

TOWNHOMES OF BAYSHORE CONDOMINIUM OWNERS ASSOCIATION, INC.
COUNCIL OF DIRECTORS CORPORATE RESOLUTION
TO
RATIFY COUNCILS' ACTIONS TO ESTABLISH DEFENSE OF LITIGATION
AND
SETTING UNIT ASSEMENT AND MANNER OF COLLECTING THE \$25,000 DEDUCTIBLE

RECITALS:

WHEREAS, the Declaration Establishing a Plan for Condominium Ownership for Townhomes of Bayshore (the "Declaration") submitted the Bayshore Townhome property to the provisions of the Unit Property Act of the State of Delaware, 25 *Del. C.* §2201-2240.

WHEREAS, the Code of Regulations for Townhomes of Bayshore (the "COR") was recorded in the Office of the Recorder of Deeds in and for Sussex County Delaware, in Deed Book 2889, Page 044, *et. seq.*

WHEREAS, the Townhomes of Bayshore is operated and controlled by Townhomes of Bayshore Condominium Owners Association, Inc. (the "Association"), a corporation organized and existing under the laws of the State of Delaware.

WHEREAS, Section 3.2 of the COR provides for the powers and duties of the Board of Directors of the Association (the "Council"). The Council has all of the powers and duties necessary for the administration of the affairs of the condominium and may do all such acts and things as are by the Unit Property Act, by the COR, or by the Declaration, directed to be exercised and done by the Association of Owners.

WHEREAS, on January 24, 2024, the Association became aware that a Complaint was filed on January 22, 2024 in the Delaware Superior Court with the title: Patricia Hoffman v John Dill and the Townhomes of Bayshore Condominium Owners Association, Inc.; further identified by the Court as Civil Action Number: N24C-01-169 (the "Complaint").

WHEREAS, on February 8th 2024, at a properly noticed regular meeting of the Council that was open to all owner in the Townhomes of Bayshore community, discussion took place regarding the Complaint (an item that was noted on the Agenda for the subject meeting). The Vice President of the Association reported to all Council members present, the information then known about the above-referenced Complaint. Council had notified all of the proper parties; no service had been made as of that date and no other information was available.

WHEREAS, on February 14, 2024, a Sheriff of Sussex County simultaneously served John Dill, and Townhomes of Bayshore Condominium Owners Association, Inc with a notice of the Complaint.

WHEREAS, on February 15, 2024, the Council was presented with an engagement letter from an attorney identified by Philadelphia Insurance. The President and Vice President of the Association requested a review of this engagement letter by the Association's general legal counsel.

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WHEREAS, after review, the Association's general legal counsel did remark on administrative issues regarding the aforesaid engagement letter, and more specifically noted that Section 3.15 of the COR provides a right for members of Council to be indemnified, however, that indemnity arguably ends if the actions of any individual party are determined to fall completely outside of their role as an agent of the entity. For the time being, this does not appear to be an issue since paragraph 4 of the Complaint alleges that Mr. Dill was, at all relevant times, acting in the course and scope of his duties as an officer or agent of the Association. The Association's general legal counsel further noted that Section 4.8 of the COR provides that any contracts for expenditures and obligations over \$1,000 must be signed by two (2) officers or by others persons specifically designated by the Council.

WHEREAS, the Council, reviewed the information provided by general legal counsel, and by defense counsel, and, noting that time was a factor, concluded that it was reasonable and prudent to engage defense counsel to defend the Association and John Dill. With no other persons specifically designated by Council, VP, Jeanne Bartlett and President John Dill executed the engagement letter with litigation defense counsel.

WHEREAS, the litigation defense engagement letter obligates the Association to pay for defense costs up to \$25,000, an amount equal to the deductible provided in the Directors and Officers Policy in effect with the Association's insurer, Philadelphia Insurance (the applicable policy effective date being 9/3/2023, and the policy number being PCAP022352-0519).

WHEREAS, Section 3.2.2. of the COR provides the authority to Council to make assessments against owners in the Townhomes of Bayshore community to defray the costs and common expenses of the Association. Section 5.1.4. of the COR authorizes the Council to levy additional assessments where existing reserves are inadequate to fund the operation of the Association. Section 5.1.4. of the COR further provides that "[e]xtraordinary expenditures not originally included in the original budget which may become necessary during the year shall be charged first against such reserves."

WHEREAS, the COR provides the authority to Council in Section 3.2.11. to pay the cost of all services rendered to the Association, and not billed to unit owners.

WHEREAS, the Council acted to approve, provide for, and collect as part of the common expense assessment for budget years 2019 and 2020 such operating reserves as were deemed necessary, and further memorialized the existence of the reserve funds as a part of the Association's equity called "Working Capital." Council placed both budgets before membership, plainly identifying the assessments to be held as operating reserves. After proper notice to all members in both budget

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years 2019 and 2020, each such budget was passed by the Association's membership. The "Working Capital" assessments totaling \$26,050 have been collected, recorded and audited.

WITNESSETH:

We, the undersigned, constituting all the Council of the Association, and consenting at a meeting where notice was proper and quorum was met, **THEREFORE RESOLVE AS FOLLOWS:**

1. All relevant and fully disclosed actions of the Directors and Officers of the Association, taken relative to the allegations made in the Complaint have been reviewed and adequately considered by the Council. Based on such review, the Council adopts, ratifies, and approves all of the relevant and fully disclosed actions of the Directors' and Officers' that were taken in furtherance of the defense of those allegations made in the Complaint. The Council expressly ratifies and approves the prior signing by the Association's President and Vice President of the engagement letter with litigation defense counsel, the said engagement providing defense counsel for both John Dill and the Association.
2. Council further approves for payment any and all defense cost as may be billed and become due up to the amount of the \$25,000 insurance deductible. Payments will be recorded by the Association as a common expense of the Association.
3. Council approves litigation defense payments to be made first from operating reserves.
4. Council shall endeavor to propose budgets in the future that will account for the replenishment of operating reserves that have been allocated and/or expended in defense of the above-referenced litigation.

The Secretary of the Association is directed to update the corporate records of the Association with this Resolution.

This Resolution may be executed in counterparts. Facsimile or scanned signatures are binding and are considered to be original signatures.

This Resolution is duly adopted on April 13, 2024.

[SIGNATURES TO FOLLOW]

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Signatures

By: John M. Dill
John M. Dill, Council Member &
President

YES NO

Date: 4/13/2024

By: Jeanne E. Bartlett
Jeanne Bartlett, Council Member &
Vice-President

YES NO

Date: 4/13/2024

By: John Sciole
John Sciole, Council Member &
Secretary

YES NO

Date: 4/13/2024

By: absent
Geoffrey Germono, Council Member &
Treasurer

YES NO

Date: _____

By: Loretta Forsythe
Loretta Forsythe, Council Member

YES NO

Date: 4/13/2024

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CERTIFICATE OF CORPORATE RESOLUTION

I, John Sciole, duly elected and qualified Secretary of Townhomes of Bayshore Condominium Owners Association, Inc. hereby certify that the attached is a true, correct, and complete copy of the resolution that was duly adopted at a meeting of the Council on April 13, 2024.

I further certify that the aforementioned resolution is now in full force and effect without modification or rescission.

Signed this 13 day of April, 2024.

By: John Sciole
John Sciole, Secretary