

BAYSIDE COMMUNITY ASSOCIATION, INC.

RESOLUTION NO. 2021-_____

CREATION OF INDEPENDENT TRANSITION COMMITTEE

Recitals

A. According to Article 3, Section 3.15 of the By-Laws of Bayside Community Association, Inc. (the “Bylaws”), the Board of Directors (the “Board”) shall have the power to administer the Bayside Community Association, Inc.’s (the “Association”) affairs, perform the Association’s responsibilities, and exercise the Association’s rights as set forth in the Governing Documents¹ and as provided by law.

B. According to Article 5, Section 5.1 of the Bylaws, the Board may appoint advisory committees as it deems appropriate to perform such tasks as the Board may designate by resolution.

C. Pursuant to the power vested by Article 5, Section 5.1 of the Bylaws, the Board appointed the Transition Planning Committee to advise and assist the Board in developing and executing an integrated plan to transition from Founder control to Owner control.

D. The Board has determined that it is necessary, pursuant to the Board's authority under 8 *Del. C.* 141(c)2, to designate a special committee of Owners to serve beyond an advisory role and administer certain decision making authority relating to transition of the Association from Founder control to Owner control.

E. The Board, by this Resolution, hereby terminates the Transition Planning Committee and in place thereof, designates and empowers a new committee to exercise certain decision-making authority and assist with transition of the Association from Founder control to Owner control.

¹ All capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the Community Charter for Bayside (the “Charter”), recorded in the Office of the Recorder of Deeds, in and for Sussex County, State of Delaware at Deed Book 3106, Page 123 *et seq.*

NOW, THEREFORE the Board hereby adopts the following Resolution:

1. Pursuant to 8 *Del. C.* 141(c)2, an independent committee of the Board is hereby designated and delegated the power of the Board to evaluate, investigate, negotiate and compromise all issues of transition with the Founder including, but not limited to, all financial matters, negotiation and execution of a written transition agreement(s), investigation and negotiation of any warranty and defect concerns, and the transition of Board control (the “Transition Committee”). The Transition Committee’s mandate shall be set forth in the Transition Committee Charter and Guidelines attached as Exhibit A (the “Charter”). The Transition Committee may from time to time propose to the Board edits and revisions to the Charter.

2. The Transition Committee shall be composed of all homeowner elected directors serving on the Board that are free from conflict and material financial interest in the transition.

3. The Transition Committee is authorized to retain and compensate independent legal counsel, accounting advisors, engineering and other professionals as it deems necessary to accomplish its mandate.

4. The Transition Committee is authorized to spend resources allocated in the Association’s budget for transition. For expenditures beyond those allocated in the budget, the Transition Committee must obtain approval from the Board. Funding for any professional services shall be negotiated and mutually agreed upon by the Committee and the Founder during the transition process.

5. The Transition Committee shall have the power to initiate formal mediation or other alternative dispute resolution proceedings on behalf of the Association pertaining to the transition. The Committee is a Bounded Party, as the term is defined in Chapter 20 of the Community Charter, which, in part, limits certain types of litigation that could result in significant legal and emotional costs to the Community.

6. Each duly elected homeowner Director is hereby designated as the directors from the Board to serve on the Transition Committee. Those appointed Directors shall determine a Committee Chair or may serve as Co-Chairs. Each homeowner elected Director shall have equal authority as all other homeowner elected Director Committee members.

7. The Transition Committee may add further Owners as advisory non-voting members in its sole discretion.

8. The Transition Committee may adopt further rules, policies and resolutions necessary for conducting the purpose assigned herein. The Board has agreed upon an initial proposed Negotiation Framework that is attached hereto as Exhibit B. The Negotiation Framework represents only a proposed starting point and the Committee and Founder are authorized to request and negotiate changes to the Negotiation Framework. Any modifications or changes to the Negotiation Framework do not need further approval from the Board.

9. The creation of the Transition Committee is not intended to be a committee created under 25 *Del. C.* §81-416 and as such this action by the Association is not intended to begin the running of any period of limitations for claims.

EXHIBIT A
Transition Committee Charter and Guidelines

Bayside Community Association, Inc.
Transition Committee Charter and Guidelines

Reports to: The Transition Committee (“Committee”) is an independent committee being delegated certain decision making power of the Board of Directors (the “Board”) for the Bayside Community Association, Inc. (the “Association”) in Selbyville, DE. The Board of the Association may from time to time change or modify the Transition Committee Charter and Guidelines.

Mandate and Power: The Transition Committee is a temporary independent committee of the Board created by Board resolution under 8 *Del. C.* 141(c)2. The Committee shall consist of at least one Director of the Association and the Committee is being delegated the power and authority of the Board to evaluate, investigate, negotiate and compromise all issues of transition with Carl M. Freeman Communities L.L.C., its successors and assigns (the “Founder”). The Committee shall have “real bargaining power” as that phrase is used in Delaware corporate jurisprudence. The Committee shall negotiate in good faith and build a record demonstrating that it has engaged in a complete process. The Committee shall meet as often as necessary to fulfill its mandate.

Goal: To negotiate the transition from Founder control to Owner¹ control. The Board believes that the final result of the Committee would be a comprehensive and complete agreed upon, executed and binding transition agreement or agreements in a form approved by the Founder and the Committee that provides for a fair, timely and complete transition.

Structure: The Committee will be comprised of all non-Founder appointed directors. This Committee may solicit appropriate technical and management individuals to assist as events merit however such persons shall be non-voting members. Committee membership shall be determined by the non-Founder appointed directors. The Committee shall serve until such time as this Charter is dissolved by a majority of the homeowner elected members of the Board. The Committee may meet in person, or by any electronic means that allows the committee members to hear and be heard. The Committee may choose to hold its meeting in a forum open to members or it may hold closed meetings when in the Committee’s discretion confidentiality is needed. The Committee may choose to publish meeting minutes but is not required to do so. The Committee shall provide written monthly updates to the Association membership about its progress in cooperation with the Website Committee and the official Community Website.

Composition: The Committee shall exercise real bargaining power in its discussion with the Founder and shall negotiate at arms-length. Each member of the Committee shall be free of any conflicts or material financial interest in the transition. A

¹ As defined in the Community Charter for Bayside, recorded in the Office of the Recorder of Deeds, in and for Sussex County, State of Delaware at Deed Book 3106, Page 123 et seq.

Committee member shall not have a close business or personal relationship with the Founder that may be perceived to influence or constrain hard bargaining. Each member of the Committee shall have no historical or current relationship with the Founder that constitutes domination or control of or undue influence over such member in the context of his or her representation of the Association in connection with transition.

Independent Advisors: The Committee may engage its own independent legal counsel, financial advisors, engineering professionals or other professional advisors who do not possess any material financial interest or legal conflict in the Transition. The Committee has been allotted resources in the current budget and may spend the allotted financial resources without further approval by the Board. If the Committee believes the amounts in the budget are inadequate, it may petition the Board for additional resources.

Guidelines:

- The Committee may utilize the work performed by the former Transition Planning Committee and continue those efforts as well as expand upon that work to conduct additional fact investigation and negotiation with the Founder.
- Transition efforts shall include, but not be limited to, explicit and derived requirements in the following categories:
 - Regulatory/legal
 - Easement and Cost Share
 - Warranty and defects
 - Transition agreements
 - Tolling agreements
 - Board control issues
 - Records and record keeping
 - Business
 - Finance
 - Technical
 - Governance
 - Community assets/Transfer of assets to the Association
 - Community operations
 - Lessons-learned
 - Other best practices
 - Stakeholder-specific transition objectives²

² In this context, a stakeholder is defined as an individual, group, or organization who may affect, be affected by, or perceive itself to be affected by a decision, activity, or outcome of the transition effort.

EXHIBIT B
Proposed Negotiating Framework

Bayside Transition Negotiating Framework (Proposed)

1. The Transition Committee (the “Committee”) shall designate (in writing) individuals authorized to negotiate on behalf of the Committee and that such designation may vary by topic and issue.
2. The Founder shall designate (in writing) individuals authorized to negotiate on behalf of the Founder and that such designation may vary by topic and issue.
3. The Committee & Founder may request that experts retained by either party be invited to attend certain meetings for the purpose of providing information relevant to the resolution of an issue. Each side must provide advanced notice of the individuals designated to attend each meeting. Legal counsel shall not be present or participate in any formal face to face discussions or negotiations, until such time as agreement on any issue is reached and ready to be documented in an agreement.
4. The parties will meet in confidential closed negotiations no less than twice a month with the initial meeting to occur no later than February 1, 2021. The goal is for the execution and implementation of all Transition Agreements within 90 to 180 days. The final duration will be determined by mutually agreed upon scope and schedule by the Committee and the Founder.
5. Prior to the initial meeting, the Committee shall provide to the Founder an initial comprehensive list of concerns and issues to be discussed and negotiated during the transition. The Founder, as well, shall provide its list of transition issues and concerns to the Committee. These lists may be revised as the transition negotiation progresses.
6. The duration and frequency of meetings shall be mutually agreed upon by the parties. During a meeting, either party may request a caucus or a recess.
7. The parties shall identify the transition issues, as well as the order and timeframe in which the issues shall be discussed and negotiated.

8. The objective is to reach agreement on each issue before moving to a discussion of the next issue. However, if mediation is required to settle a specific issue, negotiations may continue on another issue while mediation arrangements are being made.
9. Negotiated agreements shall be binding and will be approved and executed by the Committee Chairs along with the Founder, after drafting and preparation by each party's respective legal counsel. Any executed agreements will be immediately submitted to the Association Board for implementation.
10. Meeting minutes shall be taken at each meeting and posted on Town Square upon approval by both parties to keep residents informed of negotiation progress and the transition events. Upon mutual agreement by the Committee and Founder, official periodic updates of the transition process shall be provided via Town Square and the regular Association Newsletter.
11. If either party determines there is an impasse on one or more of the issues under negotiation, that party may request involvement of the Association Attorney. If a mutually agreed upon resolution cannot be reached upon review and discussion with the Association Attorney, the parties may request to proceed to formal mediation as set forth in Section 20.2 of the Community Charter for Bayside. Each party to a mediation is obligated to pay only its own attorney's fees, costs and its one-half share of the cost of mediation.
12. All discussions, negotiations, documentation and communications of every type and kind shall be subject to Delaware Uniform Rules of Evidence #408.

RESOLUTION ACTION SHEET

Policy Resolution Number 2021-_____
Creation of Independent Transition Committee

Date of Adoption: _____

The above-referenced Resolution was adopted by the Board as of the date set forth above.

Signatures:

Vote: (Y/N)

Director: Josh Mastrangelo

Director: Rachel Allen

Director: Dave Levitsky

Director: Gordon Green

Director: Mark Littleton

ATTEST:

Secretary

Date