

**CASA YBEL BEACH & RACQUET CLUB, PHASES F, G, H  
BOARD OF DIRECTORS TELECONFERENCE MEETING  
March 10, 2009**

The meeting was called to order at 9:15 a.m. by President Susan Walter via telephone. The meeting was held in the Sanibel, Florida office of Hilton Grand Vacations Company (HGVC). Board members in attendance via telephone were: John Demos, Joe Gala, Lynn Perkins, Brenda Pommerenke, Pat Sweeney and Susan Walter. Len Elikan was traveling to a funeral and unable to attend. Attending from HGVC were: E. J. Nees – Director of Resort Operations, Sanibel/Captiva, Randy Piatt – Vice President of Resort Operations and Cindy Glasenapp – Administrative Assistant and acting Recording Secretary for this meeting.

The purpose of the meeting was to discuss proposed amendments to the Declaration of Condominium, Articles of Incorporation and By-laws regarding Board Terms, Interest on Unpaid Assessments and Termination.

The proposed amendments will be sent to the owners to vote upon with the annual meeting package if approved by the Board. There was discussion on whether to have the owners vote separately on each issue or to vote on the amendments in total. ***MOTION was made by Pat Sweeney and seconded by Lynn Perkins to present these proposed amendments to the owners as separate items to be voted upon.*** Mr. Demos voted aye, Mr. Gala voted aye, Mr. Perkins voted aye, Ms. Pommerenke voted aye, Ms. Sweeney voted aye and Ms. Walter voted aye. **Motion carried unanimously.**

**BOARD TERMS** – Amendments were proposed due to Florida statutes effective October 1, 2008 which no longer allows a three year term or a sit-out clause.

Proposed amendment to the Articles of Incorporation (*words ~~stricken~~ are deletions; words underlined are additions*):

Article VI, Section 1. The affairs of the Corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than the number specified in the Bylaws. The Directors elected in 2009 and thereafter ~~subsequent to the first Board of Directors~~, shall be elected at the annual meeting of the membership, for a term of ~~three~~ two years, or until their successors shall be elected and shall qualify. Provisions for such election, and provisions respecting the removal, disqualification and resignation of Directors and for filling vacancies on the Directorate, shall be established by the By-Laws.

Proposed amendment to the By-Laws (*words ~~stricken~~ are deletions; words underlined are additions*):

Article IV. DIRECTORS, Section 1. Number, Term, and Qualifications ~~and Term Limits~~:

(a) The affairs of the Association shall be governed by a Board of Directors composed of not less than three (3) nor more than seven (7) members elected by the membership. All Directors shall be members of the Association and shall ~~not~~ be ~~dis~~qualified as stated below. All officers

of a Corporate Unit Owner shall be deemed to be members of the Association so as to qualify as a Director herein.

(b) In order to continue to provide for continuity of experience and in order to comply with Section 718.112(2) F.S. (2008) it is the intention of these Bylaws that a system of two year staggered terms be created and retroactively applied to the Directors elected at the annual meeting held in 2009 who shall be elected to serve terms of two (2) years each. Thereafter, as the terms of the Directors elected prior to 2009 under the previous three (3) year staggered term provision expire, all Directors shall be elected for terms of two (2) years each.

~~(b) Beginning with Directors elected in the year 2003 and after, Directors shall be elected for a term of three (3) years. The term shall extend from the annual meeting at which they are elected until the annual meeting three (3) years later unless they are disqualified, removed or resign as provided for below.~~

~~(c) In order to transition from the present two (2) year terms to three (3) year terms the following procedure will apply:~~

~~1. At the annual meeting in 2001, two (2) Directors will be elected to a two (2) year term expiring in 2003.~~

~~2. At the annual meeting in 2002, five (5) Directors will be elected. The three (3) persons receiving the highest number of votes will be elected to a three (3) year term expiring in 2005. The two (2) persons with the next highest number of votes will be elected to a two (2) year term expiring in 2004.~~

~~3. After the annual meeting in 2003, all persons elected shall serve a three (3) year term.~~

~~(d) Beginning with those Directors elected to a three (3) year term in 2002, a person who has served two (2) consecutive terms on the Board of Directors shall not be eligible for re-election to the Board of Directors for one (1) year. Those people elected to two (2) year terms in 2001 and 2002 shall be eligible to serve one (1) consecutive three (3) year term and then will not be eligible for election to the Board of Directors for one (1) year.~~

Board members expressed disappointment that after all the work to get a sit-out clause, it is no longer valid. ARDA has been asked to look into getting an exemption for timeshares to these new statutes, but it may not happen in the foreseeable future.

After discussion, ***MOTION was made by Lynn Perkins and seconded by Brenda Pommerenke to adopt the proposed amendment to Article VI of the Articles of Incorporation and Article IV of the By-Laws for Phases F, G and H as presented.*** Mr. Demos voted aye, Mr. Gala voted aye, Mr. Perkins voted aye, Ms. Pommerenke voted aye, Ms. Sweeney voted aye and Ms. Walter voted aye. **Motion carried unanimously.**

**INTEREST ON UNPAID ASSESSMENTS:** A proposed amendment to Article XIV of the Declaration of Condominium for each phase was reviewed (*words ~~stricken~~ are deletions; words underlined are additions*):

#### XIV. ASSESSMENTS

Assessments, installments and maintenance fees that are unpaid for over ten (10) days after due date shall bear interest at the maximum rate ~~of~~ allowed by law (presently 18%) ~~ten percent (10%)~~ per annum from due date until paid, and at the sole discretion of the Board of Directors, a late charge of \$25 or 5% of the late installment, whichever is greater shall be due and payable. ~~Regular assessments shall be due and payable on the first of each month and monthly bills for same shall not be mailed or delivered to Unit Owners.~~ Maintenance fees for Units committed to Interval Ownership shall be due and payable on the first day of January, ~~April, July and October~~ in advance, unless otherwise ordered by the Board of Directors.

E.J. advised that 92.3% of the maintenance fees were paid by the end of February. In 2008, 99.5% of the maintenance fees were paid by year end. She also proposed changing the “10 days” to “75 days” for charging interest and a late fee “45 days after the due date”. These dates correspond with the policy that was adopted by the Board in 1984/1985. Late fees are imposed on February 15<sup>th</sup> on accounts not paid (fees must be received by Feb. 15<sup>th</sup>, not post-marked by Feb. 15<sup>th</sup>). Current documents provide for more strict policy, at 10 days. The change to 75 days would be more lenient. Delinquent accounts are referred to an attorney for collection in May each year.

There was discussion on whether imposing 18% interest might be punitive, that the interest rate was too high; also that there was not enough incentive to pay on time. E. J. noted that what was proposed is what is what is “allowed by law”. Whether or not 18% is charged would be a board decision.

After much discussion, the Board decided to postpone a decision on this proposed amendment until either next year’s annual meeting or until a complete revision of all the documents is proposed.

**TERMINATION** – A proposed amendment to Article XIX of the Declaration of Condominium for each phase was reviewed (*words ~~stricken~~ are deletions; words underlined are additions*):

#### XIX. TERMINATION:

A. Pursuant to a vote at a properly called meeting, if all seventy-five percent (75%) of the Unit Owners and holders of all liens and mortgages affecting any of the Condominium Parcels agree to execute and duly record an instrument terminating the Condominium property (or if this percentage of Unit Owners and holders of all liens and mortgages simply execute and duly record an instrument terminating the Condominium property in lieu of a meeting), or if “major damage” occurs as defined in the insurance clauses hereunder, said property shall be deemed to be subject to termination and thereafter owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owner shall then become the percentage of the undivided interest previously owned by such Owner in the Common Elements upon termination of the Condominium.

B. ~~It is understood that in the year 2018, the Purchasers of Units committed to Interval Ownership shall become tenants in common. The Board~~

~~of Directors of the Association shall, no less than 30 days, nor more than 60 days prior to the actual date of such conversion to tenancy in common, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, a vote shall be taken to decide the disposition of the Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, the Owners, by a majority vote, may vote to continue their intervals, in which case the restrictive covenants set forth below will be adopted as covenants running with the land for a period of ten (10) years. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days prior to the actual expiration of said ten year period, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all owners of Unit Weeks in Units committed to Interval Ownership. The Owners may then vote to continue the intervals for an additional 10 year period. This process shall be repeated as the end of each successive 10 year period approaches. Should less than a majority of the Owners vote to continue the intervals at any such meeting, then the Board of Directors of the Association shall take the necessary steps to discontinue the Interval Ownership program at the Condominium, at which time the Board of Directors of the Association and each Owner of a Unit Week in a Unit committed to Interval Ownership shall have the right to take such action as is permitted by this Declaration and laws of the State of Florida. This shall include, but not be limited to, filing suit in a Court of competent jurisdiction in Lee County, Florida, for partition of the Units if permitted by applicable law.~~

~~In the event For so long as the Owners do not terminate the Condominium vote to continue their Unit Weeks as provided above, then each Owner shall have the exclusive right to occupy his Unit, and as between Owners to use and enjoy the Common Elements and Association Properties of the Condominium, and the rights and easements appurtenant to his Unit during his Unit Weeks (and, in the case of Developer, during all Unit Weeks not theretofore conveyed, and to authorize others so to do, together with the non-exclusive right in common with all other Owners, but only when acting through the Association), to maintain and repair the Units during maintenance weeks. No Owner shall occupy his Unit, or exercise any other rights of Ownership with respect to his Unit other than the rights herein provided to him, during any other Unit Weeks unless expressly so authorized by the Owner entitled to occupy the Unit during such Unit Weeks or during any maintenance week except when acting through the Association. Each Owner shall keep his Unit and all furnishings in good condition and repair during his Unit Weeks, vacate the Unit at the expiration of his Unit Weeks, remove all persons and property therefrom excluding only furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Association.~~

No Owner or other person or entity acquiring any right, title or interest in a Unit shall seek or obtain through any legal procedures, judicial partition of the Unit or sale of the Unit in lieu of partition at any date prior to the termination of the

~~condominium property expiration of each successive ten (10) year period voted by a majority of the Owners. If, however, any Unit Weeks shall be owned by two or more persons as tenants-in-common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Unit Weeks in lieu of partition as between such co-tenants or joint tenants.~~

C. **Certificate of Termination; Termination Trustee:** The termination of the Condominium property shall be evidenced by a Certificate of Termination, executed by the President or Vice President of the Association with the formalities of a deed, certifying to the facts effecting the termination. Written joinders or consents, executed with the formalities of a deed from the requisite number of voting interests of the Association, and mortgage holders, if required, shall be included in or be attached to the Certificate of Termination. The certificate shall include the name and address of a Termination Trustee, which must be one of the following: (1) the Association; (2) a Florida financial institution with trust powers; or (3) a licensed Florida attorney. The Certificate of Termination shall be signed by the Trustee indicating willingness to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this section is recorded in the Public Records of Lee County, Florida. The recording of that Certificate of Termination automatically divests the unit owners of legal title, and vests legal title to all real and personal property formerly the condominium property (hereinafter the "Property") in the Termination Trustee named in the Certificate of Termination without need for further conveyance. Beneficial title to the Property shall be owned by the former unit owners as tenants in common in undivided shares, such shares being the same as the undivided shares in the common elements appurtenant to the units as provided elsewhere in this Declaration. On termination, each lien encumbering a condominium parcel shall be transferred automatically to the beneficial shares in the Property with the same priority.

D. **Wind-up of Association Affairs.** The termination of the Condominium does not, by itself, terminate or dissolve the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, the Articles of Incorporation, and Bylaws, and by law, for the purpose of winding up the affairs of the Association. The powers of the Association include the authority to sell real or personal property owned by the Association and distribute net proceeds therefrom, and insurance proceeds, to the unit owners in shares that are the same as the undivided shares in the common elements appurtenant to the units as provided elsewhere in this Declaration.

E. **Trustee's Powers and Duties.** The Termination Trustee shall hold title to the Property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees, and other lienholders, as their interests shall appear. If the former unit owners approve a sale of the Property as provided in this section, the Termination Trustee shall have the power and authority to convey title to the Property and distribute the net proceeds in accordance with the

provisions of this Declaration. In the event the Association is not the Trustee, the following provisions shall apply:

(1) The Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and that fee, and all costs and expenses incurred by the Trustee in the performance of its duties, may be paid from the proceeds of the sale of the Property.

(2) The Trustee shall be entitled to be indemnified and held harmless by the Association and its members from any and all liabilities and costs incurred by virtue of acting as Trustee, except those resulting from the Trustee's gross negligence or malfeasance.

(3) The Trustee may rely on written instructions and information provided by the officers, directors, and agents of the Association, and shall not be required to inquire beyond such information and instructions.

**F. Partition; Sale.** Following termination, the Condominium Property may be partitioned and sold on the application of any unit owner. If at least two-thirds (2/3rds) of the total voting interests of the membership of the Association agree to accept an offer for the sale of any or all of the Property or to create a new Condominium, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. The Trustee shall have the authority to execute any and all documents to complete the sale and convey legal title to the Property, provided an agreement setting forth the terms and conditions of the sale is approved and executed by the requisite two-thirds of the voting interests, which agreement must be recorded in the Public Records of Lee County, Florida, prior to or simultaneous with the sale of the Property to a third party. In the event of a sale approved by the unit owners, any action for partition of the Property shall be held in abeyance pending the sale, and on the consummation of the sale shall be discontinued by all parties thereto. If the former unit owners have not authorized a sale of the Property within one year after the recording of the Certificate of Termination, the Trustee may proceed to sell the Property in a commercially reasonable manner without agreement by the former unit owners, or may file an appropriate lawsuit to request judicial assistance regarding the partition and sale of the Property. The proceeds of the sale of any of the Property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

**G. New Condominium.** The termination of the Condominium does not bar creation of another condominium including all or any portion of the same property.

**H. Provisions Survive Termination.** The provisions of this Article are covenants running with the land, and they shall survive the termination of the Condominium until all matters covered by these provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and applicable law, and shall have the power to levy assessments and to pay the costs and expenses of maintaining the property

until it is sold. The costs of termination, the fees, and expenses of the Termination Trustee, as well as post-termination costs of maintaining the Property, are common expenses, the payment of which is secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law shall be superior to, and take priority over, all other liens.

***MOTION was made Pat Sweeny and seconded by Lynn Perkins to approve the proposed amendment to Article XIX of the Declaration of Condominium for Phases F, G and H as presented.*** Mr. Demos voted aye, Mr. Gala voted aye, Mr. Perkins voted aye, Ms. Pommerenke voted aye, Ms. Sweeney voted aye and Ms. Walter voted aye. **Motion carried unanimously.**

**COMERICA DECLARATION** – HGVC has asked the Secretary to sign a Declaration for Deposit Accounts and Treasury Management Services, authorizing HGVC personnel as signers on a zero balance sweep account with Comerica for reserve funds. This is an FDIC-insured bank account tied to the Federated Government Money Market Fund and allows access to monies in the account by way of check disbursements to vendors. After discussion, ***MOTION was made by Joe Gala and seconded by Brenda Pommerenke to authorize the Secretary of the Association to sign the Declaration for Deposit Accounts and Treasury Management Services form.*** Mr. Demos voted aye, Mr. Gala voted aye, Mr. Perkins voted aye, Ms. Pommerenke voted aye, Ms. Sweeney voted aye and Ms. Walter voted aye. **Motion carried unanimously.**

E. J. confirmed that all of the Association's funds are in insured accounts.

There being no further business, ***MOTION was made by Brenda Pommerenke and seconded by John Demos to adjourn.*** Mr. Demos voted aye, Mr. Gala voted aye, Mr. Perkins voted aye, Ms. Pommerenke voted aye, Ms. Sweeney voted aye and Ms. Walter voted aye. **Motion carried unanimously.**

**Meeting adjourned at 9:45 a.m.**