

# Operating Agreement Between Verde Santa Fe Community Association Board of Directors and Verde Santa Fe Community Clubhouse Committee

Amended and Restated August 1, 2023

Numerous legal documents were filed by Stardust-VSF, the Developer of Verde Santa Fe. Until 2018, both the VSF Board of Directors and Clubhouse Committee had members who acted as historians as they had lived through turnover of the community from the Developer. When that was lost, so was the clarity of the relationship between the VSF Board of Directors and the VSF Clubhouse Committee. The purpose of this document is to recap the evolution of the legal documents and provide a basis of agreement between the VSF HOA Board and the VSF Clubhouse Committee.

## Legal History

The Verde Santa Fe Community Association was incorporated on February 25, 1997 to provide for the management, maintenance, and care of the Common Areas and other property owned by the association or property placed under its jurisdiction and to perform all duties and exercise all rights imposed on or granted to the Association by the Constituent Documents. The original *Declaration of Covenants, Conditions, Easements and Restrictions* for Verde Santa Fe was filed in that same month. The *Declaration* imposed annual assessment fees against each Parcel and Lot to allow the Association to fund all common expenses, and to maintain reasonable reserves for replacements, maintenance and contingencies.

The Verde Santa Fe Community Clubhouse was first established by the filing of a *Tract Declaration and Declaration of a Parcel Assessment Area* on April 15, 2003. This document established the potential for the developer to annex a parcel of land to the original *Tract Declaration* for the construction of a clubhouse facility. The property would be deemed as Common Area for the VSF Community Association, but would be a distinct Parcel Assessment Area for the use of Benefited Lot owners who would be responsible for paying the assessments on the parcel. At this time, only the Dorado and Montara neighborhoods were included as Benefited Lots.

In January 2004, an updated version of the *Tract Declaration and Declaration of a Parcel Assessment Area* was filed, adding the LaPrivada neighborhood to the list of Benefited Lots and language committing to a one-time Capital Assessment refund to each Benefited Lot Owner should the Clubhouse not be constructed. As the

Clubhouse construction became more of reality, lot owners in Phase 1, Turnberry and the Villas were offered an opportunity to become Benefited Lots.

As a point of reference, it was also in 2004 that the CC&Rs for the Amante neighborhood were filed with the county. The plans for that neighborhood included a clubhouse right from the inception.

A third version of the *Tract Declaration and Declaration of a Parcel Assessment* was filed in June 2005 to include language to allow the addition of Benefited Lots from these neighborhoods from time to time and includes a number of lots which chose to become Benefited Lots at this time.

The fourth and current version of the document was filed in April 2006, when the Clubhouse was turned over to the Verde Santa Fe Community Association by the Developer. This version of the *Tract Declaration, Declaration of Annexation, and Declaration of Parcel Assessment Area* has several significant changes from the previous versions:

1. It conveyed the title to the Clubhouse Tract to the Verde Santa Fe Community Association through a special warranty deed.
2. "Although the Deed conveys title to the Clubhouse Tract to the VSF Association, this Tract Declaration establishes operational responsibility and control over the Clubhouse Tract in a committee of Owners of the Benefited Lots rather than in the board of directors of the VSF Association, and imposes financial responsibility for the Clubhouse on the Benefited Lots, rather than on all members of the VSF Association."
3. The Declaration section of the document further defines the Clubhouse Committee: "The affairs of the Clubhouse Tract and the facilities located thereon, including but not limited to, financial affairs, charges for use, rules for use (including guest policies), maintenance and repair, and hours of operations shall be determined from time to time by a committee (the "Clubhouse Committee") consisting initially of five members. Each member of the Clubhouse Committee shall be an Owner or spouse of an Owner of the Benefited Lots.....Commencing with the first selection of the Board of the VSF Association by Members of the VSF Association, and continuing thereafter annually, at the time of the VSF Association's annual meeting, members of the Clubhouse Committee shall be selected annually by the vote or written assent of the Owners of the Benefited Lots."
4. "Financial Responsibility: All costs and expenses of owning, operating, repairing and replacing the Clubhouse Tract and the facilities located thereon shall be imposed upon the Owners of the Benefited Lots. To the extent that insurance, services, and other shared expenses are incurred by the VSF Association for the Clubhouse Tract and other common areas of the VSF Association, the costs allocable to the Clubhouse Tract shall be reasonably determined by the Board and shown by reasonable backup information. The Board shall, whenever reasonably feasible, utilize purchasing methods available to the VSF Association for collective or bulk purchasing to minimize cost attributable to the Clubhouse Tract rather than causing all goods and services for the Clubhouse Tract to be separately obtained at a higher cost, provided that the costs that are allocable to the Clubhouse Tract are substantiated with reasonable backup information."
5. "Association Assistance: In recognition of the fact that the Clubhouse Committee is an unincorporated committee, the Board shall provide such administrative assistance as may be reasonably required to allow the Clubhouse Committee to perform its assigned responsibilities including, but not limited to, assistance with (a) accounting, (b) scheduling and conducting elections, (c) conducting any desired meetings of either the Owners of Benefited Lots or the Clubhouse Committee (d) keeping records of the Clubhouse Committee and its activities, and (e) promulgating and enforcing any rule applicable to the use of the Clubhouse Tract. Any reasonable expenses incurred by the VSF Association in connection

with providing such assistance will be charged to the Owners of the Benefited Lots in the assessments applicable thereto.”

Additionally, two other documents filed in January 2005 discuss the use and maintenance of the paved surfaces of the Clubhouse Tract.

1. The Developer filed an *Access Easement Agreement*, granting a nonexclusive easement for pedestrian and vehicular traffic across the Clubhouse Tract to the Golf Course and the “North Parcel” which is now the Timeshare property. Additional details of this document include:

- a. Gives the Golf Course and Timeshare permission to travel over all paved surfaces in the Access Easement Area, but does not confer the right for either of these entities to park on these surfaces.
- b. Holds the Golf Course and Timeshare liable for any material damage to the Access Easement Area.
- c. Puts the responsibility for the maintenance and improvement of the Access Easement Area on the Owner, requiring the owner to keep the area in a “commercially reasonable condition and state of repair”.
- d. Requires the Golf Course and the Timeshare to “pay one-third of the maintenance and repair costs within 30 days after receipt of an invoice and supporting materials from the Owner.”
- e. Defines the Access Area as a rectangle that is approximately 32 feet wide by 100 feet long. This is essentially the rectangle of driveway from S. Verde Santa Fe Parkway to the Timeshare property line.

2. The Developer also filed an *Access and Special Events Parking Easement Agreement* with the following details:

- a. An easement granted by the developer to the Golf Course for a nonexclusive access easement over all paved or graded surfaces intended for vehicular or pedestrian traffic for all areas beyond the Access Area defined in the previous document. This is essentially all of the parking areas on the Clubhouse Parcel, excluding the 32' X 100' rectangle covered in the document above. Note that the access agreement allows the Golf Course the right to pass through but does not allow vehicular parking on the Clubhouse Parcel.
- b. An easement granted by the Golf Course to the Clubhouse Parcel Owner over all paved or graded surfaces intended for vehicular or pedestrian traffic for vehicular parking in striped or otherwise designated areas after normal business hours for Special Events with 48 hour notice
- c. Each owner is responsible for the maintenance of its parcel.

All of these documents were put in place by the Developer. The current versions are all on the community website. The prior versions can all be located on the Yavapai County Recorder’s web site using the Book and Page numbers in the current documents. Current versions of the pertinent documents are provided to all Owners in the Verde Santa Fe Community in accordance with the Arizona Laws. Benefited Lot Owners also receive the *Clubhouse Tract Declaration*.

The arrangement is uncommon in an HOA setting. An unincorporated committee used in conjunction with an incorporated board appears to be a rarity. To change it would require a significant legal expense and voting procedures requiring 2/3 majority from both the VSF Ownership and Benefited Lot Owners, which is very difficult to obtain. Since the relationship worked for many years without problems, it seems reasonable that with proper understanding of the documents and some agreements, the VSF HOA and Clubhouse should be able to establish a reasonable framework for cooperation and minimize the expenses to the entire VSF Community.

# Operating Agreement

Based on these documents, the following is agreed:

1. The VSF HOA Board is the body elected by the owners of all lots in the VSF Community to oversee the management, maintenance, and care of the Common Areas and other property owned by the association or property placed under its jurisdiction and to perform all duties and exercise all rights imposed on or granted to the Association by the Constituent Documents. The Clubhouse Committee is a body elected by the owners of the Clubhouse Benefited Lots to oversee the affairs of the Clubhouse Tract and the facilities located thereon, including but not limited to: financial affairs, charges for use, rules for use (including guest policies), maintenance and repair, and hours of operation. It is not a committee of the VSF HOA. Both bodies shall operate in a collaborative, respectful manner for the good of the entire VSF Community. Neither shall independently seek any further legal opinions of the documents outlined above.
2. The VSF HOA is the legal entity for both groups. There is a single tax ID. Annual financial statements for tax purposes must reflect the combination of the VSF HOA and the Clubhouse. Logically, this can best occur if the VSF HOA and Clubhouse use a single property management company and accounting service.
3. The Clubhouse Committee and VSF HOA Board shall both hold regular open meetings, following the rules established by the Arizona Revised Statutes, the VSF Bylaws and the Code of Conduct as stated in Appendix A. Each Committee and Board Member shall sign Appendix A upon taking office. The Clubhouse Committee will prepare a brief update at the VSF HOA Board of Director Meetings on topics that could have an impact on the greater community.
4. The VSF HOA shall include representation from the Clubhouse Committee when requesting bids and/or proposals from management companies, accounting services, property/liability insurance services, landscaping services, and other major providers where the Clubhouse Committee will be expected to pay more than \$500 for its fair share per the Clubhouse Declaration. Although it has no vote in the process, the Clubhouse Committee has the right to be included in the solicitation process, including selection of vendors, proposal creation, and reviewing of bids. It also has the right to publicly voice its opinion to the Board and owner membership during the discussion of the bids at the VSF Meeting. Contracts related to all Common Areas shall be bid to both include and exclude the Clubhouse Tract. This will provide a clear method for charging the expenses back to the Clubhouse.
5. Working with the Management Company, the VSF Board and Clubhouse will strive to provide a more unified experience for Benefited Lot Owners. This shall include changing the process for billing assessments into a single bill.
6. Delinquencies for both the Association dues and/or Clubhouse dues will result in loss of access to the Clubhouse facilities until both dues are brought current and there is a \$0 balance due on the account. Only one set of late fees will be applied to an owner's account for non-payment of the combined dues for both the Association and the Clubhouse. Any owner account that has more than \$500 owed in combined dues will initiate the collections process per the Association's Collection Policy.
7. The costs associated with collections will be split 50/50 between the Association and the Clubhouse.

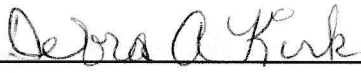
The Board will handle collections as the legal entity for both the Association and Clubhouse assessments.

8. Costs for statement production, coupons, delinquency collection and associated legal fees related to Benefited Lots shall be shared equally between the Association and Clubhouse. The income will be collected by the Association and transferred to accounts specific to the Clubhouse.
9. The accounting service shall maintain separate charts of accounts, bank accounts and financial statements for the Association and Clubhouse. The separate and combined statements will be shared monthly at each Board Meeting and Clubhouse Committee Meeting.
10. The Master shall pay the Clubhouse the exact amount of calculated dues that would be earned each month. This is the amount that the Clubhouse would receive based on the number of members multiplied by the dues for the Clubhouse. This amount changes each month as new members are added. In addition, the Master will pay the Clubhouse for any new member fees collected. Since the Master is responsible for the collection of all fees and will pay the Clubhouse for calculated dues, all late fees and costs incurred to collect the late fees belong to the Master.
11. The Clubhouse and VSF Board are each responsible for the completion of their own Reserve Study. The VSF Board shall provide, upon request, updated cost estimates for walls and landscape items to the Clubhouse annually for use in its Reserve Study analysis.
12. All bank accounts must be jointly reviewed to assure that the combined funds of the Association and Clubhouse does not exceed the FDIC insured limits at any one financial institution. CDs are the biggest risk area.
13. Insurance coverage shall include Directors and Officers, D&O coverage for the Clubhouse Committee as well as the Board. Insurance premiums shall continue to be split equally by the Clubhouse and Association unless the insurance carrier can provide adequate documentation to determine a more equitable division. Both the Board and the Clubhouse Committee agree to notify each other of any potential legal action pending against them as any legal action puts the assets of the other at risk.
14. Income tax liabilities will be shared based on calculating the tax return with and without the Clubhouse numbers. The Clubhouse will pay the difference between the two calculations. The cost of tax preparation will be borne by the Association as the expense is the same regardless of the inclusion of the Clubhouse. Property tax will continue to be paid by the Association.
15. The usage rules, maintenance decisions and costs of the Clubhouse Parking lots are the responsibility of the Clubhouse. The Board will not enter into any agreements with the Time Share or Golf Course regarding the use, configuration and/or maintenance of the parking lots without prior approval of the Clubhouse Committee. The Clubhouse Committee is responsible for ensuring the Time Share and Golf Course have access to their properties at all times in accordance with the Access and Easement documents filed with the County and shall provide reasonable notice of any planned maintenance activities. The Clubhouse is responsible for the full cost of any maintenance with the exception of the 32' x 100' rectangle entranceway for which the Clubhouse, Golf Course and Time Share are equally responsible.
16. The Clubhouse Committee encourages the Board, and its committees, to use the Clubhouse for their

meetings. All meetings must be scheduled in advance and approved by the Clubhouse Manager. Under no circumstances will a Board or committee meeting supersede a scheduled Clubhouse meeting, event, or function. The Clubhouse is for the primary use of its Members. The Board, and its committees, is responsible for assuring all furniture and items used are returned to their original location and state. The Board, and its committees, assumes all responsibility for damage to the facility, furnishings, and equipment. The Board, and its committees, will be responsible for all attendees including letting them in and signing them in and out. Other Board or Association events, possibly with a rental fee, will be evaluated on a case by case basis. Under no circumstances can these events relate to political or religious organizations.

17. The Clubhouse agrees to be the library for materials needed by owners that cannot be distributed electronically – paint books being the primary example. However, the Clubhouse will not take responsibility for items to be transferred between members, committees and the Management Company.
18. The Clubhouse is not responsible for administrative support, such as making copies or printing documents, for the Board or Association related meetings and/or its committees.
19. Both the Board of Directors and the Clubhouse Committee agree to offer each other an opportunity to participate in software licensing and other technology services to minimize costs and leverage expertise.
20. This document remains in effect until changes are mutually agreed upon by both parties.

 10-16-23  
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President, Verde Santa Fe Board of Directors      Date

 10-19-23  
\_\_\_\_\_  
Chairperson, Verde Santa Fe Clubhouse Committee      Date

## Appendix A. Code of Conduct for VSF Board of Directors and Clubhouse Committee Members

WHEREAS, the Board of Directors and Clubhouse Committee Members have the authority and responsibility to make decisions for the benefit of the entire community, and to ensure that all Members maintain a high standard of ethical conduct in the performance of the Association's business, and to ensure that the Association's members maintain confidence in and respect for the entire Board and all Clubhouse Committee Members. It is hereby resolved that the Board and Clubhouse Committee of the Association adopts the following rules of conduct, standards and behavior, ethical rules, Operating Agreement and enforcement procedures that are applicable to all members as stated herein. Any violations by Board or Committee Members will be reviewed by the appropriate Governing Body (Board or Clubhouse Committee) and handled in accordance with the Association's Governing Documents and applicable laws.

1. **Board shall act in the best interests of the Association as a whole and Clubhouse Committee Members shall act in the best interest of the Benefited Lot Owners and the Community.** Members serve for the benefit of the entire community, and shall, at all times, strive to do what is best for the Association as a whole. Board and Committee Members shall not use their positions as such for private gain, for example:
  - a. No Board or Committee Member shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who is seeking a contractual or other business or financial relationship with the Association.
  - b. No Board or Committee Member shall seek preferential treatment by the Board, any of its committees, or any contractors or suppliers.
  - c. No Board or Committee Member shall accept a gift or favor made with the intent of influencing a decision or action on any official matter.
  - d. No Board or Committee Member shall receive any compensation from the Association for serving on the Board or any Committee.
  - e. No Board or Committee Member shall willingly misrepresent facts to advance a personal cause or influence the community to advance a personal cause.
  - f. No Board or Committee Member shall use his/her position to enhance his/her financial status through the use of certain contractors or suppliers.
2. **Board and Committee Members shall comply with Governing Documents and relevant law.** Board and Committee Members shall use their best efforts at all times to make reasonable decisions that are consistent with the Bylaws, Tract Declaration, Clubhouse Tract Declaration, and other Governing Documents of the Association, and to be familiar with all such documents. Board and Committee Members shall likewise comply with and make decisions that are consistent with all applicable laws, including, but not limited to, refraining from discriminating against any person on the basis of race, color, religion, national origin, gender, family status, or mental or physical disability.
3. **Board and Committee Members shall set high standards for themselves as Association members.** Board and Committee Members shall hold themselves to the highest standards as members of the Association, and shall in all ways comply with the provisions of the Association's Governing Documents.
4. **Board and Committee Members shall work within the Association's framework and refrain from unilateral action.** Members shall at all times work within the Association's framework and abide by the system of management established by the Association's governing documents and the Board. All Members shall conduct business in accordance with state law and the Association's Governing Documents, and shall act upon decisions duly made, and no Board or Committee Members shall act unilaterally or contrary to such decision. Toward that end, no Board and Committee Members shall seek to have a contract implemented that has not been duly approved by the appropriate Governing Body, nor promise anything unapproved by the majority to

a contractor, supplier or to any other entity.

5. **Board and Committee Members shall behave professionally at meetings.** Board and Committee Members shall conduct themselves at all meetings, including Board meetings, annual meetings of the members, and committee meetings, in a professional and businesslike manner. Personal attacks against other Board and Committee Members, Association members, residents, officers, management, or guests are not consistent with the best interests of the community and will not be tolerated. Language at meetings shall be kept professional. Though differences of opinion are inevitable, they must be expressed in a professional and businesslike manner. Any violations by Board or Committee Members will be reviewed by the appropriate (Board or Clubhouse Committee) Governing Body and handled in accordance with the Association's Governing Documents and applicable laws.
6. **Board and Committee Members shall maintain confidentiality when appropriate.** Board and Committee Members shall, at all times, maintain the confidentiality of all legal, contractual, personnel, and management matters involving the Association. Board and Committee Members shall also maintain the confidentiality of the personal lives of other Board and Committee Members, Association members, residents, and management staff. This includes delinquency information for assessment payments.
7. **Board and Committee Members shall disclose conflicts of interests.** Board and Committee Members shall immediately disclose to the Board or Committee any perceived or potential conflict of interest regarding any aspect of the business operations of the Association.
8. **Board and Committee Members shall refrain from defaming anyone in the community.** Board and Committee Members shall not engage in defamation, by any means, of any other Board or Committee Members, Association member, resident, or management staff member. The Association shall deem any Board or Committee Member, who engages in defamation, to be acting outside the scope of his authority as a Board or Committee Member.
9. **Board and Committee Members shall refrain from harassing Association members or residents.** Board and Committee Members shall not in any way harass, threaten, or otherwise attempt to intimidate any other Board or Committee Member, Association member, resident, or management staff member. The Association shall deem any Board or Committee Members, who harasses, threatens or otherwise attempts to intimidate other Association members or residents, to be acting outside the scope of his authority as a Board or Committee Member.
10. **Board and Committee Members shall refrain from interfering with Management staff and contractors.** No Board or Committee Members shall interfere with the duties of management staff or any contractor executing a contract in process. All communications with contractors must go through the President of the Board, Committee Chair, and must otherwise be in accordance with Board and Committee policy.

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Signature

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Printed Name

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Date