

# HIDDEN VALLEY VILLAGE OWNERS ASSOCIATION

## Board of Directors Special Meeting

### Minutes

**Date of Meeting: Thursday, July 30, 2020**

**Location: 2031 Charleen Cir. Carlsbad, CA 92008.**

**Ruth Wheeler is inviting you to a scheduled Zoom meeting.**

**Topic: Hidden Valley Special Meeting**

**Time: Jul 30, 2020 6:30 PM Pacific Time (US and Canada)**

**Join Zoom Meeting**

**<https://us02web.zoom.us/j/84546240636?pwd=OHdQc1FTdTlYaVZVbzEzT045TjJEUT09>**

**Meeting ID: 845 4624 0636**

**Password: 460950**

**If you have difficulty accessing the zoom meeting you may call (760) 500-0740**

**MEETING RULES:** No [audio or video recording](#) allowed by attendees. However, the secretary may record the meeting to aid in the preparation of minutes. The recording is deleted once the minutes have been prepared. As provided in the "Open Meeting Act," members may observe the meeting but do not have the right to participate in the board's deliberations or votes. Members may address issues during the open forum portion of the meeting

A. Call to order by President Ruth Wheeler: 6:32 PM

B. Roll call. Record Board Members, Management, owners and guests, present:  
Board Members: Ruth Wheeler, Steve Latshaw, Tony Cole, Matt Desario, Kinoka Ogsbury, Dave Natali, Jeff Risse. Homeowners: John McElhone unit 38, Missy Fay, Unit 132, Doug and Chalese Miller Unit 109, Mike Tikunoff unit 21, Laura Samuelson Tikunoff unit 38. Tiffany Mejia 15, James Murphy unit 122, Christopher and Jana Prezbiada unit 40, Rosemary Braun and David Fox unit 105, Jeff Alger and Lauel Leach unit 42, Matt McDonald unit 102.

C. Announcements/Orders of the day: Items on agenda are new territory, will try to keep meeting short and stick to the agenda, request that board members put away cell phones.

Request by Jeff Risse to Move Censure Hearing before Removal of Secretary accepted by general consensus:

1. Hearing and possible action to censure Matt Desario for breach of code of ethics

MOTION BY DAVID NATALI: Move to censure Matt Desario because of his violation of Board Member Code of Ethics; specifically, failure to "Respect and support the majority decisions of the Board".

Second: Steve Latshaw

Passed: 4-2-1 Yes: Dave Natali, Steve Latshaw, Jeff Risse, Ruth Wheeler, No, Tony Cole, Kinoka Ogsbury, Abstain Matt

Matt Desario is Censured.

-Disclosure of failure of board to notify Matt of the hearing in writing 10 days in advance: Matt was presented with the option of delaying the hearing so that a written notice of the hearing could be delivered. Matt requested immediate open session hearing.

Rules Violated:

1) Breach of Code of Ethics signed by Matt Desario on January, 16, 2020 specifically: "Respect and support the majority decisions of the board"

[https://www.hiddenvalleymammoth.com/uploads/1/1/2/1/112158911/ethics\\_pledge\\_-\\_matthew\\_desario.pdf](https://www.hiddenvalleymammoth.com/uploads/1/1/2/1/112158911/ethics_pledge_-_matthew_desario.pdf)

2) Failure to perform fiduciary duties, specifically the "One Voice Rule"

<https://www.davis-stirling.com/HOME/One-Voice-Rule>

See attachment #1 Censure Hearing

Motion: Dave Natali: Move to remove Matt Desario from the Office of Secretary because of his violation of Board Member Code of Ethics; specifically, failure to "Respect and support the majority decisions of the Board".

Second: Steve Latshaw

Passed: 4-3 (Yes, David Natali, Steve Latshaw, Tony Cole, Ruth Wheeler no, Kinoka Ogsbury, Jeff Risse, Matt Desario

Arguments for the Motion: Breach of Code of Ethics, President and Secretary have difficulty working together, format of minutes is not in keeping with standards for minutes

Arguments against the Motion: Matt feels his minutes offer transparency and better documentation of the meeting. Need to find somebody else to be secretary.

#### E. Board election of new secretary

Volunteers for Secretary: Tony Cole, Laura Tikunoff, Matt Desario

-Some board members expressed opinions that the secretary should be on the board, others felt that was not necessary

-Voting Results Tony Cole 5 votes, Matt Desario 2 votes

F. Changes to order of agenda...sorry don't know who made the motion, but I know it failed

Motion: Move homeowners forum to beginning of meeting; Matt Desario

Second: Jeff Risse

Failed: 2-5-0

G. Recusals: None

H. Adoption of minutes

Motion: Adopt Minutes for June 27, 2020 meeting; Matt Desario

Second: Steve Latshaw

Vote: 4-2-1 [Yes, Matt Desario, Kinoka Ogsbury, Steve Latshaw, Tony Cole, No Ruth Wheeler, Jeff Risse, Abstain, Dave Natali]

### **Business/Action/discussion Items**

1. Approval of work request for unit 22 and unit 26

Motion: Ruth Wheeler; approve the work request for unit 22 with the stipulation that the replaced window be casement style. Direct managers to follow through with the routine management duties for work requests

Second: Dave Natali

Passed: 7-0

Motion: Ruth Wheeler; approve the work request for Unit 26: fireplace replacement with a pellet stove. Direct managers to follow through with the routine management duties for work requests

Second: Kinoka

Passed: 6-0-1 Abstain Steve Latshaw

2. Challenge by homeowner regarding incorrect procedure for the Bylaw Vote.

Information and Disclosure:

Homeowner Jeff Alger brought up points regarding the new procedures for voting that are required by the new law SB323. The Board made the following mistakes:

1) We were supposed to appoint exactly 1 person or 3 people to be "inspectors of elections".

We erroneously appointed a pool of 7 people.

2) Inspectors of Election are supposed to determine where ballots are to be collected and when the "polls" open and close prior to secret ballots being mailed out.

3) One of Jeff's specific complaints was that the President Ruth Wheeler, requested a count of the number of ballots that had been mailed into Cindy Butners office and had physical access to the ballots. Cindy Butner did not have an answer for Jeff, because SB323 is a new law. She spoke to the association's attorney and sent this reply to Jeff: " Yes, Ms. Wheeler did request and receive information about the number of returned ballots from our office. This is a common practice; boards typically check in with us after ballots have gone out to be sure that enough ballots are coming in so that they are going to have a quorum for the ballot count. No directors, including Ms. Wheeler, have had physical access to the ballots that have been received.

The president apologized to all, She was following past protocol, In the future the board can have the inspectors of election do this type of legwork.

With these mistakes there was a board concern that the errors would make the Bylaw vote null if challenged:

Here is the attorney Tim Sanford's comments on the situation sent via email to the board "From what I know about the way this vote has been conducted, I am not aware of any legal grounds to cancel the vote. Although I have not researched this issue (I would be happy to do so if

requested), from my experience votes like this one can only be nullified if there is some mistake in the process so grave that the results of the vote were affected and the true intent of the voters cannot be ascertained. For example, if a ballot was sent out with an inadvertent deletion of the name of one of the nominees for the board of directors, than the vote should be nullified and redone. Here, while procedural errors appear to have been made, none of them seem to affect the ability of the voters to cast their votes knowingly and accurately. Please let me know if there are other facts in this regard of which I may be unaware.

3. Cancel current Bylaw vote and reschedule new election.

Motion: Ruth Wheeler; to table to the end of the Meeting

Second: Dave Natali

Vote: Passed 6-0-1 Abstain Matt Desario

4. Appointment of inspector/s of election for July 30 vote counting

Motion: Ruth Wheeler; Appoint Jamie Kelly, Doug Miller and Chalese Miller as inspectors of election for the Bylaw vote

Second: Steve Latshaw

Passed: 7-0

Jamie Kelly was not present in the common area room so Motion was rescinded.

Motion: Ruth Wheeler; Appoint Doug Miller as inspector of election for the Bylaw vote

Second: Matt Desario

Passed: 7-0

5. Counting of ballots for Bylaw vote – Inspectors began at 7:40

6. Request that Matt Desario resign from the board

MOTION: DAVID NATALI; Move to request Matt Desario resign from the Board because of his violation of Board Member Code of Ethics; specifically, failure to “Respect and support the majority decisions of the Board”. In his signed Commitment Pledge, he states “If, for any reason, I find myself unable to carry out the above duties as best as I can, I agree to resign my position as a board member/officer”.

Second: Ruth Wheeler

Motion Failed Vote: 3-2-1 Yes: Dave Natali, Jeff Risse, Ruth Wheeler, No Tony Cole, Kinoka Ogsbury, Abstain, Steve Latshaw

Discussion departed from the topic of the board request that Matt to step down. Matt stated that he would not step down stating that he had done nothing wrong.

7. Action to Rescind a motion by Kinoka Ogsbury to include the initial email sent to the Board by Mike Tikunoff and owners in March to the voting packet sent out to Homeowners by Butner Association as a “Argument in favor of Overturning the rule.”

Second Ruth Wheeler. Motion Passed at June 27, 2020 board meeting 4-2-1 (Yes: Kinoka Ogsbury, Matthew Dsario Jeff Risse Tony Cole; No: Ruth Wheeler Dave Natali Abstain: Steve Latshaw)

Motion: To rescind the Motion; Tony Cole  
Second: Matt Desario  
Vote: Passed 5-2 No ]Matt Desario, Kinoka Ogsbury]

Motion Matt Desario; *[Matt, please insert motion]*

Second: ???

Passed: ???

Arguments For: The owners who are demanding reversing the rules should be able to present their argument; *anything else?...*

Arguments Against: The owners have access to the association's mailing list and emails they can campaign independently.

8. Appointment of inspector of elections for rule change vote.

Motion: Ruth Wheeler; appoint Doug Miller as inspector of election and schedule vote for Aug 7 through Sept 8

Second: Tony Cole

Passed 7-0

Meeting for ballot counting will be Wednesday Sept 9, 2020

9. SuddenLink Contracts: See attachment #2

Motion: Matt Desario; *[Matt, please insert motion]*

Second: Tony Cole

Passed: 7-0

Motion: Ruth Wheeler: Accept Matt's option 2 plan: Resume payment, press for a quote from SuddenLink Bulk Services for a new bulk contract. Aaron who helped with the Office account recommended calling Suddenlink to cancel solely to speak to the 'retention department' as he can see we are not getting prompt responses from SuddenLink Bulk Services.

Second: Tony Cole

Passed: 7-0

10. Results of Bylaw Vote:

Bylaw vote count was:

67- Ballots mailed in

42- Voted to approve the Bylaws

25- Voted against approval  
Bylaws are adopted, effective today 7-30-2020

11. Submission of corrected Voting Rules to Homeowners for Review

Motion: Kinoka Send voting rules out for 28 day review in next billing statement  
Second: Ruth Wheeler  
Passed: 7-0  
See Attachment #3

12. Homeowners Forum:

13. Recess to Executive Session

1. Items discussed in Executive Session:

Warnings sent to three homeowners for: failure to notify management of occupancy, and nuisance violations.  
Board member protocols

**Meeting adjournment: 9:57**

## **ATTACHMENT #1-CENSURE HEARING**

## **ATTACHMENT #1-CENSURE HEARING**

### **Action that precipitated the notice of violation**

On 7/15 the board received the following email information sent from a homeowner:

To the board...We had a phone call from Matt personally to vote No on the boards Bi-Laws on the coming election and we think that is very unprofessional of him...We are requesting that Mr. Matthew Desario should be removed from the Hidden Valley Board...

In following up with the homeowner these specifics were disclosed:

- Matt told me how to mark my ballot
- he told me how to sign the envelop
- he had me take a picture of the signed envelop and text it to him so that he could be sure I voted.

-The photo of the envelop was provided by the homeowner.

### Rules Violated

:

1) Breach of Code of Ethics signed by you on January, 16, 2020 specifically: "Respect and support the majority decisions of the board"

[https://www.hiddenvalleymammoth.com/uploads/1/1/2/1/112158911/ethics\\_pledge\\_-\\_matthew\\_desario.pdf](https://www.hiddenvalleymammoth.com/uploads/1/1/2/1/112158911/ethics_pledge_-_matthew_desario.pdf)

2) Failure to perform fiduciary duties, specifically the "One Voice Rule"

<https://www.davis-stirling.com/HOME/One-Voice-Rule>

**One Voice.** Power resides with the board, not individual directors. The board must speak with one voice. All directors take part in discussions and debate. Once a vote is taken, that becomes the board's decision and all directors must support the decision. Dissenting directors do not have to become cheerleaders for the board's decision but a director goes too far when he/she seeks to undermine the board's decision, disrupts meetings and/or constantly seeks reconsideration. Such behavior can result in a breach of the director's fiduciary duties.

**Business Judgment Rule.** When a homeowner is elected to the board, he/she automatically becomes a fiduciary and must follow the business judgment rule. That means the actions of a director must be in good faith, in the best interests of the association, and with prudent care. Stating you voted against the motion but support the board's decision is okay. Disrupting operations, attacking fellow directors and undermining an agreed-upon course of action is harmful to the association and falls outside the Business Judgment Rule. When that happens, disruptive directors face personal liability.

**Dealing with Rogues.** If a director goes rogue, the board may have no choice but to censure him and, when appropriate, form an executive committee to exclude the director from sensitive issues. Any director who believes he must win all votes is not suited to be on the board. If needed, the board can call a membership meeting to recall the director.

**Recommendation:** Once the board makes a decision, dissenting directors should either publicly support the decision or keep silent. They should in no way undermine the board. If the director cannot follow this policy, he/she should immediately resign from the board. Once off the board, the former director can publicly oppose the board's decision, provided he/she does not disclose any privileged information.

-Disclosure of failure of board to notify Matt of the hearing in writing 10 days in advance: Matt was presented with the option of delaying the hearing so that a written notice of the hearing could be delivered. Matt requested immediate open session hearing.

-Matt's defense of his behavior included that the board had not specifically voted to adopt the bylaws, only to present the bylaws as rewritten for an ownership vote.

-He made references that other board members had misbehaved and he felt he was being singled out unfairly.

-Jeff Risse commented that using the test of common sense Matt should not have reached out to homeowners to promote a vote against an action that had been endorsed by the board.

## **ATTACHMENT #2-SUDDENLINK**

### **SuddenLink Options for the Office Wifi/Phones and HOA Bulk Cable Contract**

#### **SuddenLink Options for the Office Wifi/Phones and HOA Bulk Cable Contract.**

SuddenLink Report 7/30//20 by Board Member Matthew Desario

SuddenLink "Office Account" ending in 212-01

HVV maintains a SuddenLink Business account for the HVV manager's office. As of July 20, 2020

- Business Class internet 50/5 for the Managers' Unit and Office billed at \$199/mo
- Business Class Internet 50/5 for the Second Managers' unit billed at \$90/mo
- Analog phone service for the HVV Office and HVV Managers' unit billed at \$30/mo each

Completed first step. Office accounts have been updated as of July 21, 2020 with an immediate savings of \$110/mo + taxes

- Business Class internet 100/10 for the Managers' Unit and Office billed at \$89/mo
- Business Class Internet 100/10 for the Second Managers' unit billed at \$89/mo
- Analog phone service for the HVV Office and HVV Managers' unit billed at \$30/mo each

Recommended second step is to purchase equipment \$381 of equipment (NTE \$428) which will allow us to combine the two internet plans into 1 plan, for a further monthly savings of \$89/mo + taxes. ROI would pay off at month (4) if all equipment required. Requires:

- Ubiquiti Unifi Security Gateway (USG) (NTE \$140, current Amazon price is \$124)
- Ubiquiti Networks UniFi FlexHD 802.11ac Wave 2 Wi-Fi Access Point (NTE \$199, current Amazon price is \$178)
- ARRIS SURFboard SB6190 DOCSIS 3.0 Cable Modem (NTE \$89, current price is \$79) *Potentially not necessary if Hidden Valley owns existing cable modem*

Recommended third step; eliminate our existing mobile phone service with AT&T, eliminating a further \$73/mo. Bundle this service with the existing SuddenLink residential internet account (see #2) at a cost of \$35/mo for service + \$25/mo for a device payment plan.

The net effect of the above would be

1. Yearly savings of ~\$3000.
2. Reduction in the number of vendors needed to be managed by Butner HOA services
3. A new 2020 model iPhone for Managers with a larger screen, better reception, better battery life, a 2 year warranty etc.

#### Complete Separate Department

#### SuddenLink Bulk Account ending in 364-01

The bulk account is billing out at \$2000/mo to the HOA and then split up fractionally amongst 61 owners. On advice of SuddenLink's representatives, the HOA has ceased payment for this service the preceding 3 months (May, June, July). Our contract is up for renewal in September. Suddenlink has not granted any additional credits, although if we ultimately cancel our service, we can request a credit for those months. Options

1. Resume payment, leave bulk Cable as-is. Communicate to (61) Owners they will not be permitted to cancel cableTV services
2. Resume payment, press for a quote from SuddenLink Bulk Services for a new bulk contract. Aaron who helped with the Office account recommended calling Suddenlink to cancel solely to speak to the 'retention department' as he can see we are not getting prompt responses from SuddenLink Bulk Services.
3. Proceed to withhold payments, cancel the contract on/before September 1 and communicate to Suddenlink and Owners the 30 day transition plan to commence direct billing. Suggest: Get firm answers from the (61) owners on who would like to end SuddenLink CableTV services and who would like to resume. Suggest: Speak to the remaining 23 owners currently not on the package to assess if any of those owners would 'take the spot' of an Owner who wants to exit the plan.

#### Notes

1. Owners don't use CableTV to work from home, pre or post-Covid. This action only relates to Cable TV services.
2. Any Owner who wants to continue paying for their own CableTV during Covid is able to do so without obligating the 60 other owners who do not.

#### Key clarifications

- The bulk contract and potential cancellation affects only **SuddenLink Cable Television** ("Cable TV") services for owners on the bulk program. In no way will changes to "Cable TV" impact long term resident's ability to work from home. These Owners make use of **SuddenLink Internet Services** ("Internet") and/or **SuddenLink Telephone Services** ("Telephone") services which are completely unrelated services from "Cable TV". Owners

and Renters making use of "Internet" and "Telephone" services with SuddenLink due so via a direct billing agreement with SuddenLink. For these "Internet" and "Telephone" services, these Owners pay their bill directly and are responsible for selecting the packages and pricing directly. If Owners wish to continue their "Cable TV" services once the bulk contract is terminated, they have 30 days to so following cancellation of the bulk account to create a direct billing agreement by calling SuddenLink. SuddenLink can easily add "Cable TV" to any existing direct billing account that has "Internet" or "Telephone." They can also easily create a new SuddenLink account for any Owner that only desires "Cable TV" service. No Owner will be impacted from working on their computers at home or working remotely from home during Covid-19.

- Since the May meeting, I have emailed and called 30+ times without regular response from our SuddenLink Bulk TV representative. The Office account reduction went much more smoothly once I was transferred to the correct department.

## **ATTACHMENT #3-VOTING RULES WITH CORRECTIONS**

### **Hidden Valley Village Voting Rules**

#### **Hidden Valley Village**

#### **Owners' Association, Inc.**

#### **Rules for the Election and Removal of Directors by Secret Ballot**

In connection with the election and removal of directors, the following rules and procedures shall apply:

##### **1. Meeting at Which Secret Ballots Shall Be Tabulated.**

1.1 The inspectors of election or their designee(s) shall tabulate the ballots for the election of directors at the annual meeting of the owners or at a special meeting of the Board of Directors duly noticed for the purpose of counting ballots. The Board of Directors shall determine the date, time and place of said annual meeting of the owners and/or the special meeting of the Board of Directors in accordance with the Association's Bylaws.

1.2 The qualifications for voting and the voting power of each membership are as stated in the Association's governing documents and as shall be determined in accordance with Section 4.4.1 hereof.

1.3 The voting period for elections shall be at least thirty (30) days. The polls shall open and close as stated on the secret ballot distributed for each election.

##### **2. Nomination of Candidates.**

2.1 At least ninety (90) days before the date of the meeting at which the ballots for the election of directors are to be counted, the Association shall mail to each owner a Candidate Nomination Form, which shall include a description of the procedure and deadline for submitting a nomination.

2.2 Owners may nominate themselves or another person; provided, however, all candidates must meet the qualifications set forth in Section 3.

2.3 Any candidate nominated by another person will be contacted to confirm that such candidate consents to having his or her name placed in nomination for election to the Board.

2.4 All candidates who meet the qualifications to serve on the Board of Directors and, if appropriate, have confirmed their willingness to run for election to the Board of Directors, shall be listed on the secret ballot if their candidate nomination form is received by the date stated on the form.

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2.5 The Candidate Nomination Form must be returned to the Association at the address provided on, and by the deadline stated on, such form, which deadline must be at least sixty (60) days before the date the ballots for the election of directors are scheduled to be counted.

### **3. Qualifications of Candidates for Board of Directors.**

3.1 The following persons are disqualified as candidates for the Board of Directors and may not be nominated therefore:

3.1.1 Those who are not members (owners) of the Association, except that 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 (owner) for purposes of this Section 3.1.

3.1.2 Those who are not current in the payment of regular and special assessments, which are consumer debts subject to validation; except that those who have paid regular or special assessments under protest pursuant to Civil Code section 5658, or who have entered into a payment plan pursuant to Civil Code section 5665, shall not be disqualified under this Section 3.2.

3.1.3 Those who, if elected, would be serving on the board of directors at the same time as another person who holds a joint ownership interest in the same separate interest parcel and the other person is either properly nominated for the current election or an incumbent director.

3.1.4 Those who have been a member (owner) for less than one full year.

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

3.2 Notwithstanding Section 3.1, the Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10 of the Davis-Stirling Act of the Civil Code.

#### **4. Inspectors of Election.**

4.1 The Board of Directors shall appoint either one (1) or three (3) independent third parties as inspectors of election after the close of candidate nominations but before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:

4.1.1 a volunteer poll worker with the county registrar of voters;

4.1.2 a licensee of the California Board of Accountancy;

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4.1.3 a notary public;

4.1.4 a member of the Association, 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.

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

4.3 Prior to the secret ballots being mailed to all of the owners, the inspectors of election shall meet to determine to whom the secret ballots shall be returned (the "Ballot Collector"), which may be the Association's property manager, if any.

4.4 The inspectors of election shall also do all of the following:

4.4.1 determine the number of memberships entitled to vote and the voting power of each;

4.4.2 receive ballots;

4.4.3 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;

4.4.4 count and tabulate all votes;

4.4.5 determine when the polls shall close;

4.4.6 determine the result of the election; and,

4.4.7 perform any acts as may be proper to conduct the election with fairness to all members in accordance with sections 5100-5145 of the Civil Code, pertinent provisions of the Corporations Code and all applicable rules of the Association regarding the conduct of the election that are not in conflict with these codes.

4.5 The following shall be prohibited:

4.5.1 The denial of a ballot to a member (owner) for any reason other than not being a member at the time when ballots are distributed; and

4.5.2 The denial of a ballot to a person with general power of attorney for a member (owner). The ballot of a person with general power of attorney for a member (owner) shall be counted if returned in a timely manner.

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4.6 An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interests of all members of the Association. If there are three inspectors of election the decision or act of a majority shall be effective in all respects as the decision or act of all.

4.7 Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

4.8 The Board of Directors may remove and replace any inspector of election prior to the tabulation of ballots if an inspector of election resigns or if the Board of Directors reasonably determines that an inspector of election will not be able to perform his or her duties impartially and in good faith.

4.9 The inspectors of election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspectors of election deem appropriate, provided that the additional persons are independent third parties as defined herein.

## **5. Secret Ballot Procedure; Record Date.**

5.1 Ballots and two (2) preaddressed envelopes with instructions on how to return ballots, along with a copy of these Election Rules, shall be mailed by first-class mail or delivered by the Association to every member not less than thirty (30) days prior to the deadline for voting. Alternatively, the Election Rules may be posted on the Association's website, so long as the website address is included on the ballot together with the phrase "The rules governing this election may be found here," in at least twelve point font. The ballot instructions shall include the date and time by which, and the physical address where, ballots are to be returned or mailed or handed to the inspector or inspectors of elections; 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.

5.2 Ballots must ensure the confidentiality of the voters.

5.2.1 A voter may not be identified by name or separate interest identifier on the ballot.

5.2.2 The ballot shall not require the signature of the voter.

5.2.3 The ballot itself is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign his or her name, indicate his or her name and indicate the address or separate interest identifier that entitles him or her to vote. The second envelope is addressed to the inspectors of election, who will be tallying the votes.

5.3 Owners may return their secret ballot by mail, hand deliver it to the meeting or complete the ballot at the meeting; provided, only those ballots which are delivered to the inspectors of election prior to the polls closing shall be counted.

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5.4 A member may request a receipt for delivery of his or her ballot.

5.5 The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.

## **6. Campaigning.**

6.1 All candidates or members advocating a point of view during a campaign, including those not endorsed by the Board of Directors, shall be provided equal access to Association media, newsletters, or Internet Web sites (if any) for purposes that are reasonably related to the election. The Association may 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 that content.

6.2 All candidates, including those who are not incumbents, and all members advocating a point of view, including those not endorsed by the Board of Directors, for purposes reasonably related to the election, shall be provided equal access to any common area meeting space during a campaign, if any exists, at no cost.

6.3 Association funds shall not be used for "campaign purposes" in connection with any board election. The term "campaign purposes" is defined to include, without limitation, (1) expressly advocating the election or defeat of any candidate that is on the ballot; or (2) including the photograph or prominently featuring the name of a candidate on a communication from the association (except the ballot and voting materials and equal access communications sent pursuant to Sections 6.1 and 6.2 above).

## **7. Handling of Ballots.**

7.1 As secret ballots are returned to the Ballot Collector, the Ballot Collector shall check off on a sign-in sheet that a ballot has been received for such unit. The inspectors of election or their designee(s) may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspectors of election, it shall be irrevocable. Any subsequent ballots received for the same unit shall be deemed invalid and shall be discarded.

7.2 The sealed ballots, signed voter envelopes, voter list and candidate registration list shall at all times be in the custody of the inspectors of election or at a location designated by the inspectors until delivered to the inspectors at the meeting for the opening of the ballots and the tabulation of the vote.

7.3 No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

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7.4 After the tabulation of the vote and for nine (9) months after the election or removal, election ballots shall be kept in the custody of the inspectors of election. After such time, the custody shall be transferred to the Association and the ballots shall be stored by the Association in a secure place for no less than one (1) year after the date of the election or removal. If there is a recount or other challenge to the election process, the inspectors of election shall, upon written request, make the ballots available for inspection and review by an Association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

## **8. Tabulation of Votes; Quorum Requirement.**

8.1 All votes shall be counted and tabulated by the inspectors of election or their designee(s) in public at a properly noticed open meeting of the members or of the Board of Directors. A quorum of members or a quorum of Board members, as the case may be, must be present if required by the Association's governing documents. Each ballot received by the inspectors of election shall be treated as a member present at a meeting for purposes of establishing a quorum.

8.2 The inspectors of election shall confirm that no more than one (1) ballot was returned for each unit.

8.3 Any candidate or other member of the Association may witness the counting and tabulation of the votes.

8.4 In order for the vote for the election of directors to be valid, ballots must be returned by at least a quorum of the owners if a quorum is required by the Association's governing documents. If a quorum of ballots is not received, the ballots will not be counted.

## **9. Announcement of Results.**

9.1 The results of the election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members of the Association.

9.2 Upon certification of the election results by the inspectors of election, the newly elected Board members shall be deemed to have taken office.

9.3 Within fifteen (15) days of the election, the Board of Directors shall publicize the results of the election in a communication directed to all members.

**10. Retention of Candidate Registration List and Voter List.** The Association shall retain, as association election materials, both a candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical

address of the voter's separate interest or if only the parcel number is used. The Association shall permit members to verify the accuracy of their individual information on both lists at least thirty (30) days before the ballots are distributed. The Association

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or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two (2) business days. These two lists shall be retained for the current fiscal year and for each of the prior two fiscal years in accordance with Sections 5200 and 5210 of the Civil Code.

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## **Hidden Valley Village**

### **Owners' Association, Inc.**

#### **Rules for Voting Regarding Assessments Legally Requiring a Vote, Amendments to Governing Documents and Granting of Exclusive Right to Use Common Area by Secret Ballot**

Pursuant to Civil Code Sections 5100-5145, when owners are to vote to approve assessments legally requiring a vote, amendments to governing documents and/or granting the exclusive use of common area to a member, the following must occur:

##### **1. Meeting at Which Secret Ballots Shall Be Tabulated.**

1.1 Unless the vote is being taken in connection with an annual meeting of the owners, the inspectors of election or their designee(s) shall tabulate the ballots for the vote to approve assessments legally requiring a vote, amendments to governing documents and/or granting the exclusive use of common area to a member at a duly noticed (regular or special) meeting of the Board of Directors, or at a special meeting of the members. The Board of Directors shall determine the date, time and place of said meeting.

1.2 The qualifications for voting and the voting power of each membership are as stated in the Association's governing documents and as shall be determined in accordance with Section 2.4.1 hereof.

1.3 The voting period for elections shall be at least thirty (30) days. The polls shall open and close as stated on the secret ballot distributed for each election.

##### **2. Inspectors of Election.**

2.1 The Board of Directors shall appoint either one (1) or three (3) independent third parties as inspectors of election before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:

2.1.1 a volunteer poll worker with the county registrar of voters;

2.1.2 a licensee of the California Board of Accountancy;

2.1.3 a notary public;

2.1.4 a member of the Association 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.

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

2.3 Prior to the secret ballots being mailed to all of the owners, the inspectors of election shall meet to determine to whom the secret ballots shall be returned (the "Ballot Collector"), which may be the Association's property manager, if any.

2.4 The inspectors of election shall also do all of the following:

2.4.1 determine the number of memberships entitled to vote and the voting

power of each;

2.4.2 receive ballots;

2.4.3 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;

2.4.4 count and tabulate all votes;

2.4.5 determine when the polls shall close;

2.4.6 determine the result of the vote; and,

2.4.7 perform any acts as may be proper to conduct the election with fairness to all members in accordance with sections 5100-5145 of the Civil Code, pertinent provisions of the Corporations Code and all applicable rules of the Association regarding the conduct of the election that are not in conflict with these codes.

2.5 The following shall be prohibited:

2.5.1 The denial of a ballot to a member (owner) for any reason other than not being a member at the time when ballots are distributed; and

2.5.2 The denial of a ballot to a person with general power of attorney for a member (owner). The ballot of a person with general power of attorney for a member (owner) shall be counted if returned in a timely manner.

2.6 An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interests of all members of the Association, if there are three inspectors of election. The decision or act of a majority shall be effective in all respects as the decision or act of all.

2.7 Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

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2.8 The Board of Directors may remove and replace any inspector of election prior to the tabulation of ballots if an inspector of election resigns or if the Board of Directors reasonably determines that an inspector of election will not be able to perform his or her duties impartially and in good faith.

2.9 The inspectors of election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspectors of election deem appropriate, provided that the additional persons are independent third parties as defined herein.

### **3. Secret Ballot Procedure; Record Date.**

3.1 Ballots and two (2) pre-addressed envelopes with instructions on how to return ballots, along with a copy of these Election Rules, shall be mailed by first-class mail or delivered by the Association to every member not less than thirty (30) days prior to the deadline for voting. Alternatively, the Election Rules may be posted on the Association's website, so long as the website address is included on the ballot together with the phrase "The rules governing this election may be found here," in at least twelve point font. The ballot instructions shall include the date and time by which, and the physical address where, ballots are to be returned or mailed or handed to the inspector or inspectors of elections; and the date, time and location of the meeting at which ballots will be counted.

3.2 Ballots must ensure the confidentiality of the voters.

3.2.1 A voter may not be identified by name or separate interest identifier on the ballot.

3.2.2 The ballot shall not require the signature of the voter.

3.2.3 The ballot itself is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign his or her name, indicate his or her name and indicate the address or separate interest identifier that entitles him or her to vote. The second envelope is addressed to the inspectors of election, who will be tallying the votes.

3.3 Owners may return their secret ballot by mail, hand deliver it to the meeting or complete the ballot at the meeting; provided, only those ballots which are delivered to the inspectors of election prior to the polls closing shall be counted.

3.4 A member may request a receipt for delivery of his or her ballot.

3.5 The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.

#### **4. Campaigning.**

4.1 All members advocating a point of view during a campaign, including those not endorsed by the Board of Directors, shall be provided equal access to Association media,

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newsletters, or Internet Web sites (if any) for purposes that are reasonably related to the vote. The Association may 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 that content.

4.2 All members advocating a point of view, including those not endorsed by the Board of Directors, for purposes reasonably related to the vote, shall be provided equal access to any common area meeting space during a campaign, if any exists, at no cost.

4.3 Funds of the Association shall not be used for campaign purposes in connection with any Association election held in accordance with these rules except to the extent necessary to comply with duties of the Association imposed by law.

#### **5. Handling of Ballots.**

5.1 As secret ballots are returned to the Ballot Collector, the Ballot Collector shall check off on a sign-in sheet that a ballot has been received for such unit. The inspectors of election or their designee(s) may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspectors of election, it shall be irrevocable. Any subsequent ballots received for the same unit shall be deemed invalid and shall be discarded.

5.2 The sealed ballots, signed voter envelopes and voter list shall at all times be in the custody of the inspectors of election or at a location designated by the inspectors until delivered to the inspectors at the meeting for the opening of the ballots and the tabulation of the vote.

5.3 No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

5.4 After the tabulation of the vote and for nine (9) months after the election or removal, the ballots shall be kept in the custody of the inspectors of election. After such time, the custody shall be transferred to the Association and the ballots shall be stored by the Association in a secure place for no less than one (1) year after the date of the vote. If there is a recount or other challenge to the voting process, the inspectors of election shall, upon written request, make the ballots available for inspection and review by an Association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

#### **6. Tabulation of Votes; Quorum Requirement.**

6.1 All votes shall be counted and tabulated by the inspectors of election or their designee(s) in public at a properly noticed open meeting of the members or of the Board of Directors. A quorum of members or a

quorum of Board members, as the case may be, must be present if required by the Association's governing documents. Each ballot received by the inspectors of election shall be treated as a member present at a meeting for purposes of establishing a quorum.

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6.2 The inspectors of election shall confirm that no more than one (1) ballot was returned for each unit.

6.3 Owners who have not previously submitted a ballot may complete one at the meeting and return it to the inspectors of election prior to the polls closing.

6.4 Any member of the Association may witness the counting and tabulation of the votes.

6.5 In order for the vote on the proposal to be valid, ballots must be returned by at least a quorum of the owners if a quorum is required by the Association's governing documents or applicable law and the requisite percentage of owners must vote to approve the proposal. If a quorum of ballots is not received, the ballots will not be counted.

## **7. Announcement of Results.**

7.1 The results of the vote shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members of the Association.

7.2 Within fifteen (15) days of the vote on the proposal, the Board of Directors shall publicize the results of the vote in a communication directed to all members.

**8. Retention of Voter List.** The Association shall retain, as association election materials, a voter list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. The Association shall permit members to verify the accuracy of their individual information on the list at least thirty (30) days before the ballots are distributed. The Association or member shall report any errors or omissions to the list to the inspector or inspectors who shall make the corrections within two (2) business days. The list shall be retained for the current fiscal year and for each of the prior two fiscal years in accordance with Sections 5200 and 5210 of the Civil Code.

