

DESERT SKIES HOMEOWNERS ASSOCIATION

MEMBERSHIP MEETING AND VOTING RULES

Effective Date: January 1, 2020

1. **Secret Ballots.** The Association will utilize a secret ballot process, as described in these rules and as required by the Davis-Stirling Common Interest Development Act, for:
 - a. Election and removal of the Association's Board of Directors.
 - b. A vote of the membership regarding assessments as may be required by Civil Code Section 5605(b).
 - c. Amendments to the governing documents that require membership approval.
 - d. Prior to granting exclusive use of common area property where required by Civil Code Section 4600.
 - e. Any other matters where the law requires a secret ballot vote.
2. **Membership Meetings, Annual Meeting and Election of Directors.**
 - a. The Association will hold an Annual Meeting of the members to elect Directors and to conduct Association business. The Annual Meeting shall be held at a date, place and time determined by the Board of Directors, pursuant to Article 5.2 of the Association Bylaws.
 - b. The Board of Directors consists of five (5) Directors. Directors are elected for a two (2) year term. In even numbered years there will be three (3) directors elected and in odd numbered years there will be two (2) directors elected. Directors must be elected by secret ballot and cannot be elected by voice vote or show of hands at the Annual Meeting. Directors must be owners of condominiums in the project.
 - c. At least 90 days prior to the voting deadline, the Association will distribute a self-nomination form, seeking candidates for the Board. The form must be completed by the candidate and received by the Association by the deadline stated on the form in order to ensure the candidate's name appears on the ballot. Regardless of

whether a candidacy form was completed, any candidate may still be nominated by himself, herself or by someone else from the floor of the Annual Meeting. If the person is not present to accept the nomination, then the person must have provided a written acceptance of a nomination.

- d. The candidacy form may include the opportunity for each candidate to submit a 150-word written statement reasonably related to the election, including advocating a point of view. Candidate statements received in a timely manner will be included with the Association's mailing of the notice and ballot materials.
- e. All candidates for the board shall be members of the association at the time of nominations.
- f. If 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 to be a member for voting purposes.
- g. A nominee for a board seat and a director during their board tenure, shall be current in the payment of regular and special assessments. The person shall not be disqualified for failure to be current in payment of regular and special assessments if the person has paid the regular or special assessment under protest pursuant to Section 5658, has entered into a payment plan pursuant to Section 5665, or if the person has not been provided the opportunity to engage in the internal dispute resolution process.
- h. A member shall be disqualified as a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the association from purchasing the fidelity bond coverage required by Section 5806 or terminate the association's existing fidelity bond coverage.
- i. A member shall be disqualified as a nominee if that member has been a member of the association for less than a year at the time of nominations.
- j. A member shall be disqualified as a nominee if the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either

properly nominated for the current election or as an incumbent director.

- k. The Association will send out a general notice at least 60 days before the annual meeting that includes the physical address and deadline for the return of ballots, the date, time and location of the meeting at which ballots will be counted and the list of all candidates' names that will appear on the ballot.
- l. Other meetings of the members may be noticed and held by the Association to vote on matters which are proper for member vote. For member votes that are to be conducted pursuant to the secret ballot process described herein, the meeting notice sent by the Association will include information on when polls will open and when the members may attend a membership or Board meeting to witness the review, count and tabulation of ballots by the inspector(s) of election.
- m. Other business at the Annual or other membership meeting, such as approval of minutes, motions to adjourn and other parliamentary procedures required by a recognized system of parliamentary procedure, may be conducted by a show of hands, voice vote or other method.
- n. All membership meetings and votes will be conducted in accordance with the Association's governing documents and California Corporations and Civil Codes, as appropriate.
- o. Members will have one vote per unit owned.
- p. For election of Directors, cumulative voting will not be permitted, pursuant to Article VII, Section 4 of the Bylaws.
- q. If allowed by law, any vote (except for a vote on election of Directors) to be conducted pursuant to the secret ballot process described herein may be conducted by mail only without holding a membership meeting for voting purposes. A membership meeting must be held for the election of Directors. Further, the counting and tabulation of votes may only be performed by inspector(s) of election in the open at a properly noticed meeting.

3. Inspector(s) of Election.

- a. One or three inspector(s) of election ("Inspectors") will be selected and appointed by the Board of directors at an open Board meeting approximately 120 days prior to the date of the Annual Meeting and approximately 90 days prior to any other membership vote to be conducted by the secret ballot process described in these rules.
- b. The Board is required to select an independent third party as the Inspector(s), which may include, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public.
- c. The Board will not select a member of the Board of Directors, a candidate for the Board of Directors, a relative of a member of the Board or of a candidate, or a person or business entity currently employed by or under contract to the Association for other compensable services.
- d. The Board may determine to pay compensation to the Inspectors.
- e. Inspectors' Duties:
 - i) Determine number of memberships entitled to vote and the voting power of each.
 - ii) Determine the authenticity, validity and effect of proxies, if any.
 - iii) Receive ballots.
 - iv) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, including verification of signatures.
 - v) Count and tabulate all votes.
 - vi) Determine when the polls shall close.
 - vii) Determine the results of the election.
 - viii) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with Civil Code Section 5105 and these rules.

- ix) The inspector or inspectors shall retain both a candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest.
 - x) The association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.
 - xi) Determine, prior to the mailing of the ballots by Association, the location where the sealed ballots will be mailed or delivered and where the Inspectors will maintain custody of the sealed ballots until after the tabulation of the vote by the Inspectors.
 - xii) All duties must be performed in good faith, to the best of the Inspector's ability and as expeditiously as practical.
- f. The Inspectors may appoint additional personnel to assist them in their duties, including registration, counting, tabulating, and verifying signatures, but the Inspectors will oversee and be responsible for all actions of such personnel and such personnel must not be in the category of persons or entities, in subsection c above, that the Board may not select.
- g. If there are three Inspectors, the decision to act must be by a majority of the Inspectors and is effective, in all respects, as the decision of all.

4. Secret Ballot Procedures.

- a. At least 30 days prior to the Annual Meeting or other deadline for voting, the Association will mail to all members, by first-class mail, the ballots, along with two preaddressed envelopes. A notice will also be sent with the instructions on and deadlines for the return of ballots. Additionally, a copy of the election operating rules will be

mailed, or a link will be included to where they are posted on the Association's website.

- b. The ballot will not identify the voter by name, address, lot, parcel number or unit number.
- c. For election of Directors the ballot will contain the names of any candidates known to the Association at the time the ballot is mailed and blank lines for candidates nominated from the floor.
- d. The ballot itself is not signed by the voter but is inserted into a sealed, preaddressed (to the Inspectors) envelope (Envelope #1).
- e. The sealed Envelope #1 is then inserted by the voter into a second preaddressed (to the Inspectors) envelope (Envelope #2) which should then be sealed. In the upper left-hand corner of Envelope #2, the voter shall sign his or her name, indicate his or her name, and indicate the address or other identifying account/unit/lot number that entitles him or her to vote. Envelope #2 may be mailed or delivered by hand to the preaddressed address specified on the envelope.
- f. The owners of multiple properties must submit separate sealed ballot envelopes (#1 and #2) for each property.
- g. The member may request a receipt for hand delivery of the sealed Envelope #2 to the location selected by the Inspectors. Any member desiring a receipt for mail delivery should send the ballot by certified mail, return receipt requested, to the location selected by the Inspectors.
- h. Only the Association's ballots in the form which are sent out to the membership by the Association or are provided by the Association at the membership meeting will be accepted by the Inspectors.
- i. Ballots shall be provided to a person with a general power of attorney for a member and shall be counted if returned in a timely manner.

5. Proxies.

- a. Proxies will be accepted only if Inspectors determine the proxies meet the requirements of the Bylaws, California Corporations Code and California Civil Code.

- b. Any instruction given in a proxy that directs the way the proxy holder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain.
- c. The proxy holder must be present in person at the meeting and shall cast the member's vote by secret Ballot.
- d. Any member who gives another person his/her proxy does so with the full understanding that the Association and Inspectors will not be responsible for ensuring that any proxy holder votes the proxy in accordance with the proxy holder's direction.

6. Effect of Submitting a Ballot.

- a. Once a member mails or delivers his/her ballot that ballot cannot be changed or revoked.
- b. Only one ballot may be submitted for each address. Once a member submits a ballot with regard to a particular address, no other ballot or proxy may be submitted for that property. Should more than one ballot be received for any property, the first ballot received will be the one counted. If it cannot be determined which ballot was the earliest received, no ballot will be counted for that property except one ballot for quorum purposes only.

7. Registration of secret ballots at the meeting.

- a. The Association will have the membership voter list at the meeting.
- b. All ballots must be sealed in the two sealed, preaddressed envelopes and Envelope #2 must contain all required information on the upper left-hand corner.
- c. If a member brings ballots for other members to the membership meeting, the ballots must be sealed in separate individual Envelopes #1 and #2 as required above. The Inspectors will register and make all necessary determinations regarding those sealed ballot envelopes.
- d. The Inspectors will review the information provided on the upper left-hand corner of Envelope #2 and will determine whether the failure to include any information should result in the ballot being

counted for quorum purposes only, or not counted for any purpose. The Inspectors will require, at minimum, the following:

- i) The name of the member must be legible and must match the name of at least one of the recorded owners of the property as shown on the Association's membership list.
- ii) The member's signature must be on the Envelope #2.
- iii) The address shown on Envelope #2 must correspond to the member's property address on the Association's membership list.

8. Registration of Members in Person.

- a. Members wishing to vote in person at the membership meeting must present themselves at the registration table.
- b. A member may not revoke any previously mailed or delivered ballot; if the Inspectors confirm that a ballot was received by the Inspectors the member may attend the meeting but will not be given a new ballot to vote at the meeting. If the Inspectors confirm that a ballot was not received the member will be given a ballot and two envelopes to mark, seal and complete and cast in secret at the meeting.
- c. Members voting in person at the meeting must still use the Association provided ballot and Envelopes #1 and #2, and Envelope #2 must be filled out, sealed and signed. Failure to use the two-envelope system at the meeting may lead to invalidation of the ballot cast at the meeting and shall prevent the ballot from being counted at any adjourned date if the meeting is adjourned for lack of a quorum.

9. Registration of Proxies/Determination of Quorum.

- a. If a person brings proxies to the membership meeting, the Inspectors will review and make all necessary determinations regarding those proxies, including the validity of those proxies.
- b. The Inspectors will determine based upon the count of the number of members voting (as appropriate) in person, by proxy, or by mail, as shown on the voter list, that quorum has been obtained.

Quorum, as defined in Article V, Section 5.5 of the By-laws, is a majority of all members or 20 members.

- c. If a member has cast a ballot by mail or delivery to the Inspectors, that ballot will supersede and control over any proxy submitted, regardless of date.
- d. Once registration at the polls has been closed, no member may revoke his/her proxy.

10. Adjourned for Lack of Quorum/Recessed Meeting.

- a. If any membership meeting is adjourned to another date due to lack of quorum, ballots already received by the Inspectors in properly completed, sealed Envelopes #1 and #2 will be valid for adjourned meetings. For adjourned meetings, the quorum requirement will be 25% of all members or 10 members.
- b. The ballots will be counted during a properly noticed open meeting of the Board or during a membership meeting. The Inspectors may request that any meeting be recessed to allow the Inspectors to continue the counting and tabulation of the ballots at another time. Notice of the recessed meeting will be given as required by law. The Inspectors will continue to maintain custody of all ballots until the counting and tabulation is complete.

11. Observation/Custody of Ballots, Etc.

- a. Any candidate or other member of the Association may witness the counting and the tabulation of the votes.
- b. No person, including any member of the Association, any employee or manager, may open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
- c. The sealed ballots at all times will be in the custody of the Inspectors until after the tabulation of the votes, and for twelve months following conclusion of the vote, at which time custody of the ballots, envelopes, and voter list shall be transferred to the Association.

12. Consultation with Association Counsel. The Inspectors will have the authority to confer with Association legal counsel in advance or at the

meeting. Legal counsel represents the Association and does not represent the members, Inspectors, Board members, management or any other person. By the adoption of these rules, Association legal counsel has been authorized by the Board of Directors to provide advice to and to waive the attorney-client confidential communication privilege as determined necessary or prudent by the attorney to inform and advise the Inspectors regarding issues related to the Inspectors performing their duties for the Association. The Inspectors may confer with Association legal counsel outside the presence of the members.

13. Nominating/Balloting. Once registration for the polls has been closed, if a quorum is present, the membership meeting may proceed with nominations from the floor, followed by balloting, etc.

14. Tabulation, Counting, Inspectors' Conduct, Etc.

- a. Once the Inspectors have closed the balloting, the Inspectors may then open the sealed envelopes and begin the count and tabulation of the ballots.
- b. All votes shall be counted and tabulated by the Inspectors in public, at a properly noticed open meeting of the Board or of the members, after verification of a quorum of the membership.
- c. Members and candidates may witness the counting and tabulation from a distance of no less than six feet from the Inspector.
- d. The Inspectors will not provide members or candidates with information, will not answer questions, engage in discussion and will not provide any interim counts or tabulations. Inspectors will only provide the members with a final count and tabulation.
- e. Members and candidates may not communicate with the Inspectors during the inspection, registration, count or tabulation process.
- f. Ballots must be legible and clearly marked. If the ballot is marked to cast more votes than the maximum number of votes for that election, no votes will be counted, and the ballot will be used for quorum purposes only.
- g. Inspectors will certify the results of the membership election by completing a written report.

15. After Tabulation.

- a. Results of the election shall be announced and be promptly reported to the Board of Directors and recorded in the minutes of the next meeting of the Board.
- b. Results shall be available for review by all members after the certification of the membership meeting by the Inspectors.
- c. Tie Votes: For election of Directors, in the event of a tie vote among any number of the candidates, the tie shall be broken by lot or by any method of determining the results by chance.
- d. Within 15 days of the election, the Board shall publicize the results of the election in a communication directed to all the members.
- e. In the event of an election challenge and upon receipt of a written request from a member, the Association will make the ballots, voter list and outside envelopes available for inspection and review by Association members or their authorized representatives. In order to protect the security of the ballots, the Inspector(s) of Elections must be present during such review.
- f. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

16. Access to Association Facilities and Communications/Use of Association Funds.

- a. Any candidate or member advocating a point of view shall be provided access to association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election. Equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications but may include a statement specifying that the candidate or member, and not the association, is responsible for the content.
- b. Any candidate or member advocating a point of view shall have access to common area meeting space during a campaign at no cost, including those who are not incumbents, and to all members

advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

THE FORGOING ASSOCIATION RULES WERE ADOPTED _____, 2020 by the Board of Directors, Desert Skies Homeowners Association, in a duly noticed open Board Meeting following the Board's compliance with the Davis-Stirling Common Interest Development Act and the California Corporation Code.

ATTESTED TO:

By: _____
Secretary, Desert Skies Homeowners Association

Notice of Association Rules adoption was mailed to the membership within 15 days of the adoption date.

Community Association Financial Services

Title: _____