

DRAFT FOR WORKSHOP PURPOSES ONLY

July 16th, 2024

Village Homes Property Owners

Re: **Proposed Amendment and Restatement of Association CC&Rs and Bylaws; Notice of Informational Meeting on July 30th 2024 at 7:00 pm Via Zoom**

Dear Owners:

This firm is legal counsel to the Village Homes Property Owners Association, engaged by the Board of Directors to Amend and Restate the Association's Declaration of Covenants, Conditions and Restrictions ("CC&Rs") and Bylaws.

Enclosed are copies of the proposed amended and restated CC&Rs and Bylaws for your review and consideration. Ultimately you will be asked to approve or reject these amended versions through a secret ballot election. For the CC&Rs to be approved requires 60% of the membership to vote in favor. For the Bylaws to be approved requires a majority (50% plus 1) of the membership to vote in favor.

Because of the combined factors of the original documents being over 50 years old and largely obsolete and that California law has been amended myriad times making the original documents unenforceable in many ways, the restatement process is predicated on creating an entirely new set of documents which (1) maintains the underlying enforceable aspects of the original documents that protect the interests of the members; (2) substitutes code compliant provisions to replace a great deal of the old documents and (3) addresses certain issues (such as rental restrictions) that the original documents do not adequately handle.

The overriding goal here is to provide the Association with an integrated set of governing documents that is consistent with current law and provides reference to current or future laws so that you and the Board will not have to research California statutory laws which have superseded many provisions of your existing documents. **These proposed documents enhance the rights of the individual members and in no way reduce or eliminate the obligations of the Association.**

Your existing governing documents are out of date and are actually inconsistent with a number of current statutory requirements which have been altered or added since 1975. Since 1975, there have been numerous changes to the applicable laws governing common interest developments such as yours. In addition, there have been a multitude of appellate court decisions in California that have interpreted these statutes

and their application to Associations. **For this Association to operate in full compliance with California law, the Association's governing documents should reflect the current state of California law.**

As a practical matter, the referenced statutory changes were enacted to protect the interests of homeowners by establishing clear requirements and procedures for annual financial and insurance disclosures, collection procedures, election procedures, open meeting requirements and member's rights to obtain access to Association books and records, among others. In the enclosed documents, all of the many statutory changes have been reflected, often by reference to the applicable code section. The applicable case law impacting these laws is also reflected in the proposed documents. If adopted, the CC&Rs and Bylaws will be fully compliant with current California law and incorporates future changes to the laws without need for further amendment.

Another critical reason for the amendment is to address some of the serious issues confronting the Association; short term leasing of units, insurance requirements, Owner use restrictions enforcement against renters.

Below is a summary of the major changes/additions to the governing documents.

MAJOR CHANGES/ADDITIONS TO CC&R'S

Deletion of all Declarant/Developer References or Provisions

When the CC&Rs were recorded the Developer still had interests in the properties and reserved certain rights and obligations. After 50 plus years the Declarant Rights have all expired and these provisions have been removed so as to eliminate any confusion as to applicability.

Clear legal description of the Lots governed by the Association and its governing documents.

Village Homes was developed in various phases by multiple developers that periodically added lots which were to be subject to the CCRs and other governing documents. This was generally done through multiple recorded annexation documents identifying these new additions. These multiple documents have been condensed into a single comprehensive legal description which clearly identifies all the covered lots and common area lots subject to the CC&Rs and Association administrative procedures. See Exhibit A to the new CC&Rs.

Exhibit C, D, E and F are copies of tract maps depicting residential and common area lots which are within the Association.

Definitions

New and modern terms which are used in the document are included

Common areas are defined by reference to Exhibits rather than numbers

Compliance assessment is introduced as a remedy which the Board can seek

Eligible first mortgagees are added to address the rights of lenders

Quorum for both the Board and the Association are defined with the Association quorum reduced to 33% to allow elections to be more readily conducted

Article 2 Additions

Art. 2 sets forth common area lots and Members easements over common areas and identifies Board rights to adopt and enforce reasonable rules governing use of common areas

Article 3 Additions

Art. 3 modernizes provisions from original CC&Rs as to automatic membership in association and voting rights and eliminates cumulative voting. There is no material change in the substantive aspects of the CC&Rs

Article 4 Additions

Art. 4 comprehensively modernizes and organizes the powers and limitations of the Board and sets forth how the Board is entitled to adopt rules and regulations which are consistent with the CC&Rs by providing a clear process and protocol which are compliant with current California law which was not in effect when the original CC&Rs were recorded.

Section 4.2 comprehensively lists the legal duties of the Association/Board relative to maintenance of common areas serving the entire community

Section 4.4 provides clear process for the conduct of meetings and record keeping and annual disclosures, all of which are statutorily required now but which were not in effect when original CCRs were recorded

Article 5 Additions

Art. 5 brings the CC&Rs into current conformance with California law relative to levy and collection of regular, special and emergency assessments by the Association, which were not in place when original CC&Rs were recorded. These provisions apply whether or not they were incorporated into the documents.

Article 6 Additions

Art. 6 comprehensively sets forth the Association's statutory obligations relative to maintaining corporate financial records and the membership's certain rights to access and review such records as well as budget disclosure, reserve studies and adoption requirements. These types of provisions were not contained in the original CC&Rs but have to be followed in any event. All of these provisions were enacted by the legislature for the sole purpose of requiring transparency by the Association concerning financial matters to the membership. The disclosures included budgetary disclosures, reserve funding disclosures, insurance disclosures, collection disclosures and others which are required by law but not mentioned at all in the original documents. Section 5.01 (e) and (f) mandates that a reserve study must be performed at least every three years and that the Board shall establish and maintain a reserve fund to repair, replace and maintain major common area components during or at the end of their useful life.

Article 7 Additions

Art. 7 sets forth Architectural Controls to replace those which were in Art. IV of the original CC&Rs. The new provisions vest authority to appoint the committee with the Board or even to have the Board act as the committee. The original CC&Rs relative to architectural issues were designed to have the developer maintain control until it owned less than 10% of the property. Moreover, the original provisions purport to give the committee authority over the board of directors, which is not tenable and likely not how this association has been operating for many years. This new set of provisions also complies with the statutory appeal requirements and provides set time frames for completion of approved projects and provides appropriate legal remedies to the Association to compel compliance.

Article 8 Additions

Art. 8 is perhaps the most important section in the entire document as it addresses conduct by members which is allowed or prohibited. This section modernizes and expands upon the use restrictions in Section 3.02 of the original CC&Rs to conform with current statutory provisions relative to antenna, satellite dishes, solar energy, signs and other matters that have become regulated by statute since the original CC&Rs were recorded. It unequivocally limits subdivision of lots and regulates ADU's consistent with applicable law. Most notably it provides restrictions relative to the leasing of homes by owners and establishes (Section 8.1.24) a number of obligations of owners who rent which will permit the Association to be more efficient in seeking compliance with the CC&Rs by renters and their landlords, including restrictions on minimum lease terms of 30 days as provided by law.

Art. 8, Section 8.3 also updates and confirms owner maintenance obligations on their properties as was previously required in the original CC&Rs. It is more a reconfirmation and not an expansion of these duties.

Article 9 Additions

Art. 9 sets forth that the CCR are enforceable as equitable servitudes through injunctive relief and provided for attorney's fees and costs to the prevailing party. This statement complies with the express provisions of the Civil Code, which is controlling.

Article 11 Additions

Art. 11 describes in detail the minimum insurance obligations of the Association as to the common areas and for liability to insulate the members from individual liability under California law. It is compliant with current applicable law. Section 11.8 strongly encourages members to insure their own property.

Article 13 Additions

Art. 13 contains protection clauses for lenders against certain kinds of amendments by the Association which are modernized from the original in order to make financing and sales of homes easier and more advantageous. These provisions are consistent with lender requirements.

Article 14 Additions Article 14 reduces the percentage approval for amendments to the CC&Rs from 60% to 50% plus one vote (a majority). This percentage is consistent with California law which allows an Association whose proposed amendments have majority approval to seek court approval for amendments. The current CC&Rs require that 60% of the members vote to amend the CC&Rs, which is a very difficult thing to accomplish and potentially gives a small minority of members the ability to block legitimate amendments without legal action. The supermajority requirement also functionally turns a "non-vote" into a no vote, which undermines the vote of those members who actually participate. The modern trend is that if the statute will allow a majority vote to support a petition, there is no good reason not to allow a majority vote to permit amendment in the first place. Consequently, the amendment provides for a simple majority of the members to approve future amendments.

Updating of Assessment and Collection Provisions

The restated version brings the Association current with California law (which the Association is required to comply with) even though many of the provisions are not in the existing CC&Rs. Not only is this simply logical, it provides members with the ability to understand what the legal requirements and procedures for collection that are in place, and the various consequences of the failure to make assessment payments, which are established in California law. California courts require strict compliance with the CC&Rs and statutes relative to assessment collection and the changes will allow members the ability to insure that proper actions are being taken.

Reference in CC&Rs to all applicable Civil Code sections. In order to make it clear that the express obligations of the Association which are set forth in the amended CC&Rs require compliance with current and future statutes, the actual code sections are referenced in the text of the CC&Rs. This is particularly important in the context of budget and financial disclosures that are required annually and in relation to requirements in collection actions. This also ensures that as statutes are amended, the applicable provisions in the CC&Rs track those amendments.

Strengthening of Use Restrictions for Leased Lots. Although the existing CC&Rs do contain provisions relative to leasing of Lots, since this is an issue which is a serious challenge to many associations, the amendment substantially improves the Association's ability to make sure that tenants are obligated and must follow the governing documents. These provisions create clear requirements for the duration of the lease in compliance with California law, provisions of the lease which bind the tenant to the governing documents giving the Association a direct remedy against the tenant.

MAJOR CHANGES/ADDITIONS TO BYLAWS

Inclusion of Election Policy. Since 2006, all Associations were mandated to adopt election policies that track the requirements of California law relative to self-nomination, campaigning, use of secret ballots and the ability to mail in ballots to eliminate the need for proxies. Section 3.07 of the restated Bylaws includes an election policy which complies with that statutory mandate in all respects which will automatically be updated to correspond with changes to the law. It also provides for Election by acclamation where the election is uncontested, saving time and money by avoiding the mailing of ballots. This embedded election policy also will be automatically updated to conform to amendment of applicable statutes so that further amendment is not required on election matters.

Provision defining who is eligible to seek election to the Board or serve on the Board. Section 5.02 provides clear guidance as to what factors determine who is qualified to run for and serve on the Board in compliance with California law. It also clarifies that Units that are owned by Trusts, Corporations or LLCs can have certain representatives serve on the Board. Section 5.02 (c) provides for staggered 1 and 2 year terms that will provide for continuity and experience in operations

Reduced Quorum Requirements. Pursuant to California law, all elections of directors must be conducted by mailed-in secret ballots. This means that anyone who wants to participate has a simple procedure to do so. However, under the existing Bylaws, a quorum is a simple majority (50% plus 1 vote) which is often not achieved and results in delays in elections and additional expenses. The amended Bylaws reduce the quorum percentage to thirty-three (33%) to make the election process more efficient and serve the interests of those who actually participate. In addition, a new CA statute provides

Village Homes POA
June 7, 2024
Page 7

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that if the 33% quorum is not achieved, the meeting can be adjourned and subsequently held with a 20% quorum.

Elimination of Cumulative Voting

The provision for cumulate voting in board elections has been removed. Due to the laws mandating mail in secret ballots and self nomination, the use of cumulative voting is not necessary or appropriate.

INFORMATIONAL MEETING ON _____ 2024 AT __7:00 PM VIA ZOOM.

In the interests of transparency and to assist you in understanding the reasons for the amendment, I will be attending the informational meeting on _____, 2024 for the purpose of answering your questions regarding the proposed amendment of the CC&Rs and Bylaws. A question-and-answer session will be held and I will attempt to respond to all your questions and comments. Please read the enclosed documents and develop questions that you want answered. If you wish to submit written questions, please email them to me a rdhillshafer@LHCLAWYERS.NET and I will answer them at the meeting and in a general written response. The Zoom meeting information is:

Join Zoom Meeting: _____[INSERT LINK TO ZOOM MEETING]_____

Meeting ID:

Passcode:

IMPORTANCE OF VOTING

To approve the CC&Rs it requires approval by 60% of the members. To approve the Bylaws requires a simple majority (50% + 1). This is an important opportunity for the Association to bring its governing documents current and be consistent with current laws.

Thank you for taking the time and making the effort to review and understand the process and the proposed changes.

Very truly yours,

LOEWENTHAL, HILLSHAFFER & CARTER, LLP

Robert D. Hillshafer