



October 7, 2021

Re: Verdera Community Association Governing Document Revision Project

To: Verdera Community Association (“Association”) Members:

The Board of Directors has recently prepared proposed revisions of our Association’s Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) and Bylaws to reflect new California laws regulating common interest developments such as Verdera. The Association’s current Bylaws (adopted 2004) and CC&Rs (adopted 2003) predate California’s current Davis-Stirling Act (2014) and Senate Bill 323 (signed into law in October 2019 which regulates Association governance and election procedures), evidencing an immediate and well-overdue need to bring the Association’s Governing Documents to comply with current laws.

Being personally distributed to each of you is a copy of the proposed First Restated Bylaws and First Restated CC&Rs for Verdera. Summarized below are some of the more significant changes to the Bylaws and CC&Rs—both of those mandated by the Davis-Stirling Act and Senate Bill 323 (Section I and III of the Memorandum) and others influenced by those new laws (Section II and IV of the Memorandum). It is natural that some Verdera Members may experience “sticker shock” when reviewing a governing document update of this magnitude, but we want to stress that nearly all changes are mandated or otherwise influenced by California law and that all key provisions and policies in the current Governing Documents have been preserved and included in these new drafts. As can be gleaned from this letter, everything added or modified to the current Governing Documents of Verdera reflect new laws that are mandated by the Davis-Stirling Act or inspired by the Act. We hope that you will view the following updates in such a light.

The information that follows is intended to be a presentation of the Board’s logic or justifications (supported by the Association’s legal counsel) for the required changes that provide a basis for this governing document revision project. The first section indicates all mandated changes and updates to the Verdera Bylaws, and the reasons for making those mandated changes. The second section follows the same format and addresses the changes and updates to the Verdera CC&Rs that are required to reflect changes in law.

I. Important Mandated Revisions to Second Restated Bylaws for Verdera resulting from Davis-Stirling and Senate Bill 323.

Article I: Recitals and Definitions

The Board added definitions for the terms “Annual Budget Report”, “Annual Policy Statement” “General Notice” and “General Delivery”; “Individual Notice” and “Individual Delivery”; “Inspector(s) of Election”; and “Reserves” and “Reserve Accounts”. As provided in more detail below, inclusion of these terms is necessary to reference updates that are mandated by Civil Code sections 5300, 5310, 4045, 5110, and 5550, respectively.

The definition of “Good Standing” was added in part as a result of Senate Bill 323, a law that among other things eliminated many prohibitions which had, for many years prior to 2020, been a basis for disqualifying a member of an owner’s association from either voting in director elections or declaring his or her candidacy for election to the Board. Additionally, the election laws that went into effect this year impacted the duties of “Inspectors of Election” and placed prohibitions against certain parties employed or under contract with the Association to serve as Inspectors of Elections (all as outlined in this update).

Article IV: Membership Voting

One of the most significant changes in association law resulting from the passage of Senate Bill 323 relates to the right of members to vote. Prior to this year, most associations operated pursuant to Bylaws and policies that said that if a member was not current in the payment of assessments or was subject to some other disciplinary measure, that person could be disqualified from voting. Now, Civil Code section 5105(g) provides that a member cannot be denied a ballot for any reason other than not actually being a member at the time that ballots are distributed (Section 4.03).

In Section 4.04 (“Manner of Casting Votes”), language was added to subparagraph (e) to reflect the secret ballot voting rules set forth in Civil Code sections 5100-5135. Subparagraph (d) lists the actions requiring Member approval where the secret ballot voting procedures are required to be used.

Article V: Membership Meetings

In Section 5.01 (“Place of Meeting and Conduct of the Meetings”), Civil Code section 5000 of the Davis-Stirling Act requires that the Board permit any Member to speak at any meeting of the membership of the Association. The Board added language to reflect that requirement.

In Section 5.03 (“Special Meetings”), under circumstances in which Members present a petition to the Board of Directors demanding a special meeting regarding matters that can only be voted on by use of a secret mailed ballot, current law provides that a two-step process is required in response to the Members’ petition:

(i) First, the Board determines that the requisite number of Members have signed the petition (5% or more of the Members) and, if so, then a special meeting is called in response to the petition.

(ii) However, at that meeting, if the demand relates to a matter that must be presented to the Members by a secret ballot, then the vote at the meeting is simply to approve or to disapprove that action (i.e., for the Board to mail the ballots for the secret Member vote).

These two steps are now documented in the draft First Restated Bylaws.

In Section 5.05 (“Quorum Requirements”), the Board added subparagraph (c) to reflect the requirements of Civil Code sections 5100-5135 which provide that in any vote or election requiring use of a mailed secret ballot voting process, each ballot received by the Inspector of Elections from Members shall be treated as a Member present at the meeting (if the same vote had been conducted at a formal membership meeting) for purposes of establishing a quorum.

Article VII: Board of Directors

Section 7.04 entitled “Nomination of Directors; Qualifications for Candidacy” and Section 7.05 entitled “Qualifications for Candidacy for Election to the Board” are entirely governed and dictated by California’s Senate Bill 323 statutory changes to the Davis-Stirling Act. Carefully review these new Sections to better understand how Director Elections will be conducted going forward. Notably, the one-year hiatus on a former Director’s ability to apply for a consecutive term has been removed as a mandate of Senate Bill 323. Also, Civil Code section 5105(c) has significantly restricted the grounds on which a member can be disqualified from being a nominee for election to the Board. Even if a person has been convicted of a felony that is not grounds for disqualification unless the nature of the offense would prevent the association from purchasing fidelity bond coverage.

Section 7.06 (“Election of Directors; Ballot Tabulation and Retention Requirements”) added subparagraphs (a) through (h) to reflect the Secret Ballot Voting Requirements of Civil Code sections 5100-5135 and procedures that must be followed during director elections.

Section 7.07 entitled “Conflicts of Interest” is added to reflect new conflicts of interest rules and prohibitions, applicable to both Directors and Members of committees.

Article VIII: Meetings of the Board of Directors.

Section 8.01(b) entitled “Requirements for Conducting Board Meetings by Conference Telephone or other Electronic Means” permits the Board to conduct meetings by use of conference telephone technology, and designation of a location where Members may attend the meeting and where at least one director or other person designated by the Board must be present. “Notice of Board Meetings” was added to dictate time and manner of providing member notice in accordance with Davis-Stirling mandates.

Section 8.06 entitled (“Attendance by Members”) was modified in its entirety, and subparagraphs (a) through (f) were added to comply with the Common Interest Development Open Meeting Act Provisions mandated by the Davis Stirling Act.

Article XII: Member Assessment Obligations and Association Finances

In Section 12.04(a) (“Required Contents of the Annual Budget Report”), has been revised to add subparagraphs (i) through (ix) in order to reflect proper disclosures, summaries, and statements of the Association’s Pro Forma Operating Budget that detail the Association’s reserves, reserve funding plans, and reserve accounts as mandated in Civil Code Sections 5550-5570. Although the Association has been operating in practice in compliance with these Civil Code mandates, the documents themselves did not currently reflect statutory practice—thus necessitating this update. This applies to the remainder of comments in this letter regarding Articles XII and XIII.

Section 12.06 (“Review of Accounts”) modified the requirement that accounts be reviewed on a quarterly basis to that of a monthly basis.

Section 12.07 (“Required Reserve Studies”) was added to the current Verdera Bylaws, to reflect Civil Code section 5550, and includes a list of information that must be included in the Association’s Reserve Studies and requirements that at least once every three years a major reserve study (meaning one that has input from qualified independent professionals such as the Browning Reserve Group) must be commissioned that is then updated on an annual basis.

Section 12.08 (“Statutory Assessment and Reserve Funding Disclosure Summary”) was added to the current Verdera Bylaws. This disclosure summary is required by the Association to be presented to the Members in accordance with Civil Code section 5570.

(New) Article XIII: Other Required Reports and Disclosures to Members

In addition to the documents that the Association is required to distribute to the Members under Article XI, various statutes applicable to common interest developments and owner associations (namely Civil Code sections 5310 and 4045) require that the disclosures and information for the Association’s Annual Policy Statement and Rule Changes be provided to the Members of the Association.

Article XIV: Miscellaneous

Section 14.01(a) (“Member Inspection Rights”) was added to this new draft of the Bylaws and replaced the list stated in the current Bylaws. This change is mandated by several Civil Code sections, including 5205, 5210, and 5230, and details the manner in which inspection rights may be exercised by the Members. “Electronic Delivery” of information is a new concept embodied in the updated Davis-Stirling Act and is the primary driver for including subparagraphs (i) through (ix).

Sections 14.01(b) and 1(c) were added in accordance with the above-stated Civil Code sections and detail the inspection rights of directors and the respective adoption of reasonable inspection rules.

II. Important Substantive Change to the Bylaws for Verdera.

Article IV: Membership Voting: Cumulative Voting. The Board has decided to remove the ability of members to participate in cumulative voting. The reason the Association’s Bylaws included this provision to begin with is because the Regulations of the California Department of Real Estate (“DRE”) that must be followed in the drafting of common interest governing documents during the period of developer control mandate that the

documents include the right to cumulate votes. Those same Regulations also give the developer three votes for each Unit that the developer owns, whereas other owners who purchase a Unit from a developer only have one vote. In other words, the developer already has a strong, weighted voting advantage and is therefore in the best position to use cumulative voting effectively. The DRE Regulations are supposed to ensure that developer-drafted common interest governing documents are fair and equitable to the consumer who is buying a home, and yet by mandating the right to cumulate votes, the DRE almost ensures that the developer can dominate the association in its early years.

When the developer is out of the picture (as is the case at Verdera), nearly all associations dispense with the cumulative voting requirement as it is no longer necessary. Many adopt the position that each lot should be given one vote and one vote only.

(ii) Proxy Voting: In Section 4.05 "Prohibition of Proxy Voting", the new section eliminates the practice of voting by proxy. This revision is due to the fact that current law requires practically all significant member votes be conducted by secret ballot that is mailed directly to all Members; therefore, proxy voting is not required.

III. Important Mandated Revisions to the Declaration of CC&Rs for Verdera resulting from Davis-Stirling, Senate Bill 323, and Assembly Bill 670.

Article I: Definitions

Davis-Stirling requires associations to provide to its Members an Annual Budget Report and an Annual Policy Statement pursuant the Civil Code sections 5300 and 5310, respectively (as discussed in more detail below). As their names suggest, the Annual Budget Report provides members with important financial information relating to the Association and the Annual Policy Statement is a compilation of important information on other rules and procedures of the Association. Accordingly, the Board has added new terms for "Annual Budget Report" and "Annual Policy Statement" as necessary for this CC&R update. On a similar premise, definitions for "General Notice" and "General Delivery"; "Individual Notice" and "Individual Delivery"; "Inspector(s) of Election"; and "Reserves" and "Reserve Accounts" were included as necessary to reference updates that are mandated by Civil Code sections 4045, 5110, and 5550, respectively.

In 2020, California also enacted AB 670, which instructed that no provision in CC&Rs can prohibit or unreasonably restrict the construction or use of an Accessory Dwelling Unit ("ADU") or Junior Accessory Dwelling Unit ("JADU") on a lot zoned for single family residential use that meets the "above-described minimum standards" for those units, that is, Government Code §§65852.2 or 65852.22. As such, a definition for ADU (and JADU) was appropriate for inclusion in this update.

The Board has also backed the following additional terms: "Majority of a Quorum" (added to complement the term as used in the Bylaws and also as defined in Civil Code section 4070); "Good Standing" (added to clarify for certain prerequisites and requirements for being a candidate for election to the Board of Directors, subject to laws imposed by Senate Bill 323); and "Major Components" (added to identify significant community improvements that are the responsibility of the Association to maintain and repair and which must be included in the Association's Reserve Studies). Although some of these

definitions are not mandated by specific changes to the Davis-Stirling Act, many of the terms are influenced by the new laws and identified in Sections of the Declaration, all of which are required to be included under the Davis-Stirling Act relating to either Member approval requirements or the preparation of proper Reserve Studies.

Article II: Property Rights and Obligations

In Section 2.05 (“Obligation of Owners”), subparagraph (c) sets out the obligation of Owner’s and their successors to provide a number of important documents regarding the Verdera development to prospective buyers, pursuant to Civil Code section 4525. Therefore, subparagraphs (c)(ii)(B)-(F) were added to reflect these updates. Subparagraph (iii) reflects the manner of delivery of such documents and was included in these draft CC&Rs in accordance with Civil Code section 4530.

Article III: Homeowners Association

In Section 3.07(b) (“Association Rules; Distribution of Rules”), subparagraph (b) was amended to reflect updates in the Davis Stirling Act, specifically Civil Code section 4045, that require a copy of the Association Rules to be delivered to each Owner by General Notice.

Additionally in Section 3.07, subparagraphs (c)(i) -(iii) (regarding adoption or amendment of Association Rules) were added or amended as required by Civil Code Sections 4355-4370 to set forth requirements that Members be notified of proposed new “Operating Rules” and changes to existing Operating Rules before those rules or rule changes can be adopted by the Board of Directors.

Current Section “Minimum Content for Election Rules” was revised in part to comply with Senate Bill 323 and changes to the law regarding content of this Association’s Rules, Policies and Procedures specifically regarding rules that pertain to the conduct of elections.

Section 3.08 (“Limitation on Liability of the Association’s Directors and Officers”) was added to the current Declaration and was intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to Civil Code section 5800. The change also reflects protections against claims regarding breach of duty in accordance with Corporations Code section 7231.

Article IV: Assessments

The entirety of Article IV was modified in part to reflect 2014 updates to the Davis Stirling Act. Notably, in Section 4.01(c) (“Creation of Assessment Lien”), provisions were added to specify delinquent assessment collection procedures that follow a Notice of Delinquent Assessment, pursuant to the mandated requirements of Civil Code Sections 5600 and 5650.

The remainder of the Article IV, including the changes to Sections 4.03 and 4.04, reflect updates to the Reserve Account requirements, mailing of notices, and imposition of special and emergency assessments. Section 4.09 (“Maintenance an Expenditure of Assessment Funds”) adds subparagraph (d) which details the required study of Reserve Account Requirements as mandated by Civil Code section 5550. Finally, Section 4.10

(“Collection of Assessments; Enforcement of Liens”) sets forth the detailed procedures that the law now requires associations to follow when pursuing the collection of delinquent assessments under the re-codified Davis-Stirling Act, specifically Civil Code sections 5650 et. seq. All changes to Article IV relating to the imposition and collection of Assessments are driven by the Davis-Stirling Act.

Article VI: Minimum Improvement Standards

Section 6.06, entitled “No Temporary Structures” was added as a result of Assembly Bill 670—a bill passed and effective in California beginning January 2020. The new law (which adds Civil Code section 4751 to the Davis-Stirling Act) renders any covenant, restriction or condition contained in a deed or a set of CC&Rs void and unenforceable if the provision effectively prohibits or unreasonably restricts the construction or use of an “accessory dwelling unit” (“ADU”) or “junior accessory dwelling unit” (“JADU”) on a lot zoned for single family residential use and that meets the standards of Cal. Gov. Code §§65852.2 (minimum standards for ADUs) or 65852.22 (minimum standards for JADUs). Since Verdera is a Placer County Development, clarifying text in these Sections was necessary. This same reasoning applies to the update in Section 8.01 "Use of Lots".

Article X: Insurance

In accordance with Civil Code section 5300 of the Davis Stirling Act, Sections 10.07 through 10.10 of this Article were revised in this new draft of the Declaration. Those Sections dictate required disclosures and notifications to Members regarding the insurance maintained by the Association, as well as the Board’s authority to revise insurance coverage.

Article XIII: Breach and Default

In this Article, Sections 13.01 and 13.06 were modified in part to include mandatory dispute resolution procedures required by Civil Code sections 5900-6000, including updated notice provisions, procedures for assessment collection actions, and court actions to enforce the governing documents. The most important elements of these new Civil Code rules include: (i) the obligation of associations to offer Internal Dispute Resolution (Civil Code sections 5900 through 5920), and Alternative Dispute Resolution (Civil Code sections 5925 through 5965) before incurring the expense and complexity of filing a civil lawsuit to enforce most Governing Document Violations. Associations must also adopt and distribute a schedule of fines that may be imposed for commonly recurring infractions of the Governing Documents (Civil Code section 5850)

Article XV: Notices

Section 15.03 (“General Rules Regarding Delivery of Notices”) was added to this Article to include requirements for general delivery and electronic delivery of notices to the Association or a Member, as mandated by Civil Code Sections 4050 and 4055.

IV. Important Substantive Change to the CC&Rs for Verdera

Article III Homeowners Association

Section 3.02 ("One Class of Membership") was revised in its entirety to remove "outmoded" Declarant and Golf Course Owner provisions that previously gave the Declarant and Golf Course Owner membership rights in the Association. Since nearly all Lots in the Verdera Community have been sold to Members in the Association and the Declarant is out of the picture, these provisions are no longer required to be in the CC&Rs. The Restated Section 3.02 reflects the current state of the Verdera community, being one class of membership.

Article XVIII Member Approval Requirements for Deleting a Cost Center

Since a Cost Center is currently in effect for front-yard landscaping in Villages 18 & 20, the Board has added an amendment provision to this Article allowing members owning lots in those villages to delete a cost center on petition of at least 10% of the Lots within the cost center. To terminate the Association's obligation to provide the goods and services (i.e., front yard landscape maintenance for Villages 18 & 20) for which the cost center was created, the proposal to delete the cost center may be approved on the affirmative vote of at least a majority of the Members of the Lots that are included in the Cost Center.

V. Conclusion

The vote to approve the proposed new First Restated Bylaws and CC&Rs for Verdera Community Association must be conducted by use of a mailed, secret ballot. To conserve mailing costs, the Board has decided to include in this packet only the revised, Restated versions of the documents. You may view a red line copy, showing all changes to each document by visiting the Verdera website and searching under Member Assistance, Forms & Documents. The Restated Bylaws and CC&Rs will be made available by conducting electronic delivery of the amended documents via posting on its Internet Website to those Members who have consented to such electronic delivery. To save mailing expenses that must be funded through assessments on all Members, property owners are encouraged to provide the Association with consent to receive Association documents and notices by electronic transmission. Separately you will be provided a notice of the deadline when the ballot mailing must occur.

Sincerely,

VERDERA COMMUNITY ASSOCIATION

Tony Manning, President

David Stanley, Vice President

Bill Kemper Treasurer

Brian Hood, Secretary

John Fett, Director