



AGENDA

SPECIAL BOARD OF DIRECTORS MEETING

Thursday, December 17, 2015

10:30am – MSC Annex

Directors: Joe Gunton (President), Tony Zabicki (Vice-President), Barbara Mauser (Secretary), John Hadley (Treasurer), Richard Kidwell (Asst. Secretary), Vicky Mournian (Asst. Treasurer), John Arnold, Gunnar Bonthron, Jim Nelson, Kathy Palese, Leslie Shipley, Ron Sills, Kent Blumenthal (non-voting)

	Agenda Topic	Board Member	Exhibit	Action
I.	Call to Order / Quorum	Gunton		
II.	Adopt Agenda	Gunton	X	X
III.	Consent Calendar A. Approval of Board of Directors Meeting Minutes of November 18, 2015	Gunton	X	X
IV.	President's Report	Gunton		
V.	CEO Report	Blumenthal		
VI.	New Business A. GVR Fee Policies B. Recommended Bylaws change for uncontested elections	Zabicki Kidwell	X	X
VII.	Unfinished Business			
VIII.	Member Comments			
IX.	Executive Session (if necessary)			
X.	Adjournment			

**In accordance with GVR Bylaws, all meetings of the Board at which official business of The Corporation is transacted, with the exception of meetings limited to personnel and/or legal matters, shall be open to all members of The Corporation. An executive session "placeholder" is added to each Regular Meeting Board agenda should the Board have personnel and/or legal matters to address. Meetings shall be governed by Roberts Rules of Order unless otherwise determined by the Board of Directors.*



EXHIBIT

**Unanimously Approved by the Board of Directors
December 12, 2015**

Fees, Fee Policies and Fee Implementation Guidelines

**Board of Directors Special Meeting – MSC Annex
December 17, 2015 @ 10:30am, MST**

Overview

Several fiscal-related activities and events occurred over the past few weeks that impact Board policies and the Board-approved FY 2016 budget.

FY 2016 GVR Board-approved Budget

- On September 24, 2015, the Fiscal Affairs Committee voted unanimously to endorse the proposed FY 2016 GVR budget that included a Fee Schedule. The endorsed Fee Schedule included an across-the-board 5.6% increase in the 2016 New Member Capital Fee and Initial Fee rates, and a \$100 increase in the Transfer Fee. The Transfer Fee rate had been set at \$250 without change for several years. Addendum A to this Exhibit describes estimated total expenses associated with administering the transfer of property titles.
- On September 29, 2015, the Board of Directors voted unanimously to:
 - Approve the FY 2016 Budget and Fee Schedule as endorsed by the Fiscal Affairs Committee, without change.
 - Reassert the GVR Transfer Fee policy as stated in the CPM with new implementation guidelines.

Lawsuit Against Meritage Homes of Arizona, Inc. [Meritage]

- On November 16, 1995, GVR entered into a Developer-Member Agreement [DMA] with Fairfield Green Valley, Inc. [Fairfield GV], Fairfield Canoa Ranch, LLC (Fairfield CR), and WLC-Green Valley Limited Partnership (WLC) whereby new residential developments in Las Campanas and Canoa Ranch (then known as 'Canoa West') would include certain restrictions requiring owners who purchased homes in these new developments to pay dues to GVR. The DMA [and subsequent 2003 Side DMA] allows the Initial Fee to increase each year by an amount not greater than a measure of the Consumer Price Index (CPI). In September and October 2001, WLC, Fairfield and Canoa Ranch entered into sales

agreements with Monterrey Homes Construction [Monterrey] whereby Monterrey acquired portions of Las Campanas and Canoa West. Monterrey is the predecessor to Meritage Homes of Arizona, Inc. [Meritage].

- On October 21, 2015, the GVR's Board of Directors in Executive Session voted unanimously to instruct its attorney to file a five-count lawsuit against Meritage for breach of the DMA, among other reasons.

Recent GVR Meetings with Local Realtors

- The Transfer Fee is not explicitly referenced within GVR Bylaws. However, it is referenced within the GVR Corporate Policy Manual (CPM) within two (2) Sections:
 - *SECTION II – MEMBERSHIP, F. OTHER FEES - A fee for service is payment for the work involved in an operation that benefits individual members, as distinct from the entire membership, 1. The Board has established fees for services: a) Transfer Fees: There shall be a charge for the processing of the transfer of a membership upon the sale of a membership property.*
 - *SECTION VI – BOARD/BOARD COMMITTEES, 2. FISCAL AFFAIRS COMMITTEE, B. Responsibilities:
7) Recommend the establishment and the amount of tenant fees, membership dues, initial fees, transfer fees, and assessments.*
- On three occasions between November 17 and December 1, 2015, CEO Kent Blumenthal, COO Jim Conroy, CFO Cheryl Moose, Marketing & Communications Specialist Cadeaux, and GVR Property Transaction Specialist Tina Edwards met with groups of local realtors. Jim Callery, VP of the Green Valley Association of Realtors and Broker of the Caldwell Banker Real Estate office in Green Valley, facilitated each meeting. The central topic discussed was GVR's reassertion of its Transfer Fee according to the policy stated in the CPM, beginning January 1, 2016. Some realtors voiced concern over the interpretation and proposed implementation of the reasserted Transfer Fee. Staff agreed that implementation of the reasserted Transfer Fee policy would be complicated.

GVR Legal Counsel Review

On Tuesday, December 8, 2015, CEO Blumenthal met with GVR General Counsel, attorney Wendy Ehrlich, to discuss several matters including the Board-authorized Legal Review of GVR governing documents; whether GVR may revise the New Member Capital Fee ("NMCF") provision (CPM, Section II, Subsection 3); and how Transfer Fees should be imposed.

- NMCF & Initial Fees
 - Under the Arizona Nonprofit Corporation Act [Act], there are four different charges that a corporation may impose on its members: "dues, assessments, admission and transfer fees" (see A.R.S. §10-3302).
 - The NMCF and Initial Fees are essentially an "admission" fee: they apply anytime an individual becomes a member of GVR through a purchase of a GVR property, much like

an "initiation" fee that one would pay when joining a country club. It is essentially a one-time fee for new members or individuals who were not members within the previous twelve months.

- It is permissible for GVR to *increase* the amount of the NMCF and Initial Fee. As the Act specifically states, unless there is some express limitation, the amount and the members' liability for dues – and presumably, any other permitted fees – are subject to increase or decrease.
- Transfer Fees
 - A Transfer Fee is essentially a 'processing fee'. It is intended to cover the administrative costs associated with updating the corporation's records and providing resale disclosure to the title company which arise any time a GVR property changes hands through a sale (from a developer to a purchaser or from a GVR member to a purchaser) or if a property is transferred to a family member through a quitclaim deed (without a sale).
 - Transfer fees may apply to all property title transactions involving a member property, including new GVR properties when sold by a developer to a purchaser, unless it is expressly prohibited in the Developer-Member Agreement [DMA].
 - As the CPM currently reads, the Transfer Fee definition is inaccurate, whereby it is only imposed upon a "sale" of a GVR property and thus, does not apply when a GVR member transfers title to a trust or to a family member through a quitclaim deed (this is also true of the CPM definition of the NMCF, which states that it applies only to "purchases.")

Recommended Actions

ACTION #1: - Rollback Board-approved FY 2016 Initial Fee rate (\$2,425) to the FY 2015 Initial Fee Rate (\$2,296).

Rationale: See **Addendum B (FY 2016 Fee Schedule)**. Since GVR has filed a lawsuit against Meritage regarding its breach of the Developer-Member Agreement [DMA], it is prudent for GVR not to take any action affecting the Initial Fee pending the outcome of the lawsuit. The DMA references annual Initial Fee rate calculations.

[NOTE: the DMA does not apply to the transfer of title of new member properties that are located in voluntary deed-restricted HOAs.]

ACTION #2 – Rescind GVR Transfer Fee implementation guidelines approved previously by the Board of Directors on September 29, 2015.

Rationale: See **Addendum C (Board-approved GVR Transfer Fee)**. This addresses concerns voiced by local Green Valley realtors about application of the GVR Transfer Fee starting January 1, 2016 and simplifies implementation of the Transfer Fee.

ACTION #3 - Amend CPM Definition of Transfer Fee

Corporate Policy Manual (CPM)

SECTION II – OTHER FEES, 1.A) Transfer Fee

(Underline proposed new text; Strikethrough deleted text)

Transfer Fees: There shall be a charge for the processing of the transfer of a membership upon the ~~sale~~ transfer of title of a membership property.

Rationale: This will allow GVR to receive the Transfer Fee whenever a GVR property changes hands, per legal advice.

ACTION #4: - Provide an alternative Transfer Fee for conveyance of property title for estate planning (e.g., estate trusts) or other similar purposes, as determined by the Board of Directors.

Rationale: See **Addendum B (FY 2016 Fee Schedule)**. Legal counsel advised that is permissible to provide more than one Transfer Fee, depending on circumstances. The proposed FY 2016 Transfer Fee for conveyance of property title for estate planning or other similar purposes is \$100. **Addendum B-2 (Transfer Fee Scenarios)** offers examples of how the Transfer Fee will be applied.

ACTION #5: - Amend CPM Definition of New Member Capital Fee

Corporate Policy Manual (CPM)

SECTION II – MEMBERSHIP, SUB-SECTION 3, E. NEW MEMBER CAPITAL FEE

(Underline proposed new text; Strikethrough deleted text)

~~Upon the purchase of any existing GVR membership property, the purchaser of such property shall pay a New Member Capital Fee in an amount to be determined by the Board of Directors; however, such fee shall not exceed the Initial Fee then in effect. Revenue from New Member Capital Fees may be used as will most effectively further the general purpose of the Corporation to provide for current and future needs. This provision shall not apply to a purchaser who is currently a GVR member or has been a GVR member at any time within one year of the closing of the purchase.~~

Upon transfer of title to a GVR membership property, the new owner thereof shall pay a New Member Capital Fee unless such owner was a GVR membership property owner at the time of the transfer or within twelve months prior thereto. Revenue from New Member Capital Fees may be used as will most effectively further the general purpose of the Corporation to provide for current and future needs.

[NOTE: placement of the last two (2) sentences has been reversed]

Rationale: This will allow GVR to move ahead with the Board-approved FY 2016 NMCF rates by decoupling the NMCF from the Initial Fee as it currently appears in the CPM. Since GVR has filed a lawsuit against Meritage regarding its breach of the Developer-Member Agreement [DMA], it is prudent that GVR not take any action affecting the current Initial Fee pending the outcome of the lawsuit, even though the DMA does not apply to new Member Properties in voluntary deed-restricted HOAs. Also, the amended language will allow the Transfer Fee to apply when a GVR member transfers title to a trust or to a family member through a quitclaim deed, per legal advice, though at a lesser amount than is otherwise charged for the Transfer Fee. The proposed new text was crafted by legal counsel.

ACTION #6 – Due to revisions to the previously Board-approved FY 2016 Budget including fee schedules and implementation guidelines, re-balance the FY 2016 Budget by amending it in the following manner: reduce the FY 2016 Capital Budget by <\$81,691> from \$967,420 to \$885,729.

Rationale: See **Addendum D (FY 2016 Operating Budget Overview)**. Unless there are unavoidable circumstances, every GVR Board-approved annual budget ought to be a balanced budget. The projected \$81,691 reduction in income due to Board-approved revisions in FY 2016 fee schedules and implementation guidelines is large and may be difficult for the Corporation to overcome during the course of the fiscal year, and may also be difficult to explain at the end of the fiscal year.

Addendum A
Exhibit: GVR Fee Policies

GVR TRANSFER FEE ADMINISTRATION COSTS
December 17, 2015

A. Membership Specialist Duties Related to Transfer of Property Title

1. Current account verification/status
2. Research of prior ownership w/in one year
(Pima County records/foreclosures/trustee sales)
3. Transfer of account/property ownership
4. Notary cost/licensing fees for notarizing documents to be recorded
5. Document archiving and recordkeeping
6. 'Welcome Letter' processing/welcome packets for new members
7. Membership Card processing
8. Communications with legal representation & other stakeholders
 - Realtors, Title Company, members
 - Communication and correspondence with legal counsel regarding transfer of titles for foreclosed, auctioned properties
9. Internal communications with Finance Department and Center Coordinators

B. Financial Considerations for Administering Transfer of Property Title

- | | |
|---|-------------------|
| 1. Salary & Benefits for staff performing membership duties
(3/FTEs: 2 dedicated F/T staff; 20% CFO; 20% IT, 20% A/R; 10%, A/P, 20% Front Desk Coordinator, 10% Executive Assistant) | \$ 124,487 |
| 2. Overhead for MSC facility allocated to membership staff
(includes: space, utilities, postage, printing, insurance, custodial, supplies, taxes, technology) | 195,000 |
| 3. Legal fees for property & title questions | 20,177 |
| 4. Notarized lien releases to Pima County | <u>\$ 1,657</u> |
| Total year-to-date expenses | <u>\$ 341,321</u> |

- C. 2015 Year-to-Date Property Title Transfers: 942**
(Does not include property title transactions for transfers to family members and trusts)

Total Estimated Cost Per GVR Title Transfer Transaction **\$ 362.34**

2016 Board-approved Transfer Fee **\$ 350**

- Amount Not Covered by 2016 Transfer Fee: <\$ 12.34>



Addendum B

FY 2016 GVR FEE SCHEDULE

	<u>Original</u> <u>FY 2016</u>	<u>Amended</u> <u>FY 2016</u>
Annual Dues per Household	\$475	
Life Care Member Annual Fee	\$475	
Initial Fee	\$2,425	\$2,296
New Member Capital Fee	\$2,425	
Transfer Fee*	\$350	
*The Transfer Fee for the conveyance of property title for estate planning (e.g., estate trusts) or other similar purposes, as determined by the Board of Directors.		\$100
Tenant Fees (per person)		
1-7 day tenant card	\$15	
30 day tenant card	\$35	
365 day tenant card	\$135	
Guest Fees (under 18 no card is required)		
1st card for the year with unlimited guests/unlimited visits	\$50	
2 nd card for the year with unlimited guests/ unlimited visits	\$25	
Daily Guest card-unlimited guests/per 1 day	\$5	
Card replacements	\$15	
Set-up charge for monthly payment plan (dues only)	\$25	
Returned check or NSF fee (each)	\$35	
Monthly late fees for delinquent dues	\$20	

Addendum B-2

TRANSFER FEE SCENARIOS

The following scenarios were crafted by CFO Cheryl Moose in response to questions about implementation of the Transfer Fee received from President Joe Gunton and Fiscal Affairs co-Chairpersons, John Hadley and Vicky Mournian.

ASSUMPTION: All hypothetical properties described in each scenario are current GVR deeded homes (member properties).

Scenario #1: Person A will buy person B's home; person B will buy person C's home: person C is moving to La Posada.

Transfer Fee Implementation:

- Person A and Person B are each charged the \$350 Transfer Fee only.
- Person A and Person B are each charged \$475 annual dues.
(\$475 is the FY 2016 annual dues per Member Property; annual dues may be prorated)
- Person C may purchase a Life Care Privilege for \$475 annual fee.
(\$475 is the FY 2016 annual fee rate for Life Care Privilege; annual fee may be prorated)

Scenario #2: Person A will buy person B's home; person B will buy person A's home.

Transfer Fee Implementation:

- Person A and person B are each charged the \$350 Transfer Fee only.
- Person A and Person B are each charged \$475 annual dues.
(\$475 is the FY 2016 annual dues per Member Property; annual dues may be prorated)

Scenario #3: Person A buys a GVR deed-restricted home for investment purposes (e.g., rental property).

Transfer Fee Implementation:

- If Person A is an owner of a GVR membership property when s/he purchases another GVR deed-restricted property member, s/he will pay the \$350 Transfer Fee only.
- Annual dues are charged all GVR membership properties regardless of whether they are owner occupied, renter occupied, or vacant.

Scenario #4: Person A decides to put her/his present primary property into a trust and their investment property into a trust.

Transfer Fee Implementation:

- A change of title of a GVR membership property as part of estate planning (including placing a membership property in a Trust) triggers imposition of a reduced Transfer Fee of \$100 for each affected membership property. Since it is unlikely that GVR would be made aware of when a membership property is placed in a Trust, the reduced Transfer Fee is imposed only when a legal owner of the GVR membership property placed in a Trust requests that the name(s) on the GVR account be changed due to a change in property title.
- Annual dues are charged all GVR membership properties regardless of whether they are owner occupied, renter occupied, or vacant.

Scenario #5: Person A decides to give his present primary residence to his children at no cost (free). They do not live in the area and Person A moves out of AZ. The children of Person A leave the house sit empty, waiting to use it sometime in the future.

Transfer Fee Implementation:

- This is considered part of estate planning, and therefore, would trigger imposition of a reduced Transfer Fee of \$100 for each affected membership property. The reduced Transfer Fee is imposed only when a legal owner of the GVR membership property requests that the name(s) on the GVR account be changed due to a change in property title.
- Annual dues are charged all GVR membership properties regardless of whether it is occupied or vacant.



GREEN VALLEY RECREATION, INC.

ARIZONA

Addendum C

**Unanimously approved at the GVR Board of Director's Meeting
Tuesday, September 29, 2015**

GVR TRANSFER FEE

Overview

Initial Fees and New Member Capital Fees paid are paid to GVR when a home first enters GVR Membership or when an existing Member property is re-sold to a new owner, respectively. New Member Capital Fees are waived for GVR Members in good standing who purchase another GVR property. Instead, these GVR Members pay a nominal Transfer Fee, regardless of whether or not the newly purchased property will be used as a primary residence or as an investment/rental property.

The Transfer Fee is not explicitly referenced within GVR Bylaws. However, it is referenced within the GVR Corporate Policy Manual (CPM) within two (2) Sections:

1. **SECTION II – MEMBERSHIP**

F. OTHER FEES - A fee for service is payment for the work involved in an operation that benefits individual members, as distinct from the entire membership.

1. *The Board has established fees for services:*

a) Transfer Fees: There shall be a charge for the processing of the transfer of a membership upon the sale of a membership property.

2. **SECTION VI – BOARD/BOARD COMMITTEES**

2. **FISCAL AFFAIRS COMMITTEE**

B. Responsibilities:

7) *Recommend the establishment and the amount of tenant fees, membership dues, initial fees, transfer fees, and assessments.*

CPM language infers that the Transfer Fee is for a GVR Member's primary residence only, a one-to-one transaction ("...the transfer of a membership upon the sale of a membership property."). At some point in GVR's history New Member Capital Fees were waived and only a Transfer Fee was applied in cases where a GVR Member purchased another GVR Member property, regardless of whether it involved the sale of a membership property (as stipulated within the CPM), or if the newly purchased property was to be used as a rental or investment property or for a primary residence.

The intent of the recommendation that follows is to clarify and emphasize that GVR's focus is on members who utilize GVR amenities as a benefit of their primary residence and not to subsidize those who would use a GVR property for investment/rental purposes.

Recommendation

Re-assert the GVR Transfer Fee policy as originally intended for "the processing of the transfer of a membership upon the sale of a membership property," and implement the policy according to the following guidelines:

- 1. Permit for the purchase of GVR Member primary residences only;**
- 2. Provide GVR Members 12-months by which to complete transaction of transferring a GVR membership to a newly purchased GVR membership property from the sale of a membership property;**
- 3. Upon written request from a GVR Member, the Chief Executive Officer (CEO) is authorized to extend the transaction period for transferring a GVR membership to a newly purchased GVR membership property from the sale of a membership property.**
- 4. GVR shall collect payment-in-full of New Member Capital Fees for the purchase of GVR member properties by GVR Members that are not intended as the purchaser's primary residence.**

If a GVR member has not completed the transaction of selling their original membership property at the time they purchase another GVR property, GVR shall collect payment-in-full of a New Member Capital Fee. If at the time of sale of the original membership property (if within 12 months [or longer if extended by the CEO]), GVR shall refund the New Member Capital Fee less any appropriate Transfer Fee that would have been due.

- 5. The aforementioned re-stated Transfer Fee policy and implementation guidelines shall take effect on January 1, 2016.**



ADDENDUM D

FY 2016 OPERATING BUDGET OVERVIEW

<u>As of August 31, 2015</u>	<u>Board Approved 9-29-15</u>	<u>Adjusted 12-17-15</u>	
Member Dues (13,430 members @ \$475)	\$ 6,379,248	\$ 6,412,025	(13,499 members @ \$475)
Transfer Fees (186 Transfer Fee Transactions @ \$350)	65,004	306,500	(\$58,000 YTD Xfer Fees Plus \$248,500 for 710 Transactions that weren't charged a Xfer fee in 2015 that will be charged in 2016)
Tenant Fees	150,000	150,000	(2015 YTD \$148,419)
Guest Card Fees	99,996	117,298	(2015 YTD \$116,048)
Instructional Income	285,520	349,373	(2015 YTD \$349,373)
New Member Capital Fee (772 transactions @\$2,425)	1,871,640	1,575,056	(650 Transactions @ \$2,425)
Initial Fees (100 initial fees @ \$2,425)	242,496	55,104	(2015 YTD 24 Initial Fee Transactions @ \$2,296)
Interest Income	30,000	76,857	GVR's estimated 2016 projection, with new investment advisor
	\$ 9,123,904	\$ 9,042,213	
	\$ 9,123,904	minus \$ 9,042,213	= \$81,691
Capital Budget	(original capital budget) \$ 967,420	minus \$885,729	= \$81,691
	(amended capital budget)	\$885,729	