomination deadline (unless individual notice has been requested by the Member).
- b. General notice of the following shall be made at least 30 days before ballots are distributed (unless individual notice has been requested by the Member):
  - i. the date and time by which, and address where, ballots are to be returned;
  - ii. the date, time and location of the meeting to tabulate the ballots; and
  - iii. the list of all candidates' names that will appear on the ballot.
- c. United shall permit Members to verify the accuracy of their individual information contained in the Election Records at least thirty (30) days before the ballots are distributed. United or any Member shall report any errors or omissions for either list to the inspectors of election who shall make the corrections within two (2) business days.
- d. At least thirty (30) days before the election, the inspectors of election will deliver to each Member: (1) the ballot and voting instructions; and (2) a copy of the election rules. Note, the election rules may be provided by individual delivery or by posting same on an internet site and providing the corresponding internet site web address on the ballot with the phrase, in at least 12-point font: "The rules governing this election may be found here: <https://www.lagunawoodsvillage.com/residents/united-laguna-woods->

[mutual/documents](#)".

**5. Candidate Equal Access to Corporation Media**

- a. All candidates for a Director position shall have equal access to Corporation media for the purpose of campaigning for an election. For purposes of this paragraph, "Corporation media" means the Corporation's cable channel. No candidate may utilize Corporation media for the thirty (30) day period following the date the first election ballot material is sent to the membership for the election of the Board of Directors through the election date, even if for a period longer than thirty (30) days.
- b. In each election for the Board of Directors, the Corporation shall hold a forum ("Meet the Candidates") for the nominees within a Golden Rain Foundation (GRF) facility prior to the date that the ballot materials are sent to the Membership. Meet the Candidates will be for the purpose of allowing the Membership to meet and ask questions of all nominees. All nominees standing for election shall be invited to attend the forum and should appear in person.
- c. Golden Rain Foundation (GRF) meeting rooms shall be available to candidates free of charge for campaign purposes (California Civil Code § 5105(a)(2).).
- d. Any time a ballot measure is required to be sent to the Membership for approval which is unrelated to the election of directors, such as amending the Bylaws or the Occupancy Agreement, the Corporation may hold a town hall meeting – rather than a formal membership meeting – which is an informal gathering of members in which members can express their points of view. Further, if Corporation media is used in connection with such ballot measures, any Member advocating a point of view shall be permitted use of Corporation media, provided the Member's purposes reasonably relate to the ballot measure. The Corporation shall not edit any such communications made by Members, but may include a statement specifying that the Member, and not United, is responsible for that content.

**6. Appointment of Inspectors of Election**

- a. The Board of Directors shall appoint one (1) or three (3) independent third party(ies) as Inspector(s) of Election. An independent third party includes, but is not limited to:
  - i. a volunteer poll worker with the county registrar of voters;
  - ii. a licensee of the California Board of Accountancy;
  - iii. a notary public; and
  - iv. a Member of the Corporation provided such Member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors or a candidate for the

Board of Directors.

- b. Inspectors of Election shall not be employees of VMS; however, prior to the secret ballots being mailed to all of the Members, the inspectors of election may meet to determine to whom the secret ballots shall be returned (the "Ballot Collector"), which may be an authorized agent.
- c. Inspectors of Election who are members of the Corporation must be prepared to commit to a substantial workload during preparation of the ballots for mailing and between the time the returned ballots are received and the time when they are counted and tabulated at an open meeting.
- d. An Inspector or Inspectors may appoint and oversee additional persons to assist as the Inspector or Inspectors deem appropriate.

**7. Duties of Inspectors of Election**

- a. Determine the number of memberships entitled to vote and the voting power of each membership. (California Civil Code § 5110(c)(1))
  - i. Eligible Voter List:

Pursuant to Section 4 of this SOP, the Inspectors will create or cause to be created an Eligible Voter List that identifies all Members who are eligible to vote. This list will be used to mail ballots only to those Members entitled to vote by ballot on corporate action without a meeting as of the Record Date specified herein.
- b. Determine when the polls shall close. (California Civil Code § 5110(c)(6).)
  - i. The Inspectors of Election shall determine the date that ballots must be received in accordance with California Civil Code § 5115(a.), which states "Ballots...shall be mailed not less than 30 days prior to the deadline for voting." The deadline shall be incorporated into the voter instructions and adopted by the Board of Directors in the form of a resolution.
- c. Oversee the Mailing of the Ballot Package
  - i. Obtain certification from the preparer of the ballot packages that all necessary items were enclosed in each Ballot Package Mailing Envelope and that the envelopes were properly addressed to all members on the Eligible Voter list.
  - ii. Ensure that Ballot Package Mailing Envelopes are sent by first class mail to help ensure that all members receive ballots in a timely manner.
  - iii. Obtain a statement from the post office indicating the number of ballot packages mailed.
  - iv. the inspector of election must deliver, or cause to be individually delivered to each member, at least 30 days before an election, both the

ballots and either a copy of the election rules or a statement in 12-point font that reads, "the rules governing this election may be found here {insert web address}."

- d. Receive ballots. (California Civil Code § 5110(c)(3).)

## 8. **Secret Ballot Return Instructions**

If authorized by the California Legislature, the Corporation may utilize electronic "Secret Ballots." Such procedure will be consistent with what is required in the California Civil Code. For paper Secret Ballots, the following shall apply:

- a. The Secret Ballot itself is not signed by the voter, but is inserted into the Secret Ballot Envelope, which is sealed. The Secret Ballot Envelope shall not have any identifiable markings and is then inserted into the Pre-Addressed Return Envelope, which is also sealed.
- b. In the upper left hand corner of the Pre-Addressed Return Envelope, the voter shall both print and sign his or her name, address, and the unit number that entitles him or her to vote (California Civil Code § 5115(a)(1).).
- c. The Pre-Addressed Return Envelope is addressed to the Inspector or Inspectors of Election, who will tally the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector or Inspectors of Election. The member may request a receipt for delivery (California Civil Code § 5115(a)(2).).

### i. Return by Mail

- 1. The Pre-Addressed Return Envelope shall be returned on or before the deadline date by mail to the address of the Inspector of Election c/o Ballot Collector as set forth in the voting or ballot return instructions or on the secret ballot.
- 2. A second post office box may be used for Secret Ballot packages returned as undeliverable.
- 3. Members who desire a receipt for delivery of a mailed Secret Ballot shall mail the Secret Ballot by Certified Delivery – Return Receipt Requested at the Member's expense.

### ii. Return by Hand Delivery

- 1. Secret Ballots returned by hand shall be deposited by the Member into a locked and secure ballot box located in the lobby of the **Community Center, 24351 El Toro Road, Laguna Woods.**
- 2. At the request of the voting Member, VMS staff shall provide a receipt for the hand delivered Secret Ballot.
- 3. Inspectors shall retrieve Pre-Addressed Envelopes from the locked ballot box daily and date stamp them.

4. Secret Ballots may also be hand delivered to the Inspector of Elections at the meeting to tabulate the ballots prior to the close of polls.
  5. All Pre-addressed Return Envelopes received shall remain sealed until they are opened and tabulated in public. The Corporation shall reserve a secure room at the **Community Center (24351 El Toro Road, Laguna Woods)** for use by the Inspector(s) of Election. Notwithstanding, the Inspector(s) of Election may establish a physical boundary or buffer around them during the tabulation of ballots.
- iii. Ballot Return Instructions – The Ballot Return Instructions will be the same as the Secret Ballot Instructions, detailed herein above, with the exception that the Ballot will be inserted into the Pre- Addressed Return Envelope only inasmuch as non-Secret Ballots do not require the use of a double envelope system so the Secret Ballot Envelope will not be utilized.
- d. Determine the authenticity, validity, and effect of proxies, if any.
  - e. Verify voter eligibility.
    - i. Count and record the number of Pre-addressed Return Envelopes received from the post office.
    - ii. Count and record the number of Pre-addressed Return Envelopes received by hand delivery.
    - iii. Place the Pre-addressed Return Envelopes in order by address, which corresponds with the Eligible Voter List. This process may be automated (i.e., barcodes).
    - iv. Void (but do not open) any Pre-addressed Return Envelopes, which does not contain information that identifies the member as an eligible voter (see Section 8.c.i.1 above).
    - v. Void (but do not open) any Pre-addressed Return Envelope that is a duplicate vote.
      1. Revocation. No written ballot may be revoked after deposit in the mails or delivery to the Corporation. (Bylaws, Article V, Section 9(e))
      2. If a voter returns two Pre-addressed Return Envelopes, the Inspectors of Election shall determine which ballot to count. If it can be determined which is the first Pre-addressed Return Envelope sent or received, then it shall be deemed the original ballot, which shall be counted and the other Pre- addressed Return Envelope should be voided.
  - vi. Resolve any challenged ballots. If possible, this should be done before any Pre-Addressed Return Envelope is opened and counting begins.

- vii. Explain the reason for each voter eligibility decision made.
  - viii. The sealed ballots at all times shall be in the custody of the Inspector or Inspectors of Election or at a location designated by the Inspector or Inspectors of Election until after the tabulation of the vote, at which time the Inspector of Election can maintain custody of the Election Record pursuant to statute, or transfer custody shall be transferred to the Corporation (California Civil Code § 5125(a).).
- f. Count and tabulate the votes.
- i. All votes shall be counted and tabulated by the Inspector or Inspectors of Election in public at a properly noticed open meeting of the Board of Directors (California Civil Code § 5120(a).).
  - ii. At a properly noticed open meeting of the Board of Directors, the seals of the Secret Ballot Envelopes shall be broken, and the Inspector(s) of Election shall prepare the ballots for tabulation, which may include electronic tabulation scanning. A third-party election services contractor who is not an inspector of election may be deputized by the Inspectors of Election to assist with the preparation and scanning of the ballots.
  - iii. A ballot shall be voided if it contains information identifying the voter (California Civil Code § 5115(a).).
- g. Determine the result of the election
- i. Once the ballots are scanned and tabulated, the Inspector(s) of Election shall certify the election by signing an official form. The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by members of the Corporation.
  - ii. Within fifteen days of the election, the Board of Directors shall publicize the results of the election.
  - iii. Tabulated ballots shall be packed and sealed, and the Inspectors of Election shall initial the seal to ensure that there is no tampering with the tabulated ballots.
  - iv. The custody of the tabulated ballots and other Election Records as listed in Section 1.b of this SOP shall remain in the custody of the Inspector(s) of Election for not less than one (1) year after the tabulation of ballots, or until the time allowed by Civil Code Section 5145 for challenging the election has otherwise expired. Upon written request, Election Records shall be made available for inspection and review by Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.
  - v. After the tabulation of ballots, the Board of Directors or VMS staff shall return to the post office to pick up any ballots received after the

deadline. These ballots shall not be opened and shall be marked “Void – received after deadline”.

- vi. All written ballots and other Election Records as defined in Section 1(b) of this SOP shall be filed with the Secretary of the Corporation and maintained in the corporate records at a secure location for a minimum period of one (1) year (Bylaws, Article V Section 9(f)).

## 9. Election Mailing Materials

- a. The Corporation shall conduct its election consistent with its Bylaws and state statutes (Bylaws, Article V, Section 8(b)). The official election materials are to be prepared by the Inspector(s) of Election.
- b. As prescribed by law, secret ballot procedures shall be used when voting on the following issues: assessment increases; election and removal of directors; amendments to the Governing Documents (i.e., Articles of Incorporation, Bylaws and Occupancy Agreement); and the grant of exclusive use of Common Area property.
  - i. A “secret ballot” is a ballot which does not identify the voter by name, address, lot, unit or parcel number. The term “secret ballot” does not include a ballot for purposes of voting on any matter other than assessments, election or removal of directors, amendments to the Governing Documents or the grant of exclusive use of Common Area property. All secret ballots, including for election of directors, must conform to the requirements of applicable law. Any Bylaws provision inconsistent with the law shall be void.
  - ii. All secret ballots shall provide a reasonable time within which to return the ballot to the Corporation, which may be set at the discretion of the Board unless otherwise required by law. The time for the return of secret ballots may be extended for reasonable intervals at the discretion of the Board.
  - iii. Any action requiring Member approval, other than those requiring a secret ballot, may be submitted for vote by written ballot without calling a meeting of the Members. The written ballot shall describe the proposed action(s), provide an opportunity to specify approval or disapproval of each proposal, and provide a reasonable time within which to return the ballot to the Corporation as set forth in Article V, Section 9 of the Bylaws.
    - 1. The determination to conduct a vote by written ballot shall be made by the Board or by members having 20% of the eligible voting power signing a written request and delivering same to any Corporation officer (Bylaws, Article V, Section 9(c)).
    - 2. The officer shall thereupon distribute a written ballot to every Member eligible to vote on the matter. A written ballot may not be revoked.



3. All solicitations shall indicate the number of responses needed to meet the quorum requirement and the percentage of approvals needed to approve each proposal. The solicitation must specify the time by which the ballot must be received in order to be counted.
4. Written ballots and solicitations shall be distributed in the same manner as notice of Member meetings. Approval by written ballot shall be valid only when the number of eligible ballots received meets the quorum required at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Upon tabulation of the ballots, the Board shall promptly notify the Members of the outcome of the vote or failure to meet quorum.
- c. Should state statute allow for electronic voting for those votes which previously required paper Secret Ballots, as referenced herein and in the state statute, then the Corporation may utilize such electronic system consistent with those Rules and Regulations, so long as the electronic voting is consistent with the terms of the applicable and statutory requirements.
- d. To the extent permitted by law, in the event the number of candidates at the close of nominations is the same as the number of open positions on the Board, those candidates shall be automatically elected, by acclamation, without further action, and the results shall be announced as required by these Rules and law.

**10. Secret Ballots: Removal of Directors by the Membership**

- a. The Members may remove directors by at least a majority of the votes represented at a meeting at which a quorum is present, in accordance with California Corporations Code Section 7222 and the following procedures:
  - i. A petition must be presented, in person, to the President or Secretary of the Corporation, bearing the signatures of Members in good standing who represent at least five percent (5%) of the eligible voting power of the Corporation. The petition must state the reason(s) justifying the director's removal; the signature and address or Unit number of each petitioner in his or her own handwriting; the name(s) of the sponsor(s) of the petition; and fulfill all other legal requirements.
  - ii. Within twenty (20) days after receipt of such petition, the President, Secretary, or Board shall either call a special meeting or distribute secret ballots to the Members to vote upon the requested recall. Such meeting or vote by secret ballot shall be conducted not less than thirty-five (35) nor more than ninety (90) days after the petition is presented.
  - iii. The director(s) whose removal is being sought shall have the right to

rebut the allegations contained in the petition orally, in writing or both. Any written rebuttal shall be mailed by the Corporation or otherwise provided to all Members, together with the recall ballot.

- iv. If the quorum requirement for a valid membership action is not satisfied or if the recall vote results in a tie, the removal action will have failed.
- v. In the event the recall vote is successful, any vacancy must be filled by a vote of the Members following the nomination and election procedures set forth in this SOP, except that nominations to fill a vacancy shall close thirty (30) days before the date of special meeting to elect a director(s) to fill a vacancy(ies). Notice of the special meeting and secret ballots to elect directors to fill any vacancy created by the removal of one or more directors must be sent to Members not less than thirty (30) days before the deadline for voting. The successor director shall serve for the unexpired term of his or her predecessor.

**11. Secret Ballots: Amendments to Governing Documents.**

- a. Votes to amend the Articles of Incorporation, Bylaws, Occupancy Agreement or any other governing documents of the Corporation ("Governing Documents") requiring a vote of the Members, shall be done by secret ballot pursuant to the SOP. Secret ballots enclosing the text of the proposed amendment must be delivered to every Member not less than thirty (30) days prior to the deadline for voting.

**12. Secret Ballots: Grant of Exclusive Use of Common Area.**

- a. The affirmative vote of at least sixty-seven percent (67%) of Members secret ballot pursuant to the procedures set forth herein is required before the Board may grant exclusive use of any portion of the Common Area to a Member, unless the grant of exclusive use of Common Area meets an exception provided by California Civil Code § 4600(b), or any superseding statute, which includes, but is not limited to any grant of exclusive use that is for any of the following reasons:
  - i. To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company;
  - ii. To eliminate or correct encroachments due to errors in construction of any improvements;
  - iii. To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions;
  - iv. To fulfill the requirement of a public agency;
  - v. To transfer the burden of management and maintenance of any Common Area that is generally inaccessible and not of general use to the membership at large;

- vi. To accommodate a disability;
- vii. To install and use an electric vehicle charging station in a garage or a designated parking space that meets the requirements of California Civil Code § 4745, where the installation or use of the charging station requires reasonable access through, or across, the common area for utility lines or meters;
- viii. To install and use an electric vehicle charging station through a license granted by an association under California Civil Code § 4745; or
- ix. To comply with governing law.

Any measure placed before the members requesting that the Board grant exclusive use of any portion of the Common Area shall specify whether the Corporation will receive any monetary consideration for the grant and whether the Corporation or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area.



Reviewers  
Red – Staff  
Tan – Staff  
Blue – Legal Counsel

**~~UNITED~~ MEMBERSHIP ELECTIONS POLICY**  
**~~STANDARD OPERATING PROCEDURES~~**

Adopted May 14, 2013 RESOLUTION 01-13-90

Revised March 10, 2015 RESOLUTION 01-15-33

Revised September 13, 2016 RESOLUTION 01-16-97

Revised XXXX, 202019 RESOLUTION 01-XX-XX

1. **Definitions**

- a. "Corporation" shall refer to the United Laguna Woods Mutual Corporation.
- b. "Election Records" shall include ~~tabulated ballots, voided ballots, voided Pre-addressed Return Envelopes, Eligible Voter List(s), tally sheets, returned ballot packages, ballots received after the election deadline, and any other used and unused ballots.~~ returned ballots, signed voter envelopes, the Candidate Registration List and the Voter List. The Candidate Registration List means the list of qualified candidates existing as of the close of nominations. The Voter List may include: the name, voting power and either the physical address of the Member's separate interest or the parcel number, or both; and the mailing address of the Member (if different from the physical address or if the parcel number is used).
- c. "Secretary" shall mean an elected member of the Board of Directors who has been elected as a Corporate officer as Secretary.
- d. "Authorized Agent" shall refer to a Staff member appointed by the Board of Directors.
- e. "Inspector(s) of Elections" shall refer to an independent third party appointed by the Board of Directors to perform duties and acts to facilitate voting and elections as set forth herein.
- f. "SOP" shall mean and refer to this policy, known as the ~~United~~ Membership Elections ~~Standard Operating Procedure~~policy.
- g. "Submit" shall refer to delivery of a document to the Authorized Agent at the Corporate address: 24351 El Toro Road, Laguna Woods, California.
- h. "Qualified Member" shall mean a member qualified to nominate himself or herself as a candidate for the Board of Directors as set forth herein.
- ~~h.i.~~ "VMS" shall refer to Village Management Services, Inc.

~~Nominating Committee: The law is clear in that a Member must be able to nominate himself or herself for election to the Board. (California Civil Code § 5105(a)(3).) Accordingly, United does not utilize a Nominating Committee to limit candidates to run for a position on the Board; that practice has been superseded~~

~~by state statute. That said, the Board reserves the right to establish committees as permitted by law and pursuant to the governing documents to assist with nominations and/or director candidacy. Therefore, the provisions regarding nominating procedures set forth in this SOP shall control over the nomination procedures set forth in the Bylaws, which may be contrary to relevant law. (See, Bylaws, Article VIII.)~~

## 2. Nomination Process

a. Qualifications. Only "Qualified Members" are eligible for candidacy to the Board. All candidates seeking to run in any Election of Directors shall meet the following criteria in order to be considered a Qualified Member for purposes of this SOP:

- i. Shall be Members of record as defined under Bylaws, Article II, Section 4(h). ~~of the United Laguna Woods Mutual Bylaws~~
- ii. Shall not be shown on the books of account of the Corporation to be more than thirty (30) days delinquent in payment of any sums due to the Corporation under his or her Occupancy Agreement or otherwise, and who has been given notice thereof and the opportunity for a hearing concerning the delinquency (Bylaws: ~~Art. Article VI Sec. Section 2(b)~~). Note, this does not include non-payment of collection charges, late charges, fines, fines renamed as assessments, costs levied by a third party, or if the Member has (1) paid under protest per California Civil Code Section 5658; (2) has entered into and is current in a payment plan (defined as a signed written agreement between the Board and the Owner) per Section 5665, and is current and in compliance with all terms thereof; or (3) if the Member has not been provided the opportunity to engage in Internal Dispute Resolution ("IDR").
- ~~iii. Shall not be an employee of the Corporation (Bylaws: Art. VI, Sec. 2(b)).~~
- ~~iv.iii. While a candidate for the Board and during their term as a Director, if elected, the Candidate must have been a member of United for at least one (1) year. shall be obligated to be a current member of United having resided in his/her unit, as their primary residence, for a minimum of six months 10 months.~~
- ~~v. Further, the Board may disqualify any candidate where the candidate or the candidate's spouse has a conflict of interest with the Corporation, financial or otherwise, which engages in business transactions with the Corporation, if such candidate does not immediately disclose such relationship to the Board of Directors upon its occurrence pursuant to United's Bylaws (Bylaws: Art. VI, Sec. 2(c)), and applicable provisions of the Davis-Stirling Act.~~
- ~~vi.iv. A convicted felon may not serve as a Director. Candidates and Directors may not have been convicted of a crime that would either prevent the Corporation from purchasing fidelity bond coverage or terminate the Corporation's existing coverage.~~
- ~~vii.v. Related persons, by blood, may not serve as a Director at the same time. Or person Members may not serve who would be serving at the same time as another person who holds joint ownership in the same separate interest who is either already nominated or an incumbent~~

director.

b. In addition to the foregoing qualifications, the Board strongly discourages Members from running for the Board where the candidate or the candidate's spouse has a conflict of interest with the Corporation, financial or otherwise, or engages in business transactions with the Corporation. Further, such conflicts must be immediately disclosed to the Board of Directors upon its occurrence pursuant to United's Bylaws.

~~b-c.~~ Any Member may nominate any Qualified Member as a candidate, including himself or herself, by submitting a written application and candidate statement to the Secretary or Authorized Agent of the Corporation that states his or her intention to run for the Board of Directors which must be returned to the Secretary by the closing date stated, which deadline must be at least ninety (90) days before the date the ballots for the election of directors are scheduled to be tabulated. at least sixty (60) days prior to the annual meeting of the Members at which the election will be held. (Bylaws: Art. VI, Sec. 2, California Civil Code § 5105(a)(3). Nominations for the Board shall close sixty (60) days before the date of the annual election. No nominations for the Board can be made after the closing date.

**\*\*EXCEPTION:** Should California Civil Code ~~§Section~~ 5105 be amended at any time in such a way that nomination by petition as provided for in California Corporations Code Section 7521 (b) is allowed, the previous statement shall be replaced by the following: "Any Member who satisfies the qualification of directors (Bylaws ~~Art. Article~~ VI, ~~Sec. Section~~ 2) may nominate himself or herself by submitting a petition signed by Members representing one hundred (100) current memberships to the Secretary of the Corporation at least sixty (60) days before the annual meeting."

~~c-d.~~ Any committee established by the Board to assist the Board shall submit a final report of all candidates to the Board upon the close of nominations.

~~d.~~ Each candidate shall submit to the Secretary or Authorized Agent a statement of background and qualifications not to exceed two hundred fifty (250) words in

e. ~~(250) words in~~ length by the closing deadline. not less than sixty (60) days prior to the annual meeting.

i. The following are guidelines for the preparation of the statement of candidate's background and qualifications:

1. The statement may include: education, business background, civic, social, and community activities;
2. "Activities" may include organized events, clubs, hobbies or any unique activity;
3. Date and place of birth shall be considered optional information Length of residency in United; and
4. Statement of personal philosophy (optional).

~~e.f.~~ Each candidate for a Director position is responsible to directly forward their candidate statement, electronically, to the Inspector of Election and Corporate Secretary and is solely responsible to ensure the accuracy of the information and transmission of the candidate's statement. Once the candidate's statement is submitted, as set forth herein, it is irrevocable and cannot be changed or modified. ***United is not responsible for the content of any candidacy statement***

~~f.g.~~ Any candidate or spouse of a candidate who has a direct or indirect financial interest in any business organization or who is a director, officer or employee of any business, or agency of any county, state or federal government (other than a charitable organization), incorporated or otherwise, which engages in business transactions with the Corporation, shall disclose such relationship to the Board of Directors at the time of their self-nomination.

~~i.~~ ~~Failing to disclose such relationship, termination or cessation of membership in United, or failure to reside full time in the candidate's Manor, shall, when ascertained, immediately disqualify the candidate, or if ascertained after the candidate is elected as a Director to the Board of Directors of the Corporation, shall immediately disqualify the Director from further service on the Board thereby creating a vacancy to be filled by the Board of Directors as provided in Section 4(e) of Article VI (Bylaws, Art. VIII Sec. 3(d)).~~

~~g.~~ ~~Candidates must disclose the fact that they have significant outside, time-consuming commitments such as: (a) full time or significant employment responsibilities; (b) full time or significant time commitments to care for others; or (c) extensive travel plans which could impact the time available to conduct Board Business (Bylaws, Art. VIII Sec. 3(e)).~~

~~h.~~ The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected as directors and shall take office immediately following their election. Any tie vote shall be broken by lot, which may include any method of randomly deciding the issue as agreed by the candidates or adopted by the Board, including without limitation drawing names or straws, or use of a coin, die or other object, or a lottery, or any other random selection process.

### 3. Eligibility to Vote

a. Only persons approved for Membership by the Board of Directors and to whom a membership certificate has been issued (or the Member's successor trustee and/or power of attorney (California Civil Code §Section 5105(g)(2).Senate Bill 323)) shall be entitled to vote (see Bylaws, Art. Article II Section 4(h)- (i). This provision shall not be construed to prohibit any Member from receiving a ballot, pursuant to California Civil Code Section§ 5105(g)(1).

~~b.~~ ~~No Member shall be eligible to vote who is shown on the books of account of the Corporation to be more than thirty (30) days delinquent in payment of any~~



~~sums due to the Corporation under his or her Occupancy Agreement or otherwise, and who has been given notice thereof and the opportunity for a hearing concerning the delinquency and loss of voting rights (Bylaws: Art. V Sec. 8(a)(i)).~~

~~e.b.~~ Single Memberships in which two or more Members have a joint or undivided interest shall have only one (1) vote (Bylaws, ~~Art. Article~~ V, ~~Sec. Section~~ 8(a)(ii)) and only one such Member may run for, and serve on, the Board at any one time.

~~d.c.~~ Record Date:

i. The record date for determining those Members entitled to receive Notice of a meeting of the Members shall be fifteen (15) days prior to the day that the notice of the meeting is mailed (the "Record Date for Notice");

ii. The record date for determining those Members entitled to vote by secret ballot shall be ~~fifteen-sixty~~ (60~~15~~) days prior to the day that the secret ballots are mailed (the "Record Date for Secret Ballots");

~~iii. The record date for determining the Members entitled to vote by ballot on corporate action without a meeting shall be twenty (20) days before the day on which the first written ballot is mailed or solicited (Bylaws: Art. V Sec. 10(d)).~~

~~d. A vote is being taken in connection with an annual meeting of the Members, the Inspector(s) of Election shall tabulate the ballots for the vote to approve assessments, amendments to the Articles of Incorporation, Bylaws or Occupancy Agreement, removal of directors and/or granting the exclusive use of common area to a member shall be tabulated at a duly noticed (regular or special) meeting of the Board of Directors. The inspector(s) of elections shall tabulate the ballots for the election of directors at the Annual Meeting of the Members. The ballots for the vote to approve assessments, elections of directors to fill a vacancy not filled by the Board, amendments to governing documents and/or granting the exclusive use of common area to a Member shall be tabulated by the inspector(s) of election at a duly noticed (regular or special) meeting of the Members or Board. The Board of Directors shall determine the date, time and place of said Board meeting.~~

#### 4. Notice Requirements (Senate Bill 323)

a. General notice of the procedure and deadline for submitting a nomination shall be issued at least 30 days before the nomination deadline (unless individual notice has been requested by the Mmember).

General notice of the following shall be made at least 30 days before ballots are distributed (unless individual notice has been requested by the Mmember):

b.

- i. (1) the date and time by which, and address where, ballots are to be returned;
- ii. (2) the date, time and location of the meeting to tabulate the ballots; and
- iii. (3) the list of all candidates' names that will appear on the ballot.
- A statement that the association must retain election materials, a candidate registration list and a voter list as defined in the statute
- A statement that members are permitted to verify the accuracy of their individual information on the candidate registration list and the voter list at least thirty days before ballots are distributed; the association or member shall report any errors or omissions to either list to the inspector or inspectors of election, who shall make corrections within 2 business days
- A statement that pursuant to Civil Code Section 5105, the association must disqualify a nomination for candidacy if the nominee is not a member of the association, except for rights provided to developers under the DRE regulations and the association's CC&Rs
- A statement that if the title to a separate interest parcel 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 for voting purposes
- a. A statement that the association shall not disqualify a nominee if that person has not been provided the opportunity to engage in internal dispute resolution
- c. United shall permit Members to verify the accuracy of their individual information contained in the Election Records at least thirty (30) days before the ballots are distributed. United or any Member shall report any errors or omissions for either list to the inspectors of election who shall make the corrections within two (2) business days.
- d. At least thirty (30) days before the election, the inspectors of election will deliver to each Member: (1) the ballot and voting instructions; and (2) a copy of the election rules. Note, the election rules may be provided by individual delivery or by posting same on an internet site and providing the corresponding internet site web address on the ballot with the phrase, in at least 12-point font: "The rules governing this election may be found here: <https://www.lagunawoodsvillage.com/residents/united-laguna-woods-mutual/documents>".

#### 4.5. **Candidate Equal Access to Corporation Media**

- a. All candidates for a Director position shall have equal access to Corporation media for the purpose of campaigning for an election. —For purposes of this paragraph, "Corporation media" means the Corporation's cable channel. No candidate may utilize Corporation media for the thirty (30) day period following the date the first election ballot material is sent to

- the membership for the election of the Board of Directors through the election date, even if for a period longer than thirty (30) days.
- b. In each election for the Board of Directors, the Corporation shall hold a forum (“Meet the Candidates”) for the nominees within a Golden Rain Foundation (GRF) facility prior to the date that the ballot materials are sent to the Membership. Meet the Candidates will be for the purpose of allowing the Membership to meet and ask questions of all nominees. All nominees standing for election shall be invited to attend the forum and should appear in person.
  - c. Golden Rain Foundation (GRF) meeting rooms shall be available to candidates free of charge for campaign purposes (California Civil Code ~~Section~~ § 5105(a)(2)).
  - d. Any time a ballot measure is required to be sent to the Membership for approval which is unrelated to the election of directors, such as amending the Bylaws or the Occupancy Agreement, the Corporation may hold a town hall meeting – rather than a formal membership meeting – which is an informal gathering of members in which members can express their points of view. Further, if Corporation media is used in connection with such ballot measures, any Member advocating a point of view shall be permitted use of Corporation media, provided the Member’s purposes reasonably relate to the ballot measure. The Corporation shall not edit any such communications made by Members, but may include a statement specifying that the Member, and not United, is responsible for that content.

#### 5.6. Appointment of Inspectors of Election

- a. The Board of Directors shall appoint one (1) or three (3) independent third party(ies) as Inspector(s) of Election. ~~An Inspector of Election shall, at the Board’s discretion, be a member of the Corporation as defined under Section 1.b of this SOP, an independent third party that specializes in the administration of elections with whom the Board executes a contract, or a combination of the two (see California Civil Code Section § 5110(b)). An independent third party includes, but is not limited to:~~
  - i. a volunteer poll worker with the county registrar of voters;
  - ii. a licensee of the California Board of Accountancy;
  - iii. a notary public; and
  - iv. a Member of the Corporation provided such Member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors or a candidate for the Board of Directors.
- a-b. Inspectors of Election shall not be employees of ~~the managing agent VMS~~; however, ~~employees of the managing agent may assist the Inspector(s) of Election with their duties except for the counting and tabulation of the votes. (Senate Bill 323)~~ prior to the secret ballots being mailed to all of

the Members, the inspectors of election may meet to determine to whom the secret ballots shall be returned (the "Ballot Collector"), which may be an authorized agent.

b-c. Inspectors of Election who are members of the Corporation must be prepared to commit to a substantial workload during preparation of the ballots for mailing and between the time the returned ballots are received and the time when they are counted and tabulated at an open meeting.

~~c. If the Board contracts with an independent third party as an Inspector of Election pursuant to Section 6.a of this SOP, the provisions for verifying voter eligibility and for formatting of election materials contained in Section 7 of this SOP may be adapted to meet the requirements of an electronic processing system used by the contractor.~~

d. An Inspector or Inspectors may appoint and oversee additional persons to assist as the Inspector or Inspectors deem appropriate.

#### 6.7. Duties of Inspectors of Election

a. Determine the number of memberships entitled to vote and the voting power of each membership. (California Civil Code § 5110(c)(1) ~~and Senate Bill 323~~)

i. Eligible Voter List:

Pursuant to Section 4 of this SOP, the Inspectors will create or cause to be created an Eligible Voter List that identifies all Members who are eligible to vote. This list will be used to mail ballots only to those Members entitled to vote by ballot on corporate action without a meeting as of the Record Date specified herein.

b. Determine when the polls shall close. (California Civil Code § 5110(c)(6).)

i. The Inspectors of Election shall determine the date that ballots must be received in accordance with California Civil Code § 5115(a.), which states "Ballots...shall be mailed not less than 30 days prior to the deadline for voting." The deadline shall be incorporated into the voter instructions and adopted by the Board of Directors in the form of a resolution.

c. Oversee the Mailing of the Ballot Package

i. Obtain certification from the preparer of the ballot packages that all necessary items were enclosed in each Ballot Package Mailing Envelope and that the envelopes were properly addressed to all members on the Eligible Voter list.

ii. Ensure that Ballot Package Mailing Envelopes are sent by first class mail to help ensure that all members receive ballots in a timely manner.

iii. Obtain a statement from the post office indicating the number of ballot packages mailed.

iv. ~~It must include a statement that the inspector of election must deliver, or cause to be individually delivered to each member, at least 30 days before an election, both the ballots and either a copy of the election rules or a statement in 12-point font that reads, "the rules governing this election may be found here {insert web address}." Read: if the association doesn't have a website, it should consider establishing one if it will cost less to maintain it than printing costs for the rules for each vote the association holds requiring a secret ballot under the civil code.(Senate Bill 323)~~

d. Receive ballots. (California Civil Code § 5110(c)(3).)

## **8. Secret Ballot Return Instructions**

—If authorized by the California Legislature, the Corporation may utilize electronic "Secret Ballots." Such procedure will be consistent with what is required in the California Civil Code. For paper Secret Ballots, the following shall apply:

- a. The Secret Ballot itself is not signed by the voter, but is inserted into the Secret Ballot Envelope, which is sealed. The Secret Ballot Envelope shall not have any identifiable markings and is then inserted into the Pre-Addressed Return Envelope, which is also sealed.
- b. \_\_\_\_\_ In the upper left hand corner of the Pre-Addressed Return Envelope, the voter shall both print and sign his or her name, address, and the unit number that entitles him or her to vote (California Civil Code § 5115(a)(1).).
- c. The Pre-Addressed Return Envelope is addressed to the Inspector or Inspectors of Election, who will tally the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector or Inspectors of Election. The member may request a receipt for delivery (California Civil Code § 5115(a)(2).).
  - i. Return by Mail
    1. The Pre-Addressed Return Envelope shall be returned on or before the deadline date by mail to the address of the Inspector of Election c/o Ballot Collector as set forth in the voting or ballot return instructions or on the secret ballot.
    2. A second post office box may be used for Secret Ballot packages returned as undeliverable.
    3. Members who desire a receipt for delivery of a mailed Secret Ballot shall mail the Secret Ballot by Certified Delivery – Return Receipt Requested at the Member's expense.

### **ii. Return by Hand Delivery**

1. Secret Ballots returned by hand shall be deposited by the Member into a locked and secure ballot box located in the lobby of the **Community Center, 24351 El Toro Road, Laguna Woods.**
  2. At the request of the voting Member, ~~the management~~VMS staff shall provide a receipt for the hand delivered Secret Ballot.
  3. Inspectors shall retrieve Pre-Addressed Envelopes from the locked ballot box daily and date stamp them.
  4. Secret Ballots may also be hand delivered to the Inspector of Elections at the meeting to tabulate the ballots prior to the close of polls.
  5. All Pre-addressed Return Envelopes received shall remain sealed until they are opened and tabulated in public. The Corporation shall reserve a secure room at the **Community Center (24351 El Toro Road, Laguna Woods)** for use by the Inspector(s) of Election. Notwithstanding, the Inspector(s) of Election may establish a physical boundary or buffer around them during the tabulation of ballots.
- iii. Ballot Return Instructions – The Ballot Return Instructions will be the same as the Secret Ballot Instructions, detailed herein above, with the exception that the Ballot will be inserted into the Pre- Addressed Return Envelope only inasmuch as non-Secret Ballots do not require the use of a double envelope system so the Secret Ballot Envelope will not be utilized.
- d. Determine the authenticity, validity, and effect of proxies, if any.
  - e. Verify voter eligibility.
    - i. Count and record the number of Pre-addressed Return Envelopes received from the post office.
    - ii. Count and record the number of Pre-addressed Return Envelopes received by hand delivery.
    - iii. Place the Pre-addressed Return Envelopes in order by address, which corresponds with the Eligible Voter List. This process may be automated (i.e., barcodes).
    - iv. Void (but do not open) any Pre-addressed Return Envelopes, which does not contain information that identifies the member as an eligible voter (see Section ~~87.d~~c.i.1 above).
    - v. Void (but do not open) any Pre-addressed Return Envelope that is a duplicate vote.
      1. Revocation. No written ballot may be revoked after deposit in the mails or delivery to the Corporation. (Bylaws ~~1, Art- Article V, Sec- Section~~ 9(e))

2. If a voter returns two Pre-addressed Return Envelopes, the Inspectors of Election shall determine which ballot to count. If it can be determined which is the first Pre-addressed Return Envelope sent or received, then it shall be deemed the original ballot, which shall be counted and the other Pre-addressed Return Envelope should be voided.
- vi. Resolve any challenged ballots. If possible, this should be done before any Pre-Addressed Return Envelope is opened and counting begins.
- vii. Explain the reason for each voter eligibility decision made.
- viii. The sealed ballots at all times shall be in the custody of the Inspector or Inspectors of Election or at a location designated by the Inspector or Inspectors of Election until after the tabulation of the vote, at which time the Inspector of Election can maintain custody of the Election Record pursuant to statute, or transfer custody shall be transferred to the Corporation (California Civil Code § 5125(a).).
- f. Count and tabulate the votes.
  - i. All votes shall be counted and tabulated by the Inspector or Inspectors of Election in public at a properly noticed open meeting of the Board of Directors ([California](#) Civil Code § 5120(a).).
  - ii. At a properly noticed open meeting of the Board of Directors, the seals of the Secret Ballot Envelopes shall be broken, and the Inspector(s) of Election shall prepare the ballots for tabulation, which may include electronic tabulation scanning. A third-party election services contractor who is not an inspector of election may be deputized by the Inspectors of Election to assist with the preparation and scanning of the ballots.
  - iii. A ballot shall be voided if it contains information identifying the voter (California Civil Code § 5115(a).).
- g. Determine the result of the election
  - i. Once the ballots are scanned and tabulated, the Inspector(s) of Election shall certify the election by signing an official form. The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by members of the Corporation.
  - ii. Within fifteen days of the election, the Board of Directors shall publicize the results of the election.
  - iii. Tabulated ballots shall be packed and sealed, and the Inspectors of Election shall initial the seal to ensure that there is no tampering with the tabulated ballots.
  - iv. The custody of the tabulated ballots and other Election Records as listed in Section 1.[ba](#) of this SOP shall remain in the custody of the



Inspector(s) of Election for not less than one (1) year after the tabulation of ballots, or until the time allowed by Civil Code Section 5145 for challenging the election has otherwise expired. Upon written request, ~~ballots~~ Election Records shall be made available for inspection and review by Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

- v. After the tabulation of ballots, the Board of Directors or ~~its management agent~~ VMS staff shall return to the post office to pick up any ballots received after the deadline. These ballots shall not be opened and shall be marked "Void – received after deadline".
- vi. All written ballots and other Election Records as defined in Section 1(~~ba~~) of this SOP shall be filed with the Secretary of the Corporation and maintained in the corporate records at a secure location for a minimum period of one (1) year (~~see~~ Bylaws, ~~Art.~~ Article V ~~See. Section~~ 9(f)).

#### 8.9. Election Mailing Materials

- a. The Corporation shall conduct its election consistent with its Bylaws and state statutes (~~see~~ Bylaws, ~~Art.~~ Article V, ~~See. Section~~ 89(b)). The official election materials are to be prepared by the Inspector(s) of Election.
- b. As prescribed by law, secret ballot procedures shall be used when voting on the following issues: assessment increases; election and removal of directors; amendments to the Governing Documents (i.e., Articles of Incorporation, Bylaws and Occupancy Agreement); and the grant of exclusive use of Common Area property.
  - i. A "secret ballot" is a ballot which does not identify the voter by name, address, lot, unit or parcel number. The term "secret ballot" does not include a ballot for purposes of voting on any matter other than assessments, election or removal of directors, amendments to the Governing Documents or the grant of exclusive use of Common Area property. All secret ballots, including for election of directors, must conform to the requirements of applicable law. Any Bylaws provision inconsistent with the law shall be void.
  - ~~ii.~~ All secret ballots shall provide a reasonable time within which to return the ballot to the Corporation, which may be set at the discretion of the Board unless otherwise required by law. The time
  - ii. for the return of secret ballots may be extended for reasonable intervals at the discretion of the Board.
  - iii. Any action requiring Member approval, other than those requiring a secret ballot, may be submitted for vote by written ballot without calling



a meeting of the Members. The written ballot shall describe the proposed action(s), provide an opportunity to specify approval or disapproval of each proposal, and provide a reasonable time within which to return the ballot to the Corporation as set forth in Article V, Section 9 of the Bylaws.

1. The determination to conduct a vote by written ballot shall be made by the Board or by members having 20% of the eligible voting power signing a written request and delivering same to any Corporation officer ~~(-Per-~~Bylaws, Article V, Section 9(c)).
  2. The officer shall thereupon distribute a written ballot to every Member eligible to vote on the matter. A written ballot may not be revoked.
  3. All solicitations shall indicate the number of responses needed to meet the quorum requirement and the percentage of approvals needed to approve each proposal. The solicitation must specify the time by which the ballot must be received in order to be counted.
  4. Written ballots and solicitations shall be distributed in the same manner as notice of Member meetings. Approval by written ballot shall be valid only when the number of eligible ballots received meets the quorum required at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Upon tabulation of the ballots, the Board shall promptly notify the Members of the outcome of the vote or failure to meet quorum.
- c. Should state statute allow for electronic voting for those votes which previously required paper Secret Ballots, as referenced herein and in the state statute, then the Corporation may utilize such electronic system consistent with those Rules and Regulations, so long as the electronic voting is consistent with the terms of the applicable and statutory requirements.
- d. To the extent permitted by law, in the event the number of candidates at the close of nominations is the same as the number of open positions on the Board, those candidates shall be automatically elected, by acclamation, without further action, and the results shall be announced as required by these Rules and law.

**9.10. Secret Ballots: Removal of Directors by the Membership**

- a. The Members may remove directors by ~~a vote of the at least a~~ majority of the ~~votes represented at a meeting at which a quorum is present~~~~eligible voting power of the Corporation~~, in accordance with California Corporations Code Section 7222 and the following procedures:
  - i. A petition must be presented, in person, to the President or Secretary of the Corporation, bearing the signatures of Members in good standing who represent at least five percent (5%) of the eligible voting power of the Corporation. The petition must state the reason(s) justifying the director's removal; the signature and address or Unit number of each petitioner in his or her own handwriting; the name(s) of the sponsor(s) of the petition; and fulfill all other legal requirements.
  - ii. Within twenty (20) days after receipt of such petition, the President, Secretary, or Board shall either call a special meeting or distribute secret ballots to the Members to vote upon the requested recall. Such meeting or vote by secret ballot shall be conducted not less than thirty-five (35) nor more than ninety (90) days after the petition is presented.
  - iii. The director(s) whose removal is being sought shall have the right to rebut the allegations contained in the petition orally, in writing or both. Any written rebuttal shall be mailed by the Corporation or otherwise provided to all Members, together with the recall ballot.
  - iv. If the quorum requirement for a valid membership action is not satisfied or if the recall vote results in a tie, the removal action will have failed.
  - v. In the event the recall vote is successful, any vacancy must be filled by a vote of the Members following the nomination and election procedures set forth in this SOP, except that nominations to fill a vacancy shall close thirty (30) days before the date of special meeting to elect a director(s) to fill a vacancy(ies). Notice of the special meeting and secret ballots to elect directors to fill any vacancy created by the removal of one or more directors must be sent to Members not less than thirty (30) days before the deadline for voting. The successor director shall serve for the unexpired term of his or her predecessor.

#### ~~10.11.~~ **Secret Ballots: Amendments to Governing Documents.**

- a. Votes to amend the Articles of Incorporation, Bylaws, Occupancy Agreement or any other governing documents of the Corporation ("Governing

Documents”) [requiring a vote of the Members](#), shall be done by secret ballot pursuant to the SOP. Secret ballots enclosing the text of the proposed amendment must be delivered to every Member not less than thirty (30) days prior to the deadline for voting.

~~11.~~ **Secret Ballots: Grant of Exclusive Use of Common Area.**

~~11.12.~~

- a. The affirmative vote of at least sixty-seven percent (67%) of Members secret ballot pursuant to the procedures set forth herein is required before the Board may grant exclusive use of any portion of the Common Area to a Member, unless the grant of exclusive use of Common Area meets an exception provided by [California](#) Civil Code ~~Section~~§ 4600(b), or any superseding statute, which includes, but is not limited to any grant of exclusive use that is for any of the following reasons:
  - i. To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company;
  - ii. To eliminate or correct encroachments due to errors in construction of any improvements;
  - iii. To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions;
  - iv. To fulfill the requirement of a public agency;
  - v. To transfer the burden of management and maintenance of any Common Area that is generally inaccessible and not of general use to the membership at large;
  - vi. To accommodate a disability;
  - vii. To install and use an electric vehicle charging station in a garage or a designated parking space that meets the requirements of [California](#) Civil Code ~~Section~~§ 4745, where the installation or use of the charging

station requires reasonable access through, or across, the common area for utility lines or meters;

viii. To install and use an electric vehicle charging station through a license granted by an association under California Civil Code ~~Section~~§ 4745; or

ix. To comply with governing law.

~~a.~~ Any measure placed before the members requesting that the Board grant exclusive use of any portion of the Common Area shall specify whether the Corporation will receive any monetary consideration for the grant and whether the Corporation or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area.



## STAFF REPORT

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**DATE:** January 16, 2020  
**FOR:** Governing Documents Review Committee  
**SUBJECT:** Recognition Agreement

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### **RECOMMENDATION**

Approve the revised and amended Recognition Agreement.

### **BACKGROUND**

United Laguna Woods Mutual (United) is a stock cooperative housing development which holds title to all property and structures. Members own a share of stock in the corporation and are granted the right to occupy a specific unit upon approval of membership. Membership in United is not tied to real property ownership, and thus a mechanism was necessary to permit a lender to secure its loan with collateral owned by the corporation. United developed a Recognition Agreement to protect the financial integrity and solvency of the corporation. Since 1988, 21 different bodies have executed United's Recognition Agreement. Excepting loans currently in place, 20 of those lending entities no longer make co-op loans, presumably because they cannot risk being in second place in the event a member defaults to United.

The rate of financed co-op membership purchases historically trends between 20 and 22 percent. However, the rate in 2019 spiked to 25.5 percent.

As of January 9, 2020, NCB's 30 year fixed rate loan ranges between 3.875 percent and 4 percent; depending upon LTV and credit score. The rate is slightly higher than market rates to account for the additional risk NCB incurs by way of making loans in accordance with terms and conditions in the Recognition Agreement.

### **DISCUSSION**

The Recognition Agreement outlines the terms and conditions whereby the lender is able to secure its loan by encumbering United's real property on the basis of a loan being made to a prospective or existing member. The lender agrees to make United whole in the event of a member default, allows United to remain in first place should a default to United occur and allows United to exercise its right of first refusal to purchase a membership.

The Recognition Agreement, as written, would provide any state or federally chartered bank or credit union to make loans.

### **FINANCIAL ANALYSIS**

None.

United Laguna Woods Mutual  
Recognition Agreement  
January 16, 2020  
Page 2

**Prepared By:** Pamela Bashline, Community Services Manager

**Reviewed By:** Francis Gomez, Operations Manager  
Siobhan Foster, Chief Operating Officer

**ATTACHMENT(S)**

ATT 1 – Recognition Agreement

When recorded return to:

United Laguna Woods Mutual  
c/o Village Management Services  
24351 El Toro Road  
P. O. Box 2220  
Laguna Hills, California 92654

### **RECOGNITION AGREEMENT**

This Recognition Agreement (the "Agreement") is made this \_\_ day of Month, \_\_\_\_\_, by and between UNITED LAGUNA WOODS MUTUAL, a California nonprofit mutual benefit corporation (the "Mutual") and \_\_\_\_\_ ("Lender"). The Mutual and Lender may collectively be referred to herein as the "Parties" and, sometimes, singularly as a "Party."

### **RECITALS:**

A. The Mutual is the owner of certain dwelling units located at Laguna Woods, California (the "Project"), more particularly described in Exhibit A to this document.

B. Each member of the Mutual (the "Member") owns a membership in the Mutual and the Golden Rain Foundation of Laguna Woods (collectively, the "Membership") and the "right to occupy" a specified unit owned by the Mutual. The "right to occupy" a unit is subject to the terms of an Occupancy Agreement (the "Occupancy Agreement") entered into between the Mutual and the Member.

C. Lender desires to continue to make secured loans to qualified Members. The loans are to be secured by a pledge to Lender of the Member's Membership, including the Member's membership certificate in the Mutual and the Member's membership in Golden Rain Foundation of Laguna Woods, together with the

Member's rights and interest under the Occupancy Agreement (collectively, "Member's Interest"). For the purposes of this document, either an assignment or an encumbrance of the Member's Interest as security for repayment of a loan is a "Pledge."

D. A Member's Interest may not be Pledged to Lender without the consent of the Mutual.

E. In order to avoid the administrative expenses to the Mutual and the Lender arising from Lender's submission to the Mutual of requests on an individual basis for approval of the Pledge to Lender of a Member's Interest as security for a loan from Lender to the Member, the Mutual and Lender desire to set forth the terms and conditions under which the Mutual consents to all such pledges by Members to Lender.

### **TERMS**

1. Mutual Protection. Lender, for itself and its successors and assigns, covenants and agrees that all of its rights and powers under any obligation entered into with any Member shall be in accordance with all terms and conditions of this Agreement (a "share loan") and shall be subordinate and subject to rights of the Mutual to collect monthly assessments, which are in turn utilized to fulfill the Mutual's responsibilities to State, County or local authorities to pay any and all taxes and similar expenses assessed against the Project, for which the Mutual as owner of the underlying property is responsible. Moreover, in the event the Mutual acquires the Member's Interest based on the foreclosure process pursuant to the Davis-Stirling Common Interest Development Act and in accordance with the Mutual's governing documents (whether under judicial foreclosure or nonjudicial foreclosure), the Lender's lien or any interest in the Project that the Lender had



shall automatically terminate, subject to the conditions hereinafter described. The Lender may cure the Member's default to the Mutual prior to any such foreclosure action.

The Mutual shall give written notice to the Lender in the event that: (1) the Mutual proceeds to record a Notice of Delinquent Assessments; or (2) the Mutual decides to accept the Member's Interest in lieu of foreclosure. The Mutual will give such written notice if the Lender provides a written request for such written notice and the opportunity to cure any Member's default to the Mutual. The Lender shall have thirty (30) days to cure the default after the notice of the Member's default to the Mutual or notice of the Mutual's intent to accept the Member's Interest in lieu of foreclosure is mailed.

2. Conditions of Applicability. Although this Agreement provides a general structure for the relationship between Lender and the Mutual, it shall apply only in cases where the affected Member specifically consents in writing to subordinate the Member's rights under his Occupancy Agreement and the Bylaws of the Mutual to those of the Lender set forth in this document.

3. Consent to Pledge. Until termination of this Agreement as provided in Paragraph 19 below, the Mutual hereby irrevocably consents to the Pledge of the following to Lender by any Member as security for any loan from Lender to the Member:

- (a) The Member's Membership;
- (b) The Member's Certificate; and,
- (c) All of the Member's rights and interest under the Occupancy Agreement between the Member and the Mutual.

Notwithstanding the Member's pledge to the Lender, the Member shall retain all rights,

privileges, and obligations of membership (specifically including the right to occupy and use the dwelling unit and community facilities, the right to vote, and the obligation to comply with the Occupancy Agreement and Bylaws of the Mutual) until and unless the Occupancy Agreement and membership rights are terminated under the provisions of the Occupancy Agreement and the Mutual's Bylaws or the pledged collateral is foreclosed or accepted in lieu of foreclosure by the Lender under the terms of the lending relationship between the Lender and the Member.

4. Notification of Pledges. From time to time, Lender may furnish in writing to Mutual, a list of all Members who have made pledges to Lender of the items listed in Paragraph 3(a), 3(b) and 3(c) above. The most current such list is hereinafter called the "List." The List shall be delivered according to Paragraph 21 of this Agreement.

5. Notices by Mutual to Lender. Within 30 days of receipt of a List, the Mutual agrees to furnish Lender written notification of the name of each Member on the List (a) who is in default (monetary or otherwise) for more than thirty (30) days under the terms of either the Occupancy Agreement between the Mutual and the Member or the Mutual's Bylaws or (b) who actually or constructively gives the Mutual notice of an intention to leave the Project, as provided in Article III, Section 4 of the Mutual's Bylaws or in any other fashion that indicates an intent to surrender the Member's right to occupy the dwelling unit, the Membership and the Certificate.

6. Right to Cure in the Event of Default. The Mutual agrees that it will not commence action to terminate the Occupancy Agreement or Membership of any Member on the List for a default under the terms of the Member's Occupancy Agreement or the Mutual's Bylaws without giving Lender prior written notice and the opportunity to cure said default or acquire such Member's Membership, Certificate and Occupancy Agreement in accordance with the following:

(a) Monetary Default. If the default arises from the Member's failure to make any payment due the Mutual (including late charges, interest and any other cost associated with the delinquency), and Lender or the Member cures said default within thirty (30) days after Lender's receipt of the Mutual's notice furnished pursuant to Paragraph 5 above, the Mutual shall not commence action to terminate the Member's Occupancy Agreement or membership. The Mutual's acceptance of any amounts paid by Lender to cure a Member's monetary default shall not constitute a waiver of the Mutual's rights under the Mutual's Bylaws concerning the occupancy and use of the Member's dwelling unit or the transfer of the Member's membership in the Mutual.

(b) Nonmonetary Default. If the default arises from the Member's failure to comply with a term or condition of either the Occupancy Agreement or the Mutual's Bylaws which does not require a payment of money to the Mutual and all amounts due under the terms of the Occupancy Agreement are kept current, the Mutual will not commence action to terminate the Member's Occupancy Agreement or Membership provided either the Lender causes the Member to cure such default within thirty (30) days of Lender's receipt of Mutual's notice furnished pursuant to Paragraph 5 above or the Lender provides the Mutual with a photocopy of a document commencing foreclosure of the pledge within such thirty (30) day period and continues with reasonable diligence to foreclose Lender's pledge by nonjudicial or judicial foreclosure.

7. Mutual's Transfer of Memberships and Termination of Occupancy Agreements in the Event of Default or Surrender. The Mutual retains its right to terminate and transfer the membership and terminate the Member's rights under the Occupancy Agreement of any Member on the List in accordance with Section 5 of Article III of the Mutual's Bylaws if:

(a) Lender consents to the transfer and termination by reconveyance

of Lender's deed of trust or otherwise; or,

(b) The Member's monetary default is not cured within the thirty (30) day period for which provision is made in Paragraph 6(a) above; or,

(c) The Member's nonmonetary default is not cured within the thirty (30) day period for which provision is made in Paragraph 6(b) above or the Lender does not (1) provide the Mutual a photocopy of a document commencing foreclosure of the pledge within said thirty (30) day period and (2) diligently pursue the foreclosure of its pledge.

In the event there is a nonmonetary default and, before it is cured, a monetary default occurs also, the Mutual may terminate the Member's Membership and transfer the Member's Membership and terminate the Member's rights under the Occupancy Agreement wherever it is entitled to do so under the provisions of any of subparagraphs (a), (b) or (c).

If Lender pays the Mutual all amounts which become due the Mutual from the defaulting Member and Lender furnishes Mutual with evidence of Lender's having acquired Member's rights and interest under the Occupancy Agreement, the Certificate, and Member's Membership prior to the Mutual's termination of the Member's Membership and the Member's rights under the Occupancy Agreement, the Mutual will issue a new Certificate and enter into a new Occupancy Agreement with a designee of Lender approved by the Mutual (as provided in Paragraph 8 below) as soon as reasonably possible after such termination or surrender.

Notwithstanding the provisions of the Mutual's Bylaws and any failure by Lender diligently to foreclose its pledge, the Mutual shall deliver to Lender (instead of the Member) any amount that may become due the Member under either Section 4 or Section 5 of the Article III of the bylaws of the Mutual, up to the amount due Lender

under the provisions of its note and pledge, as provided in Paragraph 8 below.

8. Lender's Right to Proceeds or to Designate Transferee If Mutual Redeems or Accepts Surrender of Membership. If the Mutual exercises its option to purchase the Membership of any Member on the List in accordance with Section 4 of Article III of Mutual's bylaws upon a Member's actual or constructive notice of an intention to leave the Project, Mutual shall pay Lender from the funds otherwise payable to the Member an amount not exceeding the Member's indebtedness to Lender. In the event the amount otherwise payable to the Member is less than the Member's indebtedness to Lender, then if Lender pays Mutual all amounts owed to the Mutual by the Member under the provisions of Section 4 of Article III and any other provision of the Mutual's bylaws or Occupancy Agreement within 30 days after the Mutual exercises its option to purchase the Membership or after the Mutual accepts a surrender of the Member's Membership, right to occupy, and Certificate, the Mutual will issue a new Certificate and enter into a new Occupancy Agreement with a designee of Lender approved by the Mutual (as provided in Paragraph 9 below) as soon as reasonably possible after all payments due are received by the Mutual.

9. Foreclosure by Lender.

(a) If Lender forecloses its Pledge or accepts an assignment of the Occupancy Agreement encumbered by the deed of trust, the Membership, and the Certificate in lieu of foreclosure, Lender shall give the Mutual the first right of refusal to purchase the Membership Interest. Thereafter, if the Mutual declines to purchase the Membership Interest within a reasonable time, Lender will then use its best efforts to sell the Membership Interest (or lease the dwelling unit as allowed by Paragraph 11 below) as rapidly as reasonably possible.

(b) When Lender seeks the Mutual's approval of a designee pursuant to

Paragraph 7 or Paragraph 8 above, the Mutual will not unreasonably withhold its approval of such designee who meets the Mutual's customary requirements. The Mutual shall review the qualifications of the designee in the same manner as it reviews the qualifications of a prospective purchaser of a Certificate from any Member, and the Mutual's requirements or standards for membership shall not be applied capriciously or arbitrarily.

(c) During the period between Lender's foreclosure or acceptance of an assignment in lieu of foreclosure and the sale of the Membership to a designee approved by the Mutual, Lender shall not be considered a member, *per se*, and shall have no right to occupy or use the dwelling unit or common facilities or to vote. Lender's rights shall be limited to those specified in this Agreement. However, during this period Lender shall have the same duties and responsibilities under the Mutual's bylaws and the former Member's Occupancy Agreement as the former Member had - specifically including the former Member's obligation to pay the monthly carrying charges promptly. Moreover, the Mutual shall have the same remedies against Lender in the event of default that it had against the former Member.

(d) The Parties hereto agree and covenant that if Lender forecloses its Pledge or accepts an assignment of the Pledge in lieu of foreclosure, that Lender's interest in the Project is taken subject to any and all sums due and owing Mutual by the former member under the Occupancy Agreement or otherwise ("Defaulted Sums"). Lender agrees to pay all Defaulted Sums to Mutual upon sale or lease of the membership or dwelling unit, regardless of whether Mutual has obtained or perfected a lien against the membership and regardless whether the proceeds from any such sale or lease exceed or satisfy sums due and owing Lender by the former Member; the Parties agree that under any and all circumstances Lender shall pay Mutual the full

amount of the Defaulted Sums upon sale or lease of the membership or dwelling unit.

10. Indemnification of the Mutual. Lender shall indemnify the Mutual against, and hold the Mutual free and harmless from, any loss, liability or expense (including reasonable attorneys' fees and the cost of litigation) incurred by the Mutual in connection with any claim by a Member or the Member's successors in interest which arises out of Lender's representations or actions pursuant to this Agreement.

11. Lender's Right to Lease or Sublease. Lender shall have the same right to lease or sublease the dwelling unit of a Member whose Membership, Certificate, and right to occupy are obtained by Lender through foreclosure or assigned to Lender in lieu of foreclosure to the same extent and on the same terms and conditions as the Member otherwise would have.

12. Amendment to Occupancy Agreement and Bylaws. The Mutual agrees that it will not consent to or make any amendment that is materially detrimental to Lender's rights under this Agreement to any Occupancy Agreement between the Mutual and any Member on the List or to the Mutual's Bylaws without obtaining Lender's prior written consent, which consent shall not be withheld unreasonably.

13. Estoppel Statement. Within ten (10) days after receipt of a request for an estoppel statement, either Party shall deliver to the other a written statement of the magnitude and nature of any amounts which the Party alleges is due from a Member on the List. Such statement shall be binding upon the Party providing the statement as of the date of the statement. The party providing the statement shall have the right to require the Party requesting the statement to pay a reasonable fee for the provider's cost to prepare and reproduce such statement.

14. Inspection Rights. Lender shall have the same rights of inspection of the books and records of the Mutual as are granted to a Member by the Bylaws of the

Mutual and the California Corporations Code.

15. Fire and Casualty Insurance. The Mutual warrants that it has and will maintain until the termination of this Agreement fire and casualty insurance with extended coverage of all buildings containing a dwelling unit which is the subject of an Occupancy Agreement with a Member on the List in an amount as near as reasonably possible to the full replacement value of such buildings (including, without limitation, all portions of such dwelling unit consisting of built-in or set-in appliances and cabinets, as initially installed or replacements thereof, or as installed by or at the expense of the Member), without deduction for depreciation. To the extent reasonably possible, each such policy of fire and casualty insurance shall provide for waiver of subrogation of claims against residents of Laguna Woods Village.

16. Casualty Losses. The Mutual hereby waives and releases all claims against Lender resulting from an insured or uninsured casualty to the extent of the insurance proceeds available plus any deductible under insurance coverage, whether or not the damage or injury is caused by the Member's negligence, fault or misuse. Notwithstanding any provision of the bylaws or of the Occupancy Agreement with a Member on the List, the Mutual shall repair or replace the dwelling unit subject to the Occupancy Agreement with a Member on the List that is damaged or destroyed as a result of an insured casualty in a manner that restores the dwelling unit to substantially its condition and value prior to the damage or destruction if the cost of doing so does not exceed the insurance proceeds plus the deductible under the insurance coverage. If the cost of repairing or replacing such damaged dwelling unit in a manner that restores it to substantially its condition and value prior to the damage is greater than the insurance proceeds available to the Mutual for such purpose plus the deductible under the insurance coverage and the Mutual elects not to repair and replace it, then the



Mutual shall pay Lender from funds otherwise payable to the Member an amount not exceeding the Member's indebtedness to Lender prior to paying any portion of such insurance proceeds to such Member or using any portion of such proceeds for any purpose other than to satisfy any amounts owed by such Member to the Mutual.

17. Condemnation Awards. If the Mutual receives an award for condemnation or taking of all or any portion of a dwelling unit which is subject to an Occupancy Agreement in favor of a Member on the List or any other award for condemnation or taking a portion of which is allocable to a Member on the List, the Mutual shall pay Lender from the funds otherwise payable to the Member an amount not exceeding the Member's indebtedness to Lender prior to paying any portion of the condemnation or taking award to the Member or using any portion of such proceeds for any purpose other than to satisfy any amounts owed by such Member to the Mutual.

18. Further Blanket Encumbrances. The Mutual agrees that it will not consent to any further blanket lien or blanket deed of trust encumbering real property which is subject to Occupancy Agreements owned by Members on the List without giving Lender sixty (60) days prior written notice.

19. Termination. This Agreement may be terminated at any time by either party by giving sixty (60) days prior written notice of said termination to the other party; provided, however, that following any such termination, the terms and provisions of this Agreement shall remain in effect as to all Memberships, Certificates, and Occupancy Agreements then transferred or pledged to Lender as of the date of such termination, until (a) such time as the obligations secured by such transferred or pledged Memberships, Certificates, and Occupancy Agreements have been satisfied or (b) Lender has acquired such Memberships, Certificates, and Occupancy Agreements

pursuant to its right of foreclosure or assignment in lieu of foreclosure and such Memberships, Certificates, and Occupancy Agreements have been transferred to eligible Members approved by the Mutual, whichever occurs first.

20. Recording of Memorandum of Occupancy Agreement. Upon Lender's request, the Mutual shall execute, acknowledge and deliver to Lender a Memorandum of Occupancy Agreement in a form that will permit recordation of such Memorandum of Occupancy Agreement in the Official Records of Orange County, California.

21. Notices. Any notice or consent required pursuant to the terms hereof shall be deemed given when personally delivered to an authorized representative of a party or if mailed, it shall be deemed given five (5) days after mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Mutual:

United Laguna Woods Mutual  
c/o Village Management Services  
24351 El Toro Road  
P. O. Box 2220  
Laguna Hills, California 92654

If to Lender:

or to such other address as either party may specify from time to time.

22. Successors and Assigns. The provisions of this Agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties. As used herein, the term "Lender" includes, in addition to the lender named herein, (1) any other

lender; (2) any investor of any type which has then succeeded to the Lender's right and interest in all or any part of the loans subject to this Agreement; (3) any person or institution which may service the loans for such institutional lender or investor; and, (4) any institutional insurer or institutional guarantor of all or any part of any loan to a Member of the Mutual that is subject to this Agreement. The Mutual shall have an obligation to notify any person or institution other than the Lender named herein only if that person or institution has provided written notice of its interest in a specified dwelling unit as provided in Paragraph 21 above.

23. Miscellaneous. As used herein, words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa. In Witness herewith this Agreement has been executed as of the date set forth above.

Lender:

Mutual:

**UNITED LAGUNA WOODS MUTUAL,**  
a California nonprofit mutual benefit  
corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: President

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Secretary

[NOTICE AND ACKNOWLEDGMENT]



## **RESOLUTION 01-19-XX**

### **Objective Standards for Approval to Loan within United Laguna Woods Mutual**

**WHEREAS**, United Laguna Woods Mutual (hereinafter United or Corporation), is a nonprofit mutual benefit corporation, existing under and by virtue of the laws of the State of California, organized for the purpose of providing its Members with housing on a cooperative nonprofit basis pursuant to the provisions set forth in its Occupancy Agreement, Articles of Incorporation, ~~and~~ Bylaws and Board Resolutions (collectively referred to as the "Governing Documents");

**WHEREAS**, the Corporation's Amended and Restated Bylaws (Bylaws) provide that the purpose of the Corporation is to "manage, maintain, preserve, and administer the business of a common interest development, specifically, a stock cooperative" (Bylaws Article II, Section 1);

**WHEREAS**, the Board of Directors of the Corporation is authorized to establish policy and perform various administrative activities (Bylaws Article II, Section 3);

**WHEREAS**, United is a stock cooperative housing development and holds title to all property and structures in United wherein each shareholder-member has ownership and is granted of one share in the Cooperative and is granted the right to occupy a specific unit pursuant to an Occupancy Agreement ~~together with ownership of one share in the cooperative~~, provided each Shareholder-Member meets the age requirement and financial the financial qualifications set forth in the Financial Qualifications Policy (rev. ~~5-23-18~~09-10-19);

**WHEREAS**, pursuant to the above authority or otherwise contained in the Governing Documents, included among the Board of Directors' management responsibilities is the vetting of lenders seeking to loan money ~~on manners to Shareholder-Members secured by property~~ within United, in order to ensure the continued solvency of the Corporation;

**WHEREAS**, the Board of Directors requires a lender to sign its Recognition Agreement, giving United Mutual first right of refusal and agreeing to pay assessments when due in the event the member defaults in its obligation to pay assessments;

**1. WHEREAS**, through counsel, the Board of Directors has enumerated objective criteria lenders must satisfy in order to loan to Shareholder-Members within United, including that the ~~perspective-prospective~~ lender is either a state or federally chartered bank or credit union;

÷

~~1. Is either a state or federally chartered bank or credit union;~~

~~2. Insures each deposit account through by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA) or otherwise, up to \$250,000.00~~

~~per account and backed by the full faith and credit of the United States government; and~~  
~~3. Meets or exceeds the Capital Requirement pursuant to 12 C.F.R. § 3.10.~~  
~~Must sign a recognition agreement giving United Mutual first right of refusal~~  
~~3. The obligation of the lender to pay assessments in default.~~

**NOW, THEREFORE,** be it resolved that the following resolution is adopted by the Board of Directors:

**1. Acknowledging and Approving Qualified Lenders.** The Corporation, by and through its Board of Directors, is authorized to approve lenders based on confirmation of satisfaction ~~of the three three objective criteria set forth above, as follows:~~that the prospective lender is either a state or federally chartered bank or credit union.

~~**Step 1** Confirm the institution is Insured. If the institution is a state or federal bank or savings association, start by going to the FDIC home page at [www.fdic.gov/](http://www.fdic.gov/) and clicking on the "Deposit Insurance" tab and selecting "Bankfind" and entering the bank information. Credit unions are supervised and insured by the NCUA, and confirmation of insurance may be obtained at <https://www.ncua.gov/> by clicking on the Research a Credit Union link and entering the institution's name. As long as the institution's name is returned by either the FDIC or NCUA, the institution has satisfied criteria one and two.~~

### **Step 2**

~~Confirm the institution meets or exceeds the Capital Requirement pursuant to 12 C.F.R. § 3.10. All national banks and federal savings associations are subject to the Capital Requirement pursuant to 12 C.F.R. § 3.10. Therefore, if the institution is a national bank or federal savings association, and it is insured by either FDIC or NCUA, it satisfies all three objective criteria. If the institution is not a national bank or federal savings association, an officer or director of the institution must sign an affidavit under penalty of perjury under the laws of the State of California attesting to the fact that the institution meets or exceeds the Capital Requirement pursuant to 12 C.F.R. § 3.10.~~

~~If both the above steps are satisfied, the institution may be deemed an approved lender and upon execution of a Recognition Agreement, allowed to loan on property to Shareholder Members within United. Otherwise the institution should be advised that it fails to meet the objective criteria established to ensure the continued viability of the Corporation, that they are not approved to loan money on United property to United Shareholder Members.~~

**2. Further Acts.** The Board of Directors may do and perform such other acts and things as may be reasonably necessary and proper in order to carry into effect the provisions of this Resolution.

**BE IT FURTHER RESOLVED,** that the officers, directors and agents of this Corporation are authorized to carry out the purpose of this Resolution.

NOVEMBER Initial Notification

Should the Board endorse the proposed revisions, Staff recommends that a motion be made and seconded to accept the resolution and allow discussion to ensure that the resolution reads to the satisfaction of the Board. Staff then recommends that a Board Member postpones the resolution to the next available Board Meeting no less than 28-days from the postponement to comply with Civil Code §4360.