

Significant Changes Made in the Proposed Third Amended and Restated Bylaws

The following significant changes have been made to the Second Amended and Restated Bylaws (2007), resulting in the Third Amended and Restated Bylaws (2019).

1. All references to the Developer and Compania Del Rey have been deleted. Where the Developer (or CDR) had a particular right, duty or responsibility, the “Club,” or “Board,” or “Association” was substituted and assumes those rights, duties and responsibilities. Reference to “Turnover Date” was also deleted since it has no bearing on anything after December 31, 2017.

2. Areas 1, 2, and 3, which are referred to in RECITAL B, have been assigned by the former Developer to the Club and, therefore, they are obsolete. However, because the bank Trust Agreement also mentions these areas, we have retained minimal mention of them here.

3. References to the federal concessions for the water well and beach have been added to RECITAL B in addition to the existing reference to the federal concession that is the parking lot.

4. References to “Annexable Property” have been deleted (including in RECITAL B and the entire Article VIII) because Annexable Property relates solely to Property in Area 1 (i.e., Casa Giddings) and it has already been assigned to the Club. Therefore, the term “Annexable Property” is obsolete and has no meaning.

5. No changes have been made to the rights and responsibilities of Members. Voting Rights have been clarified but there are no substantive changes. (See #14 below.)

6. The existing bylaws refer to Developer Memberships and Term Memberships. As of January 1, 2018, all Term Memberships had expired and all Developer Memberships were turned over to the Club (actually to Cascadas Vacations, Inc., a wholly-owned subsidiary of the Club). That leaves only “Memberships,” which were formerly called “Permanent Memberships.”

7. Provision to create a Design Review Committee has been deleted because such a committee does not exist, and it would require two committee members appointed by the Developer. Deletion of all references to this committee is not a substantive change, as the Board would make all decisions regarding architectural design instead of the Design Review Committee. The intention would be, of course, to continue the integrity of the architectural design established by Ed Giddings.

8. The definition of “Basic Assessment” (i.e., the annual maintenance fee for each timeshare interval) was streamlined by deleting a complicated formula that is no longer necessary because the entire property has been built out and maintenance fees are set. This does not preclude the Board from increasing maintenance fees equitably for all villas (such as by an across-the-board percentage increase).

9. Provision was made that Basic Assessments, Special Assessments, and Reconstruction Assessments on Memberships must be paid by all Memberships, including any unsold Memberships that may be held by a Subsidiary of the Club. (Sections 5.5, 5.6, and 7.1)

10. The term “Basic Expenses” was replaced by the term “Operating and Capital Costs.” The definition of the term formerly contained a considerable amount of duplicative language, and such duplication has been deleted.

11. The term “Declaration of Issued Membership” has been deleted. It refers to a particular document that hypothetically exists but, in fact, does not exist. Deletion of this term has no substantive impact.

12. The definitions of “Reserve Account” and “Reserve Expenses” were clarified to require that only federally-insured bank deposits and U.S. Treasury bills may be held in Reserve Accounts; and that reserves may be used for a self-insurance program (a potential future idea) as well as for capital expenditures.

13. The term “Subsidiary” was added to mean any corporation or other legal entity voting control of which is held, directly or indirectly, by the Association (i.e., the Club). This would include, as of now, the 100 percent-owned Cascadas Vacations, Inc. (CVI) and the newly-formed Bellavista El Medano S. De R.L. de C.V., which is owned 25 percent by the Association and 75 percent by CVI. The addition of the term “Subsidiary” is needed because the inventory of unsold timeshare intervals is actually owned by CVI. Moreover, “Bellavista,” was recently created to operate the restaurant and other retail businesses at the Club, and others may be added for unforeseen purposes and reasons during the next 33 years before the Trust Agreement expires.

14. Voting rights (in Article III) have been clarified to require that a Membership must be in good standing (i.e., not delinquent) in order to vote. Further, the revision declares explicitly that unsold memberships are not entitled to vote except when a “Super-Majority” is required. That may occur in only one instance: leading up to the 2052 expiration of the Trust Agreement in dealing with the question of whether to extend the term of the Trust Agreement or to liquidate the Club.

15. The terms of office of Directors were changed, beginning in 2021, to provide for all directors to serve for terms of two years, as was the case prior to January 1, 2018. Turnover occurred on that date, and the former bylaws provided for three directors to serve for terms of three years and two directors to serve for terms of two years upon Turnover.

16. The “enumeration” of officers was changed to replace the “Chief Financial Officer” with a Treasurer. The Chief Financial Officer was an obsolete reference to the CFO of the Developer who also served as CFO of the Club. The Board retains the right to employ professional staff, such as a CFO or Chief Operating Officer.

17. Provision for a majority of the Board who are “Permanent Members” to purchase insurance was deleted. The purchase of insurance to protect the Club is a duty and responsibility of the Board acting on behalf of the Club.

18. The previous bylaws requirement to maintain and make available minutes of Board meetings within 60 days after a Board meeting was changed. Minutes are not released until approved by the Board, and Board approval typically occurs at the following Board meeting. Therefore, minutes should be available immediately after their approval at the next Board meeting. With quarterly (or trimester) Board meetings, the former requirement to make minutes available only 60 days after the meeting is impossible to meet and, in fact, was never met in recent memory.

19. Section 2.3 calls for liquidated damages in the event of a Member's or guest's (called a "Detaining Person") failure to vacate a Villa at the end of a Use Period. The current bylaws provide for the Detaining Person to pay "liquidated damages" of 500% of the Villa's fair rental value per day for each day that use of the Villa was detained. Our attorney has pointed out that this provision may not be enforceable in a court of law because it is a penalty rather than reflection of actual costs, and such penalties typically are not enforceable. Accordingly, we have accepted the attorney's recommendation to reduce the liquidated damages from 500% to 150% of the then-current rack rate for rental of the Detained Villa.

20. Section 4.2(h), Insurance, has been modified to recognize deductibles as part of the cost of insurance, and by deleting any minimum required coverage limits. Instead, the Board is given flexibility to set minimum coverages based on availability of coverage at a reasonable cost to the Club, while remaining prudent in protecting the Club from loss. The previous iterations of the bylaws specified insurance coverages that were necessary to protect a lender when the resort was being built. These minimum coverages were made obsolete long ago and, in fact, are generally not available currently in the Mexican insurance market. These revised bylaws additionally allow the possibility, with no obligation to implement, for a fully-funded self-insurance program to the extent of filling large deductibles under commercially-issued insurance policies.