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Kevin Wine, Pro Se
345 Lancaster Court
Piscataway, NJ 08854
201-401-6129 - Telephone
kwine@optonline.net
Plaintiff

KEVIN WINE, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

SOCIETY HILL AT PISCATAWAY
CONDOMINIUM ASSOCIATION, INC.,
BOARD OF TRUSTEES OF SOCIETY
HILL AT PISCATAWAY
CONDOMINIUM ASSOCIATION, INC.,
JOHN DOES 1-10, and ABC CORPS. 1-10,

Defendants.

SUPERIOR COURT OF NEW
JERSEY CHANCERY DIVISION,
GENERAL EQUITY PART,
MIDDLESEX COUNTY

Civil Action:

DOCKET NO. MID-C-00078-21

BRIEF

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTIVE
RELIEF**

On the brief:
Kevin Wine, *Pro Se*

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SUMMARY OF RELIEF SOUGHT

1
2 Plaintiff seeks preliminary injunctive relief on multiple elements of COUNT 6 of his
3 second amended complaint, specifically invaliding the June 27, 2022 Special Meeting of
4 the Board of the Society Hill at Piscataway Condominium Association (the "Board") as
5 the meeting notice was deficient; and barring three actions of the Board at the June 27,
6 2022 Special Meeting at which the Board voted unanimously in favor of awarding a
7 \$758,000 contract for the removal of a large pile of dirt (the "Spoils") from the property;
8 approving a \$2,000/unit special assessment to be charged to all 545 units; and of
9 providing an early payment discount for owners that are able to pay a \$2,000 special
10 assessment prior to October 31, 2022.
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13 In support hereof, Plaintiff shall rely on this brief and his certification.
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PRELIMINARY STATEMENT

The actions of the Board at its June 27, 2022 Special Meeting are the direct consequence of the Board’s failure to comply with the conditions of a past site plan approval from 2014, requiring either removal of the Spoils, or submission of another site plan application to incorporate the Spoils as a landscaping feature. The Society Hill at Piscataway Condominium Association (the “Association”) opted for the latter and added the Spoils to an existing site plan application for improvements to the Association’s retention basin, for which a capital expenditure of \$200,000 was previously approved by the Membership of the Association (the “Membership”) at the 2011 Annual Meeting. The Association’s By-Laws (the “By-Laws”) obligate the Board to actually make the capital expenditures approved by the Membership. The Board worked diligently on the site plan application until 2018, at which time the Board leadership changed, and the Board suspended the application indefinitely without authority. Since September 2018, no further effort or progress was made, resulting in a summons from the Township of Piscataway (the “Township”) Code Enforcement on June 16, 2021 and a final compliance deadline of November 2022. As a direct result of the Board’s failure to follow the instructions of the Membership, the board has breached its fiduciary duty, causing the Membership to suffer immediate, substantial and irreparable harms and \$758,000 of possibly irrecoverable financial harm.

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STATEMENT OF FACTS

1. As per the Society Hill at Piscataway Condominium Association’s (the “Association”) By-Laws (the “By-Laws”) section 3.11, the Membership of the Association (the “Membership”) is empowered to direct the Board with respect to capital expenditures, by “...the affirmative vote of at least 75 percent of the Members in good standing and entitled to vote and who vote in person or by proxy” at an Annual Meeting of the Association, and “The Trustees shall be governed in the making of capital expenditures by decisions made by the Members as provided in this section.” (EXHIBIT A) See Wine cert. at ¶1.
2. At the final adjournment on December 16, 2011 of the 2011 Annual Meeting of the Association, and consistent with Section 3.11 of the By-Laws, the Membership approved a capital expenditure of up to \$200,000 on the Pond Renovation Project (the “Pond Project”). (EXHIBIT B) See Wine cert. at ¶2.
3. As presented to the Membership at the time, the Pond Project was understood to include dredging of the Association’s storm water retention basin, and landscaping, trails, bridges, seating and other improvements to the areas surrounding the retention basin and tributary waterways. See Wine cert. at ¶3.
4. At the 2011, 2012, 2014 Annual Meetings, and consistent with Section 3.11 of the By-Laws, the Membership approved, in increments as the cost of the project became clearer, a total capital expenditure of \$500,000 for the construction of a maintenance garage (the “Garage”). See Wine cert. at ¶4.

- 1 5. At the final adjournment on December 18, 2017 of the 2017 Annual Meeting of the
2 Association, and consistent with Section 3.11 of the By-Laws, the Membership
3 authorized an additional expenditure of \$70,000 for the reclaimed irrigation water
4 system, related to the Pond Project. (EXHIBIT C) See Wine cert. at ¶5.
- 5
6 6. Around May 2014, a site plan application was submitted to the Township of
7 Piscataway (the “Township”) Zoning Board (the “Zoning Board”) for approval of the
8 Garage, which was eventually granted in November 2014, with restrictions, including
9 the requirement to either dispose of a large spoils pile (the “Spoils”) that had
10 accumulated on the property as a result of the pond dredging and other capital repair
11 projects, or submit another application to the Zoning Board for approval to keep the
12 Spoils on the property as a landscaping feature. See Wine cert. at ¶6.
- 13
14 7. Around May 2016, the Association applied for an extension on the Garage
15 construction deadline, which was eventually granted. See Wine cert. at ¶7.
- 16
17 8. At the July 2, 2018 Board Meeting, the Board voted to put all capital improvement
18 projects on hold until August 10, 2018 so that a cost/benefit and available funds
19 analysis could be performed on the improvement projects. (EXHIBIT D) See Wine
20 cert. at ¶8.
- 21
22 9. I do not recall if the planned analysis was ever completed, and thus far have not been
23 able to locate any such analysis. See Wine cert. at ¶9.
- 24
25 10. Subsequent to the July 2, 2018 Board vote for the cost/benefit and available funds
26 analysis, the Board never voted to take all the capital improvement projects off hold,
27 and the Board has made no effort to further any site plan applications including the
28 Pond Project site plan. See Wine cert. at ¶10.

- 1 11. Around mid-August 2018, and after multiple design iterations and consultation with
2 Association site plan counsel, and the Township, an amended site plan application
3 was finally ready for the Zoning Board, covering the Pond Project, Garage, and other
4 capital improvement and repair projects. See Wine cert. at ¶11.
5
- 6 12. Around late August 2018, Trustee Zhou, acting in the capacity of Association
7 Treasurer, unilaterally and single-handedly intercepted the site plan application fee
8 payment of around \$1,400, preventing the site plan application from being deemed
9 complete by the Zoning Board, thus placing the entire application on hold. See Wine
10 cert. at ¶12.
11
- 12 13. Neither Trustee Zhou, nor the Board as a whole, had the authority to indefinitely
13 suspend the site plan applications including the Pond Project site plan application.
14 See Wine cert. at ¶13.
15
- 16 14. Since August 2018, the Board made no effort to present the Pond Project capital
17 expenditure or other Membership approved capital expenditures to the Membership
18 for a vote to rescind by the same 75 percent affirmative vote that was originally
19 required to approve them. See Wine cert. at ¶14.
20
- 21 15. The Membership never voted to rescind any of the original Pond Project capital
22 expenditures. See Wine cert. at ¶15.
23
- 24 16. On August 6, 2018, the Board received my editorial comments via a community
25 email in which I reminded the Board that they likely lack the authority to cancel
26 Membership approved capital expenditures, stating "... There is also specific language
27 in our by-laws which again, on the surface, suggest the board is obligated to follow
28 the direction of the membership on capital improvement projects. It may not even be

1 within the board authority to cancel any of these projects. This doesn't seem to bother
2 some trustees however, who think they can do whatever they want whenever they
3 want..." See Wine cert. at ¶16.

4
5 17. A copy of my August 6, 2018 editorial was attached as exhibit D to MID-C-000216-
6 19, Society Hill at Piscataway v. Wine, suggesting that the Board was aware of my
7 comments. See Wine cert. at ¶17.

8 18. On September 11, 2018, the Board received an email from the Association's interim
9 manager which included a legal opinion, dated September 11, 2018, from Association
10 counsel at that time, Hubert Cutolo, providing his legal opinion with regard to
11 Board's obligations in terms of capital expenditures approved by the Membership.
12 (EXHIBIT E – third page, fourth paragraph) See Wine cert. at ¶18.

13
14 19. Three members of the Board at that time are still on the Board currently, and received
15 the email and attachment, including Tong Zhou, Doug Sanford, and Mary Thomas.
16 See Wine cert. at ¶19.

17
18 20. The Membership capital expenditures and capital improvements were discussed in
19 person at Board meetings with Cutolo and the Board in the fall of 2018, during which
20 time Tong Zhou, Doug Sanford, and Mary Thomas were on the Board. See Wine cert.
21 at ¶20.

22 21. I recall one particular discussion with the Board and Cutolo in which it was suggested
23 that the Board could argue the capital expenditure projects were abandoned as a way
24 to escape the Boards obligation to carry out the expenditures, in spite of the fact that
25 considerable effort was made in preparing the site plan applications up until
26 September 2018. See Wine cert. at ¶21.
27
28

1 22. On November 5, 2019, the Board received my editorial comments via a community
2 email in which I reminded the board that "...eventually the township is going to shut
3 us down and force us to clean up all the parking lots and supplies under tarps and
4 equipment and the shipping container. The town was putting up with this, reluctantly,
5 because they knew we were in the process of constructing a building to put
6 everything.", and "...the past membership approvals for the improvement projects are
7 still in effect, and technically the Board of Trustees is still obligated to follow through
8 on those plans as per section 3.11 of the association's by-laws: '...The Trustees shall
9 be governed in the making of capital expenditures by decisions made by the
10 Members...'. See Wine cert. at ¶22.

11
12
13 23. The editorial was attached as exhibit G to MID-C-000216-19, Society Hill at
14 Piscataway v. Wine, suggesting that the Board was aware of my comments. See Wine
15 cert. at ¶23.

16 24. As a result of the suspension of the Pond Project site plan application, the Association
17 was issued a summons on June 16, 2021 from the Township for the Association's
18 failure to either remove the Spoils, or submit a site plan application to have the Spoils
19 approved to remain. (EXHIBIT F) See Wine cert. at ¶24.

20
21 25. On June 21, 2022 at 9:40AM, Plaintiff received email notification of a Special
22 Meeting of the Board of Trustees, scheduled for June 27, 2022, with a single agenda
23 item entitled "Soil Remediation Project". (EXHIBIT G) See Wine cert. at ¶25.

24
25 26. N.J.A.C. 5:26-8.12 (the PREDFDA) requires seven-day notice to the Membership of
26 special meetings, yet six-day notice was given. See Wine cert. at ¶26.

1 27. On June 21, 2022, I emailed the Board, Association counsel Radom, and Association
2 manager Cole, reminding them of their obligations under the By-Laws with respect to
3 capital improvement expenditures approved by the Membership. (EXHIBIT H) See
4 Wine cert. at ¶27.

5
6 28. At the June 27, 2022 Special Meeting of the Board, Trustees Tong Zhou, Mary
7 Thomas, Wendy Zhang, Douglas Sanford, Patricia Mincarelli, and Forrest Luu,
8 knowingly, willfully and unanimously voted to award a contract in the amount of
9 \$758,000 for removal of the Spoils, and to impose a \$2,000 special assessment on all
10 owners of the Association, totaling \$1,090,000 to cover the removal costs of the
11 Spoils. See Wine cert. at ¶28.

12
13 29. The Board selected the \$758,000 bid from amongst three bids, the other two being for
14 \$859,000 and \$900,000, one is excess of the selected bid by \$101,000, and the other
15 in excess by \$142,000. See Wine cert. at ¶29.

16
17 30. The special assessment was \$332,000 in excess of the amount actually contracted to
18 remediate the Spoils. See Wine cert. at ¶30.

19
20 31. Board President Zhou explained that the excess funds might be needed for
21 contingencies that arise during the Spoils removal, and for other unrelated purposes
22 such as replacing roofs, if there are funds remaining. See Wine cert. at ¶31.

23
24 32. The Board approved discounts on the \$2,000 special assessment for owners paying
25 prior to October 31, 2022; \$1,900 is due if paid by August 31, 2022; \$1,940 is due if
26 paid by September 30, 2022; or \$1,980 is due if paid by October 31, 2022. See Wine
27 cert. at ¶32.
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33. The Board's special assessment payment discount scheme creates classes of members based on their economic status, with different treatment of the different classes, which divides the special assessment unevenly between the Membership. See Wine cert. at ¶33.

34. If the Board would have performed as instructed by the Membership, the Spoils would have been remediated years ago and within the scope of the original Pond Project capital expenditure allocation of \$200,000 and the Association would not be facing an unexpected expense of at least \$758,000 to remove the Spoils, and a special assessment of \$1,090,000. See Wine cert. at ¶34.

35. I was led to believe by Chairman Zhou at the June 27, 2022 special meeting that the Township has given the Association until November 2022 to finally remediate the Spoils. See Wine cert. at ¶35.

36. I was led to believe by Chairman Zhou at the June 27, 2022 special meeting that the Township will issue a daily fine of \$5,000 to the Association if it has not remediated the Spoils by November 2022. See Wine cert. at ¶36.

37. A review of the Township ordinances cited on the June 16, 2021 summonses reveals that the fine for violation of ordinance section 26-28.1 is a minimum of \$25 and a maximum of \$3,000, and for violation of ordinance section 24-201 the fine is a minimum of \$100 and a maximum of \$2,000. See Wine cert. at ¶37.

38. I was led to believe by Radom at the June 27, 2022 special meeting that there are approximately 10,000 tons of Spoils that need to be removed. See Wine cert. at ¶38.

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- 39. The Spoils is a truncated cone of base radius 50 feet, top radius 30 feet, and height 10 feet, resulting in a calculated volume of 1,900 cubic yards, or 2,375 tons at a soil density of 2,500 lbs/yd³. See Wine cert. at ¶39.
- 40. The quantity of Spoils, based on actual measurement, is estimated to be only one-fourth of what I was told at the June 27, 2022 special meeting. See Wine cert. at ¶40.
- 41. If the Spoils removal contract that was approved by the board was for 10,000 tons of soil, the Association is being over-charged by a factor of 4. See Wine cert. at ¶41.
- 42. Attached hereto as EXHIBIT I is a true copy of By-Laws section 5.11(C). See Wine cert. at ¶42.
- 43. Attached hereto as EXHIBIT J is a true copy of By-Laws section 13. See Wine cert. at ¶43.
- 44. Attached hereto as EXHIBIT K is a true copy of the Association's letter to the Membership dated July 7, 2022, announcing the \$2,000 special assessment and the pre-payment discount schedule. See Wine cert. at ¶44.
- 45. The By-Laws have not been amended in any way that would relieve the Board of its obligation to follow the instructions of the Membership on capital expenditures. See Wine cert. at ¶45.
- 46. The Association has been independent from the Sponsor since the late 1980's. See Wine cert. at ¶46.

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STANDARD OF REVIEW

The standard for obtaining temporary or preliminary injunctive relief is well-established. *Crowe v. De Gioia*, 90 N.J. 126, 132 (1982). Such relief is an extraordinary remedy and should only be issued "when necessary to prevent irreparable harm." *Ibid*. The party seeking preliminary relief must demonstrate by clear and convincing evidence that (1) there is a reasonable probability of eventual success on the merits in accordance with settled law; (2) the moving party will suffer irreparable harm if restraints are not entered; and (3) comparing the "relative hardships to the parties reveals that greater harm would occur if [preliminary relief] is not granted than if it were." *Garden State Equal. v. Dow*, 216 N.J. 314, 320 (2013) (quoting *McNeil v. Legis. Apportionment Comm'n*, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting)).

1 **LEGAL ARGUMENT**

2 **A. PLAINTIFF WILL LIKELY SUCCEED ON THE MERITS OF THE BREACH**
3 **OF FIDUCIARY DUTY CLAIM RELATING TO DEFICIENT MEETING**
4 **NOTICE**

5 The most recent and concise summary of an Association’s fiduciary responsibility
6 towards the unit owners is found in Billig v. Buckingham Towers Condo, 287 N.J. Super.
7 551 (App. Div. 1996) (emphasis added):
8

9 We reach this conclusion for the reasons articulated in Thanasoulis v. Winston
10 Towers 200 Ass'n., Inc., 110 N.J. 650 , 657, 542 A.2d 900 (1988). As the Court
11 there explained, a condominium association stands in a fiduciary relationship to
12 the unit owners. That relationship requires that *it act consistently with the*
13 *Condominium Act and its own governing documents and that its actions be*
14 *free of fraud, self-dealing, or unconscionability*. Siller v. Hartz Mountain
15 Assoc., 93 N.J. 370, 382-383, 461 A.2d 568 (1983). Moreover, that fiduciary
16 relationship requires that *in dealing with unit owners, the association must act*
17 *reasonably and in good faith*. See this court's opinion in Thanasoulis v.
18 Winston Tower 200 Ass'n., Inc., 214 N.J. Super. 408 , 411, 519 A.2d 911
19 (App.Div. 1985), rev'd on other grounds, 110 N.J. 650 , 542 A.2d 900 (1988). If
20 a contested act of the association meets each of these tests the judiciary will not
21 interfere. See also Papalexioiu v. Tower West Condominium, 167 N.J. Super.
22 516 , 527, 401 A.2d 280 (Ch.Div. 1979).
23

24 If the Association acted “consistently with the Condominium Act and its own governing
25 documents”, the action was “free of fraud, self-dealing, and unconscionability”, and the
26 Association acted “reasonably and in good faith”, all prongs are satisfied, and the
27 Association has not breached its fiduciary duty. If any one of these prongs is not met, the
28 breach of fiduciary duty defense is unavailable.

A similar test determines the applicability of the Business Judgement Rule (the “BJR”)
defense, as in Anklowitz v. Greenbriar at Whittingham Cmty. Ass'n, No. A-3606-12T1 (App.
Div. Aug. 29, 2014):

The business judgment rule applies to homeowners' and condominium
associations. In Walker v. Briarwood Condo Ass'n, 274 N.J. Super. 422, 426

1 (App. Div. 1994), we stated: "[D]ecisions made by a condominium association
2 board should be viewed by a court using the same business judgment rule which
3 governs the decisions made by other types of corporate directors." Accord
4 Courts at Beachgate v. Bird, 226 N.J. Super. 631, 641 (Ch. Div. 1988);
5 Papalexou v. Tower West Condo., 167 N.J. Super. 516, 527 (Ch. Div. 1979).

6 The test is "(1) whether the Associations' actions were authorized by statute or
7 by its own bylaws or master deed, and if so, (2) whether the action is fraudulent,
8 self-dealing or unconscionable." Owners of the Manor Homes of Whittingham
9 v. Whittingham Homeowners Ass'n, 367 N.J. Super. 314, 322 (App. Div. 2004);
10 accord Chin v. Coventry Square Condo. Ass'n, 270 N.J. Super. 323, 328-29
11 (App. Div. 1994). "If a contested act of the association meets each of these tests
12 the judiciary will not interfere." Billig v. Buckingham Towers Condo. Ass'n I,
13 Inc., 287 N.J. Super. 551, 563 (App. Div. 1996).

14 On the other hand, if the fiduciary duty of the association is breached by fraud
15 or acts performed in bad faith, the business judgment rule is unavailable as a
16 defense. See Mulligan v. Panther Valley Prop. Owners Ass'n, 337 N.J. Super.
17 293, 300 (App. Div. 2001) (citing Papalexou, supra, 167 N.J. Super. at 527).

18 If the BJR is not applicable as a defense, individual Trustees can be held liable for the
19 actions of the Association, as in Baouab v. 2600 Ass'n, A-4039-19 (App. Div. Dec. 28,
20 2021):

21 The court noted that the liability of the trustees is governed by the Business
22 Judgment Rule (BJR), which limits liability to proven fraud, self-dealing, or
23 unconscionable behavior.

24 But courts will not second-guess the actions of directors unless it appears that
25 they are the result of fraud, dishonesty or incompetence," [Papalexou, 167
26 N.J. Super. at 527,] and "[b]ad judgment, without bad faith, does not ordinarily
27 make officers individually liable." Alloco v. Ocean Beach & Bay Club, 456
28 N.J. Super. 124, 140 (App. Div. 2018) (quoting Maul v. Kirkman, 270 N.J. Super.
596, 614 (App. Div. 1994)).

Title 15A:6-14 exempts trustees from liability if, acting in good faith, they relied on the
advice of counsel, other professionals, officers, or committees:

"Trustees and members of any committee designated by the board shall discharge
their duties in good faith and with that degree of diligence, care and skill which
ordinary, prudent persons would exercise under similar circumstances in like
positions. In discharging their duties, trustees and members of any committee
designated by the board shall not be liable if, acting in good faith, they rely on the

1 opinion of counsel for the corporation or upon written reports setting forth
2 financial data concerning the corporation and prepared by an independent public
3 accountant or certified public accountant or firm of accountants or upon financial
4 statements, books of account or reports of the corporation represented to them to
5 be correct by the president, the officer of the corporation having charge of its
6 books of account, or the person presiding at a meeting of the board. A trustee
7 shall not be personally liable to the corporation or its members for damages for
8 breach of duty as a trustee if and to the extent that such liability has been
9 eliminated or limited by a provision in the certificate of incorporation authorized
10 by subsection c. of N.J.S.15A:2-8,..."

11 Section 8.00 of the Association's By-laws provide indemnification for Trustees, provided
12 they are not ultimately found liable for gross negligence or willful misconduct:

13 "The Association shall indemnify every Trustee and Officer, his heirs, executors and
14 administrators, against all loss, costs and expenses, including counsel fees, reasonably
15 incurred by him in connection with any action, suit or proceeding to which he may be made a
16 party by reason of his being or having been a Trustee or officer of the Association, except as
17 to matters as to which he shall be finally adjudged in such action, suit or proceeding to be
18 liable for gross negligence or willful misconduct..."

19 The Association is obligated to follow N.J.A.C. 5:26-8.12 regarding notice of meetings
20 other than Annual Meetings and regularly scheduled Board meetings, as per section (c),
21 which states:

22 (c) In addition to the posted open meeting schedule, adequate notice of at least
23 seven days prior to any such meeting shall be given to all association members
24 and voting eligible tenants, as applicable.

25 1. Such notice shall be provided as follows:

- 26 i. The notice shall be prominently posted in at least one place on the
27 property that is accessible to all owners at all times;
- 28 ii. The notice shall be posted on the association's website and included in
any association newsletter; or
- iii. The notice shall be personally provided to each member or designee by
mail, hand-delivery, or electronic means.

29 With respect to the June 27, 2022 Special Meeting of the Board, notice was delivered via
30 email to Plaintiff at 9:40 AM on June 21, 2022, (Wine cert. ¶25, and Wine cert. EXHIBIT G)
31 which was 6 days prior to the meeting. As per N.J.A.C. 5:26-8.12(c), the notice requirement

1 is 7 days. Therefore, the notice of the June 27, 2022 Special Meeting of the Board was
2 deficient in time by one day.

3 Notice was further inadequate in that it did not clearly reveal the full scope of possible
4 actions by the Board at the Special Meeting. The only agenda item stated: "Soil Remediation
5 Project – Cost to remediate violations, History of soil on property, impact today". (Wine cert.
6 EXHIBIT G) Nothing in the notice gave any indication that the cost was nearly \$1,000,000
7 and that a special assessment was under consideration, and certainly not one of the
8 magnitude the Board approved. The \$2,000/unit special assessment was nearly as much as
9 the entire years' worth of regular maintenance fees of \$2,520/unit. In Zecca v. Monterey
10 Condo. Ass'n, No. A-4531-18T3 (App. Div. May 6, 2020), the Court noted, quoting the
11 Arbitrator "...notice can hardly be adequate if it does not inform the person being noticed as
12 to what is to occur' and in this case, the published agenda lacked 'implicit reference to the
13 possible adoption of a new assessment of limited applicability.'", resulting in the invalidation
14 of the improperly noticed meeting.

15 Plaintiff will likely succeed on the merits in accordance with settled law. The Board
16 breached its fiduciary duty by failing to provide a full seven days meeting notice. The
17 Board's actions were therefore not authorized, the first prong of a breach of fiduciary duty
18 defense fails, and the Board's actions at the June 27, 2022 special meeting are likely to be
19 ruled invalid. Furthermore, the Board's meeting notice did not adequately inform the
20 Membership of the full scope of what was to occur. This failure will likely result in the
21 invalidation of the June 27, 2022 special meeting, as per settled case law.
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1 **B. PLAINTIFF WILL LIKELY SUCCEED ON THE MERITS OF THE BREACH**
2 **OF FIDUCIARY DUTY CLAIM RELATING TO THE BOARD’S FAILURE**
3 **TO HONOR THE CAPITAL EXPENDITURE INSTRUCITONS OF THE**
4 **MEMBERSHIP**

5 The Association’s By-Laws section 3.11 (Wine cert. EXHIBIT A) clearly give the
6 Membership the power to make capital expenditure decisions at the Annual meetings, and
7 require the Board of Trustees to act on those decisions (emphasis added):

8 3.11 Capital Expenditures. *All decisions of the Members involving capital*
9 *expenditures shall require for passage the affirmative vote of at least 75 percent*
10 *of the Members in good standing and entitled to vote and who vote in person or*
11 *by proxy.* All other decisions shall require for passage the affirmative vote of at
12 least a majority of the Members in good standing and entitled to vote and who
13 vote in person or by proxy. *The Trustees shall be governed in the making of*
14 *capital expenditures by decisions made by the Members as provided in this*
15 *section.*

16 Under the authority of By-Laws section 3.11, the Membership voting in person or by
17 proxy at the 2011, 2012, 2013, 2014, and 2017 Annual Meetings made and passed, by a 75
18 percent majority vote, motions on several capital expenditures, as reflected in the Minutes
19 taken at those meetings. During those years, the Association’s proxy form was designed to
20 permit Members to give their proxy holder voting rights on other matters that may come up
21 at the annual meeting. In particular, at the 2011 Annual Meeting, the Membership approved a
22 capital expenditure of \$200,000 for landscaping and other improvements to the Association’s
23 retention basin (the “Pond Project”) (Wine cert. EXHIBIT B), and at the 2017 Annual
24 Meeting, the Membership approve another capital expenditure of \$70,000 for the reclaimed
25 irrigation water project (Wine cert. EXHIBIT C), which was related to the Pond Project and
26 included on the Pond Project site plan application.

1 The Board is obligated to act on the capital expenditures approved by the Membership, as
2 By-Laws Section 3.11 reads in part (emphasis added) “The Trustees *shall* be governed...”.
3 The Board’s July 2, 2018 temporary suspension of all the capital expenditure projects, which
4 ultimately evolved in to a permanent suspension, and Trustee Zhou’s interception of the Pond
5 Project site plan application in August of 2018, was beyond both his and the Board’s
6 authority.
7

8 Since 2018, the Board was fully aware of its obligations under By-Laws Section 3.11, as
9 it had been advised by written opinion of former Association Counsel on September 11, 2018
10 (Wine cert. ¶18), the topic came up on occasion in the fall of 2018 (Wine cert. ¶20), and the
11 Plaintiff wrote at least two community editorials mentioning the Board’s obligation, one on
12 August 6, 2018 and a second on November 5, 2019. (Wine cert. ¶16 and ¶22) Both editorials
13 were later incorporated by Defendant as exhibits in their claims against Plaintiff in Society
14 Hill at Piscataway v. Wine, MID-C-000216-19 (Wine cert. ¶17 and ¶23), confirming that the
15 Board and current Association Counsel Radom had received and were aware of Plaintiff’s
16 comments. The Board was most recently advised of its obligations under By-Laws Section
17 3.11 on June 21, 2022. (Wine cert. ¶27) Three of the six currently active Trustees, Tong
18 Zhou, Mary Thomas, and Doug Sanford, were all on the Board in the fall of 2018 (Wine cert.
19 ¶19 and ¶20), and therefore were likely to be aware of their By-Laws Section 3.11
20 obligations then and now.
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23 Furthermore, in dealing with the homeowners, the Board must act reasonably and in good
24 faith. Since September 2018, the Board has made no good-faith effort whatsoever to progress
25 the capital expenditure wishes of the Membership in terms of the Pond Project and other
26 projects (Wine cert. ¶10), after having been advised and told on several occasions of their
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1 obligations under By-Laws Section 3.11. The Board's willful lack of good-faith in carrying
2 out the Membership's instructions has directly resulted in the current situation with the
3 immediate and irreparable harm of at least \$758,000 to remove the Spoils and a \$1,090,000
4 special assessment. The Board's actions are also unreasonable in that the Board is now
5 imposing a \$2,000/unit special assessment, due in four months' time, instead of opting for
6 the original and more reasonable plan to seek site plan approval to incorporate the Spoils as a
7 landscaping feature (Wine cert. ¶6) under the original Pond Project capital expenditure
8 approval of \$200,000.
9

10 Plaintiff will likely succeed on the merits in accordance with settled law. The Board
11 breached its fiduciary duty by failing to follow the Membership's capital expenditure
12 instructions on the Pond Project, as clearly described in By-Laws Section 3.11. The Board's
13 actions, or in the case its inactions, were therefore not authorized, the first prong of a breach
14 of fiduciary duty defense fails, and the Board will likely be ordered to perform as instructed
15 by the Membership, alleviating the current harm. It is also likely that individual Trustees, and
16 possibly all the Trustees, will be found to be personally liable for their inactions, as personal
17 liability protection under the BRJ is also defeated since the Board's inactions were not
18 authorized. Personal liability protection under Title 15A and the By-Laws indemnification
19 clause is likely defeated as well, since the Trustees went against the advice of Cutolo, and
20 knowingly and willfully disregarded By-Laws Section 3.11.
21

22 Finally, the Board's actions are both in bad-faith and unreasonable, as no effort
23 whatsoever was made since September 2018 to implement the Membership's capital
24 expenditure wishes, which is now resulting in an substantial hardship for the Membership,
25 which could still be avoided if the Board followed the Membership's instructions.
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1 **C. PLAINTIFF WILL LIKELY SUCCEED ON THE MERITS OF THE BREACH**
2 **OF FIDUCIARY DUTY CLAIM RELATING TO UNEQUAL ASSESSMENTS**
3 **CHARGED TO THE UNIT OWNERS**

4 N.J.S.A. 46:8B-17 (the “Condominium Act”) defers to the By-Laws of the Association
5 regarding the manner in which assessments are to be apportioned to the owners:

6 46:8B-17. The common expenses shall be charged to unit owners according to
7 the percentage of their respective undivided interests in the common elements as
8 set forth in the master deed and amendments thereto, or in such other proportions
as may be provided in the master deed or by-laws.

9 The Association’s By-Laws Section 5.11(C) (Wine cert. EXHIBIT I) address the
10 Board’s authority to impose assessments on the owners, stating:

11 C. Assessments. By majority vote of the Board, to adjust or increase the
12 amount of any annual assessment and equal installments, and to levy and
13 collect in addition thereto, special assessments in such amounts as the Board
14 may deem proper, whenever the Board is of the opinion that it is necessary to
15 do so in order to meet increased operating or maintenance costs, or additional
16 capital expenses, or because of emergencies; provided, however, that all such
17 increases or special assessments shall be made or levied against such owners
and the units owned by them respectively, in the same manner as provided in
Section 13.00.

18 And then referring to By-Laws Section 13.00 (Wine cert. EXHIBIT J) for the specifics
19 as to how the assessments are to be divided:

20 13.00 Members Maintenance Fees. Maintenance costs for the Association
21 and the condominium owned lands and facilities shall be computed on the
22 basis of each unit owner paying 1/545th of the total operating budget of the
Association.

23 The Board’s special assessment payment plan affords a discount to owners who are
24 able to pay the special assessment prior to October 31, 2022. (Wine cert. ¶32) This scheme
25 unevenly distributes the assessment amongst the owners in direct violation of the
26 Association’s By-Laws, and creates two classes of owners – one that can pay the assessment
27 early, and another that can’t - and distributes the special assessment burden unevenly
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between the two classes. In *Thanasoulis v. Winston Towers 200 Ass'n*, 110 N.J. 650 (1988), the NJ Supreme Court invalidated a parking space rental scheme that charged a different amount based on two classes of owners created by their board - owners that lived in their unit, and owners that rented out their unit, stating: “We hold that in adopting the parking fee differential, the association exceeded the scope of its power as defined by the Act and the master deed, and that the regulation is therefore invalid”. This Board is attempting a similar scheme here, creating two classes of owners, in this instance based on financial status, and treating them differently.

Plaintiff will likely succeed on the merits in accordance with settled law. The Board breached its fiduciary duty by failing to distribute their special assessment evenly amongst the Membership, as per the By-Laws. The Board’s actions were therefore not authorized, the first prong of a breach of fiduciary duty defense fails, and the Board’s special assessment payment plan is likely to be ruled invalid.

1 **D. THE ASSOCIATION WILL SUFFER SUBSTANTIAL, IMMEDIATE AND**
2 **IRREPARABLE HARM IF THE BOARD IS ALLOWED TO CONTINUE TO**
3 **BREACH ITS FIDUCIARY DUTY**

4 The Membership will suffer substantial, immediate, and irreparable harm if the Board is
5 allowed to continue ignoring the capital expenditure instructions of the Membership with
6 respect to the Pond Project and continue forward with its alternative plan to remediate the
7 Spoils, at a cost of at least \$758,000, far in excess of \$200,000 that was approved and would
8 have been spent had the Board not illegally suspended the Pond Project site plan application
9 in August 2018.
10

11 The cost of removing the Spoils is likely to exceed \$758,000, as the two other bids for the
12 same removal work were \$101,000 and \$142,000 higher, and the Board is already preparing
13 the Membership for contingencies that are likely to arise during the removal project. (Wine
14 cert. ¶29-31)
15

16 The immediate and substantial harm extends beyond a significant financial loss. By
17 ignoring the instructions of the Membership on the Pond Project, the Board is infringing
18 upon the rights of the Membership in terms of capital expenditures. Without intervention, the
19 Membership's capital expenditure instructions will continue to be ignored, as the Board
20 unilaterally rescinds a valid vote of the Membership, and worse yet, actively works against
21 the Membership's instructions by discarding and dismantling what previously existed of the
22 Pond Project. This is an affront to the very core of democratic governance in condominium
23 associations and non-profit corporations.
24

25 The Membership will be deprived of what came to be the key feature of the Pond Project,
26 as the site plan application re-purposed the Spoils into a community focal point with a trail
27 and seating areas from which to overlook the retention pond. The Membership will also be
28

1 deprived of the reclaimed irrigation water system and the environmental conservation
2 benefits and cost saving such a system would have provided to the Membership.

3 Although irreparable harm does not ordinarily extend to financial harms, and instead just
4 to harms that “cannot be redressed adequately by monetary damages”, as in Crowe v.
5 DeGioia, 90 N.J. 126, 132 (1982), in this instance there is a possibility, given the willful
6 misconduct of the Board in ignoring the capital expenditure instructions of the Membership,
7 that insurance coverages protecting the Board from breach of fiduciary duty claims may be
8 unavailable. In this event, what may seem like purely financial harm on the surface, could
9 ultimately manifest as irreparable harm to the Membership if there is no channel through
10 which to recover monetary damages. Further, any judgment awarded to the Membership
11 would be paid back to the same fund against which damage is awarded, resulting in a net
12 zero gain. Once remediation work is performed and a contractor is paid, that money may be
13 gone forever and not recoverable.

14 The harm is immediate, as the Board informed the entire Membership via letter dated
15 July 7, 2022 (Wine cert. ¶44 and EXHIBIT K) of its plans to continue forward with the
16 Spoils removal and its \$2,000/unit special assessment.

17 The actual calculations of the tonnage of soil in the Spoils is approximately 2,375 tons,
18 which is one quarter of the approximately 10,000 tons claimed to be in the pile. (Wine cert.
19 ¶40) If the Board contracted for the removal of approximately 10,000 tons as was implied at
20 the June 27, 2022 special meeting, and the Spoils are only 2,375 tons, the Board is paying to
21 remove four times the amount of soil than is actually being removed. This would constitute
22 fraud, causing further harm to the Membership.
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1 **E. THE RELATIVE HARDSHIP TO THE MEMBERSHIP WILL BE GREATER**
2 **IF INJUNCTIVE RELIEVE IS NOT GRANTED**

3 If injunctive relief were not to be granted, the Membership will be out \$1,090,000 in
4 special assessments, or \$2,000/unit, of which at least \$758,000, and quite possibly more, will
5 be lost on removal of the Spoils.
6

7 If injunctive relief were to be granted, the Membership would not be out \$1,090,000 in
8 special assessments, or \$2,000/unit, and at least \$758,000 will not be lost on removal of the
9 spoils. The Township of Piscataway has issued a final compliance deadline (Wine cert. ¶35)
10 of November 2022, after which the Township of Piscataway may issue a fine of no more than
11 \$5,000, and no less than \$125, for each day the violations continue. (Wine cert. ¶37) If the
12 Association fails to remediate the Spoils after November, 2022, the hardship to the
13 Membership could be significant, but with far less certainly and immediacy as the
14 \$1,090,000 special assessment and \$758,000 Spoils removal immediately before them, and
15 with the benefit of another 6 months to devise a more reasonable solution for Spoils
16 remediation, and with the benefit of affording the Membership with an opportunity to
17 properly vote to rescind or not rescind the original capital expenditure approval for the Pond
18 Project.
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21 The relative hardship to the Membership is therefore greater if the injunctive relief is not
22 granted.
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CONCLUSION

For all the foregoing reasons, the Court should enter a preliminary injunction to avoid immediate and irreparable harm to the Membership, declaring the June 27, 2022 special meeting of the Board null and void; ordering that the \$2,000 special assessment be suspended; ordering the Association to halt efforts to remove the Spoils and award no contracts further dismantling the Pond Project; ordering the Association to distribute the \$2,000 special assessment evenly amongst the Membership; and whatever other remedies the courts sees fit and just.

Oral argument is requested.

Respectfully Submitted,



Kevin Wine

Dated: July 12, 2022

EXHIBIT

A

3.07 Voting. Each Condominium unit shall have one vote in the Association. If a Member owns more than one unit, he shall be entitled to one vote for each unit owned. The vote of a Condominium unit shall not be divisible.

3.08 Good Standing. A Member shall be deemed to be in "good standing" and "entitled to vote" at any annual or special meeting of the Association if, and only if, he has fully paid all assessments or fines made or levied against him and his unit by the Trustees as hereinafter provided, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his unit, at least three calendar days prior to the date fixed for such annual or special meeting.

3.09 Quorum. Except as otherwise provided in the By Laws, the presence in person or by proxy of Members representing a majority of the total number of votes in the Association shall constitute a quorum at any annual or special meeting of Members. If any meeting of Members cannot be organized because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than 18 hours from the time the original meeting was called. In the event of any such adjourned meeting, no further notice of the adjourned date need be given to any of the Members.

3.10 Proxies. Votes may be cast either in person or by proxy. Proxies must be in writing and filed with the Secretary at least two calendar days before the time designated for each meeting in the notice thereof.

3.11 Capital Expenditures. All decisions of the Members involving capital expenditures shall require for passage the affirmative vote of at least 75 percent of the Members in good standing and entitled to vote and who vote in person or by proxy. All other decisions shall require for passage the affirmative vote of at least a majority of the Members in good standing and entitled to vote and who vote in person or by proxy. The Trustees shall be governed in the making of capital expenditures by decisions made by the Members as provided in this section. As long as the Sponsor maintains a majority of the Board of Trustees, Sponsor shall make no additions, alterations, improvements or purchases which necessitate a special assessment or a substantial increase in the monthly assessment unless so required by a governmental agency, title insurance company, mortgage lender or in the event of an emergency.

3.12 Order of Business. The order or business at all annual meetings of the Members of the Association shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting or waiver;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Appointment of inspectors of election;
- (g) Election of Trustees;
- (h) Unfinished business;
- (i) New business;
- (j) Election of Officers.

4.00 Obligations of Members

4.01 Unit Maintenance. Each Member shall perform promptly and at his own risk, cost and expense all maintenance and repair work with respect to the portion of each unit owned by that Member which does not comprise a part of the common elements and those common elements which are designated as limited common elements other than any assigned parking space and which, if omitted, would adversely affect or jeopardize the safety of the Condominium or any part or parts thereof belonging in whole or in part to other Members and each Member shall be liable for any damages, liabilities, costs or expenses, including attorney's fees, caused by or arising out of

EXHIBIT

B

Society Hill at Piscataway

2011 Annual Meeting Minutes
October 24, 2011 – 7:00 p.m. at the Community Clubhouse

DRAFT COPYSUBJECT TO CHANGE***

The meeting was called to order at 7:05 p.m. by Board President Wine, on October 24, 2011.

I. ROLL CALL

Members in attendance:

Kevin, Wine, 345 Lancaster
George Tsacnaris, 171 Chippenham
Kathleen Kelly, 306 Hampshire
Greg Machyowsky, 448 Lancaster
Toyce Collins, 218 Hampshire
Jonah Ridley, 237 Hampshire
Damian Thomas – Administrative Assistant.

To date 141 proxies received and 243 required.

Mr. Machyowsky moved, and asked unanimous consent, to postpone the Annual Meeting to December 16, 2011 to get enough proxies. Meeting adjourned at 7:30 pm.

There were no objections, motion passed.

The meeting was called to order at 6:45 p.m. by Board President Wine, on December 16, 2011 (originally October 24, 2011).

I. ROLL CALL

Members in attendance:

Kevin, Wine, 345 Lancaster
Linda Zhou, 509 Sheffield
George Tsacnaris, 171 Chippenham
Yoshihiko Yamakita, 183 Hampshire
Joe Falzone, 350 Lancaster
Kathleen Kelly, 306 Hampshire
Greg Machyowsky, 448 Lancaster
Bill McLarnon, 11 Canterbury
Joy Chao, 168 Chippenham
Toyce and Kay Lee Collins, 218 Hampshire
Brian Eggert, 51 Canterbury
Sarah Radford, 51 Canterbury

Chandrakant Patel, 198 Hampshire
Dorothy Schwartz, 7 Canterbury
Ricardo and Mary Mancuso, 16 Canterbury
Jack Sarhage, 24 Canterbury
Camille Chan, 30 Canterbury
Joy Chao Hsiung, 119 Bedford
Mary Thomas, 193 Hampshire
Jeff, 169 Chippenham
James Coe, 123 Berkshire
Sak Photiadis, 524 Norwich
Ellen Buckelew, 479 Harwick
Damian Thomas – Administrative Assistant.

To date 241 proxies received, 29 invalid, and 18 short of quorum.

Meeting rescheduled for January 13, 2011.

The meeting was called to order at 7:50 p.m. by Board President Wine, on January 13, 2012.

I. ROLL CALL

Members in attendance:

Kevin, Wine, 345 Lancaster
Linda Zhou, 509 Sheffield
George Tsacnaris, 171 Chippenham
Kathleen Kelly, 306 Hampshire
Greg Machyowsky, 448 Lancaster
Toyce Collins, 218 Hampshire
Yoshihiko Yamakita, 183 Hampshire
Joy Chao, 168 Chippenham
Jack Sarhage, 24 Canterbury
Imelda Sarhage, 24 Canterbury
Brenda Hill, 498 Vernon
Damian Thomas – Administrative Assistant.

Guest: James Matthews, CPA

- 2010 audit presentation by James Matthews, CPA.

II. PROOF OF NOTICE OF MEETING OR WAIVER

At the beginning of October 2011, ballots and proxies were mailed out to 545 homeowners (483 qualified to vote - 241 valid proxies are required for a quorum), and again in early December to those who had not responded.

III. READING OF MINUTES OF PRECEDING MEETING

By unanimous consent, the October 25, 2010 Annual Meeting minutes were approved.

IV. REPORTS OF OFFICERS

No officers reporting.

V. REPORTS OF COMMITTEES

No committees reporting.

VI. APPOINTMENT OF INSPECTORS OF ELECTION

The following inspectors were appointed:

George Tsacnaris, 171 Chippenham
Yoshihiko Yamakita, 183 Hampshire
Joy Chao, 168 Chippenham
Toyce Collins, 218 Hampshire
Jack Sarhage, 24 Canterbury
Imelda Sarhage, 24 Canterbury

VII. ELECTION OF TRUSTEES

Kevin Wine – 207 votes
Greg Machyowsky – 149 votes
James Coe – 47 votes

Mr. Wine and Mr. Machyowsky have been re-elected to the Board.

VIII. UNFINISHED BUSINESS

For the purpose of the following ratifications/motions, votes were counted as follows:

11 in-person votes
9 proxies naming Kevin Wine
5 proxies naming Greg Machyowsky
1 proxy naming Toyce Collins
1 proxy naming Linda Zhou

27 votes (14 votes for a majority)

Mr. Collins moved, Mr. Jack Sarhage seconded, for speed impediments be implemented on Hampshire Court at the time of resurfacing for the safety of its residents.

There were no objections, motion passed.

Mr. Machyowsky moved, Mr. Collins seconded, authorizing the ratification of the Pond Renovation Project (the summary having been read by the Chair) which the majority of residents had approved the spending of \$100,000 to \$200,000.

The motion passed, 26-0-1.

Mr. Machyowsky moved, Mr. Collins seconded, authorizing the ratification of the maintenance garage survey results which the majority of residents had approved the spending of \$100,000 to \$200,000. In addition, the motion is being amended to include the authorization of spending up to \$200,000 to purchase the land between Hampshire and Route 18 to provide an area for such maintenance garage.

The motion passed, 19-2-6.

For lack of quorum, the remaining agenda items have been deferred to the next annual meeting.

IX. NEW BUSINESS

X. ELECTION OF OFFICERS

XI. RAFFLE FOR FREE MONTH OF MAINTENANCE FEES

The winner of a free month of maintenance was 439 Lancaster.

XII. ADJOURNMENT

By unanimous consent, the meeting was adjourned at 11:28 p.m.

Respectfully submitted,

Accepted and Approved,

Secretary

Kevin Wine, President

Date:

Date:

EXHIBIT

C

Society Hill at Piscataway
2017 Annual Meeting Minutes
December 15th 2017, 6:00 p.m.
at the Community Clubhouse

DRAFT COPYSUBJECT TO CHANGE***

I. CALL TO ORDER AND ANNOUNCEMENTS

The meeting was called to order on December 18, 2017 at 9:20p.m. by Board President Wine.

Roll call:

Members in Attendance:

Kevin Wine, 345 Lancaster Ct.
Linda Zhou, 509 Sheffield, 469 Harwick Ct.
Tong Zhou, 509 Sheffield, 469 Harwick Ct.
George Tsacnaris, 171 Chippenham Ct.
Brian Timper, 257 Hampshire Ct.
Teresa Douglas, 444 Lancaster Ct.
Jack Sarhage 24 Canterbury Ct.
Mary Thomas, 193 Hampshire Ct.
Diane Richardson 443 Lancaster Ct.
Marilyn DeGirolamo 442 Lancaster Ct.
Kathryn McEnerney 130 Berkshire Ct.
Pushpa Sharma 326 Hampshire Ct.
Atif Nazir 541 Manchester Ct.
Sarma Gollamudi 182 Hampshire Ct.
Suresh Shah 489 Vernon Ct.
Kai-Hsuan Loh 140 Abbot Ct.
Ho-Jen Chueng 134 Berkshire Ct.
Jackie Wilson 415 Lancaster Ct.
Mahesh Patel 280 Hampshire Ct.
Ellen Buckelew 479 Harwick Ct.

Guests: Michael Nulty of Mathews and Nulty Inc.

II. PROOF OF NOTICE OF MEETING OR WAIVER

The 2017 Annual Meeting was announced in a mailing to all homeowners, notice was posted on the clubhouse bulletin board, announced via e-mail, and announced at the Board meeting.

III. READING OF MINUTES OF PRECEDING MEETING

By unanimous consent, the December 19, 2016 Annual Meeting minutes were approved.

IV. REPORTS OF OFFICERS

No officers reporting.

V. REPORTS OF COMMITTEES

No committees reporting.

VI. APPOINTMENT OF INSPECTORS OF ELECTION

The following inspectors were appointed:

Pat Thiele 186 Hampshire Ct.
Diane Richardson, 443 Lancaster Ct.
Jackie Wilson 415 Lancaster Ct.
Marilyn DeGirolamo, 442 Lancaster Ct.
Kathy McEnerney 130 Berkshire Ct.
Jack Sarhage 24 Canterbury Ct.
Mary Thomas 193 Hampshire Ct.
Susana Mariduenia 422 Lancaster Ct.

VII. ELECTION OF TRUSTEES

Kevin Wine – 246 votes
Atif Nazir – 232 votes
Tong Zhou – 230 votes
Teresa Douglas – 37 votes

Mr. Wine was re-elected to the board.
Mr. Nazir won election to the board.
Mr. Zhou won election to the board.

VIII. BALLOT QUESTION

Should the original capital funding approvals of \$500,000 for the design and construction of the maintenance building, and \$65,000 for the initial phase of the community-wide internet project, be rescinded?

YES 54

NO 189

IX. NEW BUSINESS

For the purpose of the following ratifications/motions, votes were counted as follows:

171 Total Votes:

73 proxies for Linda Zhou
72 proxies for Kevin Wine
17 proxies for Atif Nazir
3 proxies for Teresa Douglas
2 proxies for Brian Timper
1 vote for Mary Thomas
1 vote for George Tsacnaris
1 vote for Ho-Jen Chueng
1 vote for Sarma Gollamudi

Mr. Tsacnaris moved, and Ms. Douglas seconded, that owners should be re-surveyed for their interest in and priority of all Projects listed in Motion #1 and in addition the survey should include other projects:

- Reclaimed Irrigation Water
- Re-Roofing of Society Hill condo and townhouse buildings
- Parallel Parking Spaces
- Hampshire Court Speed Impediments
- Pool Area Repairs

The survey should include a brief description of the project including a cost estimate.

Each project should also include a question if the respondent believes the project should be funded via a special assessment (dedicated funds to ensure the project is completed) or funded from the common reserve account.

The common reserve account had a balance of \$593,000 per the 2016 Audit Statement and has \$545,000 cash on hand as of August 31, 2017.

The motion failed 7, 164, 0

Mr. Nazir moved, and Mrs. Thomas seconded, to approve management's submitted motion regarding \$70,000 for the funding of the reclaimed water system with the condition that management seek DEP and other regulatory approvals as well as consult an outside engineer to review the design work and create a formal design proposal.

The motion passed 165, 6, 0

Mr. Timper moved and, asked unanimous consent to designate a sorting day for the election envelopes, prior to the date of the Annual Meeting, and that the association consult with other communities to inquire about their election procedure.

The motion passed by unanimous consent.

ADJOURNMENT

Mr. Nazir moved, and asked unanimous consent, to adjourn the meeting at 10:55 p.m.

As there were no objections, the motion passed.

Respectfully submitted,

Accepted and Approved,

Doug Sanford, Secretary

Kevin Wine, President

Date:

Date:

EXHIBIT

D

Board of Trustees Special Meeting Minutes
July 2nd 2018 7:00 p.m.
at the Community Clubhouse

DRAFT COPYSUBJECT TO CHANGE***

I. CALL TO ORDER AND ANNOUNCEMENTS

The meeting was called to order on July 2, 2018 at 7:08 p.m. by Board President Kevin Wine

Roll call:

Kevin Wine, President	Present
Mary Thomas, Secretary	Present
Doug Sanford,	Absent
Carlyle Chan, Trustee	Present*
George Tsacnaris, Trustee	Present
Tong Zhou, Treasurer	Present
Atif Nazir, Vice President	Present

Mr. Chan joined the meeting at 7:14 p.m.*

Guests:

There were no guests present

Homeowners:

Eight homeowners were present.

II. HOMEOWNERS OPEN SESSION

John Falkla – 521 Norwich Ct. – Had a concern about neighbors' violations

III. NEW BUSINESS

- Mr. Tsacnaris moved, and Mrs. Thomas seconded that materials and labor for repairs to existing items enumerated in the capital reserve study shall be paid through the reserve fund provided the actual cost is reflected in the budget
- The motion passed by unanimous consent.

- Mr. Nazir moved, and the chair seconded that materials and labor for capital improvements, authorized by the membership at annual meetings, including equipment, shall be paid with funded with the associations' reserve fund.
 - Mrs. Thomas moved and asked unanimous consent to table the motion.
 - The motion to table was passed by unanimous consent.

- Mr. Nazir moved, and the chair seconded to direct management to pay any outstanding invoices from any vendor, assuming the invoice is not in dispute, including invoices for work that has already been committed to.
- The motion passed by 4, 2, 0 with the Mr. Nazir, Mr. Tsacnaris, Mr. Chan and the chair in favor and Mrs. Thomas and Mr. Zhou opposed.

The Board went into recess at 9:10 p.m.

The Board resumed session at 9:15 p.m.

- Mr. Zhou moved, and Mr. Tsacnaris seconded to suspend the 2018 Annual Picnic.
- The motion failed 3, 3 with Mr. Nazir, Mr. Chan and the chair in favor and Mrs. Thomas, Mr. Tsacnairs and Mr. Zhou in favor.

- Mr. Nazir moved, and the chair seconded that the chair will collect legal questions from board members, unaltered, and send them to the board and Mr. Cutolo for written opinion, within 7 days.
- The motion passed by unanimous

- Mr. Tsacnaris moved, and Mrs. Thomas seconded that the board acknowledges that the overall financial status of the association as of the current date requires proactive attention and that it has a fiduciary responsibility. By August 10th, the board, in conjunction with the finance committee shall undertake an analysis including cost/benefit of available funds and prioritize where funds from the reserve account are to be spent. During the analysis period all projects shall be put on hold.

- The motion passed by 4, 2, 0 with the Mr. Zhou, Mrs. Thomas, Mr. Tsacnaris and Mr. Chan in favor. The chair and Mr. Nazir opposed.

ADJOURNMENT

- Mr. Nazir moved, and asked unanimous consent to adjourn the meeting at 11:09 p.m.
- The motion passed by unanimous consent

Respectfully submitted,

Accepted and Approved,

Mary Thomas, Secretary
Date:

Kevin Wine, President
Date:

EXHIBIT

E

From: Aidan Landis <aidan.shp@optimum.net>
To: the Board <theboard@societyhillpiscataway.com>
Date: Sep 11, 2018 12:10:00 PM
Subject: **Cutolo Barros Communication**
Attachments: Memorandum to the Board (9-11-2018).pdf, Release for Charlo (9-5-2018).pdf, 2018-9-11 Corr to Charla enclosing release.pdf

Board,

Hubert emailed me today and apologized for being previously unavailable. He had a death in the family.

Attached are the documents he prepared regarding some of the important questions he was asked, as well as the insurance issue for 322 Hampshire Ct.

I'm assuming this means we are going ahead with having him represent us? I reached out to two law firms earlier (Greenbaum was one) and will have the retainer/proposal for the second later today.

Aidan

This exhibit has been redacted, as it contains material that is likely protected by attorney client privilege. The document will be provided in hard-copy to the Defendant, and to the Court directly.

EXHIBIT

F



Community Development and Code Enforcement

Property Owner /Agent: **SOCIETY HILL AT PISCATAWAY**
 C/O Tong Chou
 550 Chesterfield Dr.
 Piscataway, NJ 08854

Description of Property: **Lancaster Ct. Pond**

Block: 10002 **Lot(s): 2**

DATE ISSUED: 6/16/21

Pursuant to Section PM-107.2 of the Piscataway Township Property Maintenance Code you are hereby notified that you are in violation of the following section(s) of the Code:

Section: 26-28.1 Soil Erosion and Sediment Control Plan

Description: You are in violation of the Soil Erosion and Sediment Control plan submitted to the Township on January 15th 2014. You have not adhered to the plan submitted and removed the spoils from the pond dredging project.

A summons has been issued for this violation.

Section: 24-201 Site Plan Approval

A site plan approval shall be obtained from the Board of Adjustment or Planning Board prior to construction, erection or alteration of any structure, or part of a structure, or change in the use of a structure or land.

Description: Your property does not comply with approved site plan on file with the Township of Piscataway. The grading and drainage has been changed as a result of the dredging project.

A summons has been issued for this offence.

Very truly yours,

BEN POBICKI
PROPERTY MAINTENANCE
AND ENFORCEMENT OFFICER
505 Sidney Rd, Piscataway Township, NJ 08854
Phone # (732) 562-7638 Fax # (732) 529-2525
Email: bpobicki@piscatawaynj.org

EXHIBIT

G

From: Society Hill at Piscataway <notifications@frontsteps.com>
To: kwine@optonline.net
Date: Jun 21, 2022 9:40:52 AM
Subject: Special Meeting - June 27th @ 7pm
Attachments: Agenda_6.27.22_SPECIAL_MTG.pdf

Society Hill at Piscataway Bulletin

Special Meeting - June 27th @ 7pm

Good Morning,

We will be holding a special meeting on Monday, June 27th @ 7pm.
Below is the zoom information, attached is the agenda.

Society Hill @ Piscataway - Special Meeting Jun 27, 2022 07:00 PM (EST)

Join Zoom Meeting

[https://us02web.zoom.us/j/84513849687?](https://us02web.zoom.us/j/84513849687?pwd=Q2ZrNVBSQkjpL2E0bIZSTzVBSGM1QT09)
[pwd=Q2ZrNVBSQkjpL2E0bIZSTzVBSGM1QT09](https://us02web.zoom.us/j/84513849687?pwd=Q2ZrNVBSQkjpL2E0bIZSTzVBSGM1QT09)

Meeting ID: 845 1384 9687

Passcode: 297993

One tap mobile

+13017158592,,84513849687#,,,,*297993# US (Washington DC)

+13126266799,,84513849687#,,,,*297993# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

Meeting ID: 845 1384 9687

Passcode: 297993

Find your local number: <https://us02web.zoom.us/j/84513849687?pwd=Q2ZrNVBSQkjpL2E0bIZSTzVBSGM1QT09>

Sent by **Society Hill at Piscataway**
under the care of **Towne and Country Management**

SOCIETY HILL AT PISCATAWAY CONDOMINIUM ASSOCIATION

Special Meeting Agenda

June 27, 2022 - 7:00 pm – via Zoom



**550 Chesterfield Drive
Piscataway, NJ 08854
732-463-3434**

I. OPENING

A. Roll Call

B. Professionals

- Susan Radom – Radom & Wetter
- Ginger Pitaccio - Towne & Country Management
- Lisa Vitiello - Towne & Country Management

II. NEW BUSINESS

A. Soil Remediation Project

- Cost to remediate violations
- History of soil on property, impact today

III. Q & A

IV. ADJOURNMENT

EXHIBIT

H

From: kwine@optonline.net
To: Radom, Susan <sjr@radomandWetter.com>, Zhou, Tong <chow_tom@hotmail.com>, Thomas, Mary <maryknappthomas@optonline.net>, Sanford, Doug <offsiteworks@optonline.net>, Zhang, Wendy <wjzhang78@yahoo.com>, nalakadias@gmail.com, Forrest Luu, <citny001@yahoo.com>, pmincarelli1@gmail.com, <pmincarelli1@gmail.com>, Cole, Stacey <scole@tc-mgt.com>
Date: Jun 21, 2022 12:21:53 PM
Subject: Re: Special Meeting - June 27th @ 7pm

Board, Management, Counsel,

I see from the agenda that there may be further movement on removal of "the hill". The agenda also alludes to the story behind the hill.

When I filed MID-C-78-21 a little over a year ago, I left out the 6th Count of the complaint, which was another breach of fiduciary duty claim, alleging that the Board is ignoring the vote of the membership relating to the approval of several capital improvement projects that were voted on by the membership at duly called and publicly held Annual Meetings of the membership between 2011 and 2014. At that point in time there was no specific damage to the Association, or impending damage. However, it now appears the situation has changed.

Our by-laws clearly say that the board is obligated to follow the directions of the membership, especially in terms of capital expenditures, as per section 3.11, "...The Trustees shall be governed in the making of capital expenditures by decisions made by the Members as provided in this section.". While I'm sure legal arguments could be made that the approvals were not proper, or have since expired, or are now being over-ridden by the town, I believe those arguments to be invalid, and technically since there has be no subsequent vote of the membership reversing the various capital expenditures that were already approved, the Board is still under the obligation to follow through on those approvals. One of the approvals was for the pond improvement, which envisioned keeping the hill in place and landscaping it, as per a site plan application that was ready to submit to the Township of Piscataway Planning or Zoning Board in late 2018.

After the Association spent tens of thousands of dollars on consulting, engineering, and environmental application fees, the application was unilaterally cancelled by now Chairman Zhou, around September 2018 as best I can immediately recall. Certainly Chairman Zhou individually, and for that mater even the Board as a whole, lacked the authority to over-ride the direction of the membership. Furthermore, any claims that the pond landscaping project, and the various other capital improvement projects, where "abandoned" is ridiculous and easily provable to be wrong, as design and approval work and expenditures relating to the projects were occurring up until their unauthorized cancellation in late 2018.

Although I can't be certain what is intended by the only agenda item for the June 27th 2022 special Board meeting, I am inclined to file a second amended complaint under MID-C-78-21, to include a sixth count relating to the Boards failure to comply with the will of the membership on various capital expenditures, including the original pond landscaping plan. The fact that the Association is now supposedly being pressured by the town to remove the hill does not relieve the Board of its obligations and failure to act as instructed by the membership. The damages in this count could be substantial, as I bet the cost to haul all that dirt away is probably pushing \$100k.

Kevin

----- Original Message -----

EXHIBIT

I

5.09 Notices and Waivers of Notice. Before any meeting of the Board of Trustees, whether regular or special, any Trustee may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee at any meeting of the Board shall likewise constitute a waiver by him of such notice. If all Trustees are present at any meeting of the Board, no notice of such meeting shall be required and any business may be transacted at such meeting except as otherwise prohibited by law or these By Laws.

5.10 Quorum. At all duly convened meetings of the Board of Trustees, a majority of the Trustees shall constitute a quorum for the transaction of business except as otherwise expressly provided in these By Laws or by law and the acts of the majority present, shall be the acts of the Board of Trustees. If at any meeting of the Board of Trustees there shall be less than a quorum present, the Trustee or Trustees present may adjourn the meeting from time to time, and at any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting as originally called may be transacted without further notice to any Trustee.

5.11 Powers & Duties. The Board of Trustees shall have and exercise all lawful powers and duties necessary for the proper conduct and administration of the affairs of the Association and the operation and maintenance of a residential condominium project and may do or cause to be done all such other lawful acts and things as are required by law, by these By Laws or otherwise directed or required to be done or exercised by Members of the Association or owners of units, or by others. In the performance of its duties as the administering body of the Association and of the Condominium being administered by said Association, the Board of Trustees shall have powers and duties, including, but not limited to, the following:

A. General Duties. The operation, maintenance, renewal, replacement, insurance, care, upkeep, protection and surveillance of the buildings in the condominium, the common elements (except as specifically provided for otherwise), the community and recreational facilities and all other property, real or personal, of the Association. The responsibility for the operation, maintenance, renewal, replacement, insurance, care, upkeep, protection and surveillance of the buildings in the condominium, the common elements (except as specifically provided for otherwise) shall become the responsibility of the Association immediately upon conveyance of title to the first unit in any building to an individual purchaser by the Sponsor. From and after the conveyance of title to the first unit in any building, the sole obligation and responsibility of the Sponsor under the Bylaws with regard to the operation, maintenance, renewal, replacement, insurance, care, upkeep, protection and surveillance of each such building shall be to pay to the Association the applicable assessments as specified in Article 9.00 of the Master Deed. Sponsor shall not, however, be obligated to pay any maintenance fees or assessments for common expenses other than replacement Reserves funds for so long as Sponsor is providing any subsidy or guarantee to unit owners of maintenance fees or assessments for common expenses. The Board of Trustees, pursuant to the By-Laws, shall adopt Rules and Regulations which shall be in addition to and supplement to restrictions on the owner's use of the Common Elements and as long as such Rules and Regulations are consistent with the intent and purposes set forth herein, such Rules and Regulations shall be deemed not to be Amendments.

B. Budget. The preparation prior to the beginning of each fiscal year of a budget or estimate for the annual expenses of the operation of the Association, the expenses of the operation of the community and recreational facilities, and reasonable reserves for depreciation, retirements and renewals. The total amount of such budget or estimate shall be assessed against all of the dwelling units and the respective owners thereof, as set forth in Section 13.00 herein. The amount thus found applicable to each dwelling unit shall be payable by the owner thereof to the Association in equal installments, in advance, said billing dates to be determined by the Trustees. The Trustees shall review each year the adequacy of the amount being assessed for the capital reserve replacement costs. In addition, the Trustees shall include in each annual

budget an amount sufficient to reimburse each Trustee for the tuition for two educational seminars sponsored by the Community Associations Institute or similar organizations. Each Trustee may be reimbursed for all or portion of expenses including but not limited to tuition, textbooks, transportation, gas, lodging and meals incurred by the Trustee in connection with attending such educational seminars provided that such reimbursement is approved by a majority of the Trustees.

C. Assessments. By majority vote of the Board, to adjust or increase the amount of any annual assessment and equal installments, and to levy and collect in addition thereto, special assessments in such amounts as the Board may deem proper, whenever the Board is of the opinion that it is necessary to do so in order to meet increased operating or maintenance costs, or additional capital expenses, or because of emergencies; provided, however, that all such increases or special assessments shall be made or levied against such owners and the units owned by them respectively, in the same manner as provided in Section 13.00.

D. Use of Funds. To use and expend any sums collected from such assessments or levies for the operation, maintenance, renewal, care, upkeep, surveillance and protection of the common elements, (except as specifically provided for otherwise), community and recreational facilities of the Association and all of its real and personal property. This includes the use of any surplus funds which might remain at the end of any fiscal year. Any such surplus shall be applied toward the immediate subsequent year's costs and shall be included in the budget for that year.

E. Fidelity Bonds. To require all officers and employees of the Association handling or responsible for funds in the Association's possession or under its control to furnish adequate fidelity bonds, in a form which includes penalties and corporate surety satisfactory to the Board of Trustees. The premiums on such bonds shall be paid by the Association as part of the common expenses.

F. Taxes. To pay all taxes and assessments levied or assessed against any property which has been made a part of the Condominium, exclusive of any taxes or assessments levied against any individual dwelling unit or otherwise properly chargeable to the owners thereof.

G. Personnel. To hire, employ and dismiss such clerks, stenographers, workmen, janitors, gardeners and other personnel, and to purchase or arrange for such services, machinery, equipment, tools, materials and supplies, as in the opinion of the Board of Trustees may from time to time be necessary for the proper operation and maintenance of the Condominium, and the community and recreational facilities of the Association, except the portions thereof required to be maintained by owners of dwelling units. The Board of Trustees may also employ a manager or contract with a management company for the Association at such compensation or in such terms as may be established by the Board, to perform such duties and services as the Board may lawfully delegate.

H. Access to Units. To enter or cause to be entered any dwelling unit with Notice at a reasonable hour when deemed necessary for or in connection with the operation, maintenance, repair or renewal of any common elements, or to prevent damage to the common elements or any dwelling units, or in emergencies provided that such entry and work shall be done with as little inconvenience as possible to the owners and occupants of such dwelling units. Each owner shall be deemed to have expressly granted such rights of entry by accepting and recording the deed to his Condominium Unit.

I. Delinquencies. To collect delinquent penalties, fines, levies or assessments made by the Association through the Board of Trustees against any dwelling units and the respective owners thereof, together with such costs and expenses incurred in connection therewith, including, but not limited to, court costs and attorney's fees, whether by suit or otherwise, to abate nuisances and enforce observance of the Rules and Regulations relating to the Condominiums, by injunction or such other legal actions or means as the Board of Trustees may deem necessary or appropriate.

EXHIBIT

J

render to the President and Trustees, at the regular meetings of the Board or whenever they or either of them shall require, and account of his transactions as Treasurer and of the financial conditions of the Association.

7.07 Compensation of Officers. The officers of the Association shall serve without compensation except that they shall be entitled to reimbursements for all expenses reasonably incurred in the discharge of their duties.

8.00 Indemnification of Officers and Directors. The Association shall indemnify every Trustee and Officer, his heirs, executors and administrators, against all loss, costs and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Trustee or officer of the Association, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct in the performance of his duty as such Trustee or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Trustee or officer may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as common expenses, provided, however, that nothing contained in this Article shall be deemed to obligate the Association to indemnify any Member or owner of a dwelling unit who is or has been a trustee or officer of the Association or as a Member or owner of a dwelling unit in the Condominium. Nothing contained herein to the contrary shall serve to exculpate Members of the Board of Trustees appointed by Sponsor from their fiduciary responsibilities.

9.00 Fiscal Year. The fiscal year of the Association shall begin on the first day of January in each year, unless changed by a vote of two-thirds (2/3) of the full membership of the Board of Trustees.

10.00 Corporate Seal. The corporate seal of the Association shall consist of two concentric circles between the circumferences of which shall be inscribed the name of the Association and within the circumferences of the inner circle the words "Incorporated, New Jersey" and the year of incorporation.

11.00 Amendments to Bylaws. These By Laws and the form of administration set forth herein may be amended from time to time by the affirmative vote of 75 percent (75%) of the total number of votes of Members in the Association, within the limitations prescribed by law. No such modification shall be operative until it is embodied in a recorded instrument which shall be recorded in the Office of the Clerk of Middlesex County in the same manner as the Master Deed and original By Laws.

12.00 Dissolution.

12.01 Procedure. In the event it is deemed advisable and for the benefit of the Members of the Association that the Association should be dissolved, the procedures concerning dissolution set forth in Chapter 1, Section 20, of Title 15 of the Revised Statutes of the State of New Jersey, entitled Corporations and Associations Not for Profit shall be followed.

12.02 Distribution of Assets. In the event of dissolution, the assets of the Association, after the payment of all debts including mortgages and other encumbrances, shall be distributed to the unit owners in proportion to the fair market value of their respective dwelling units.

13.00 Members Maintenance Fees. Maintenance costs for the Association and the condominium owned lands and facilities shall be computed on the basis of each unit owner paying 1/545th of the total operating budget of

the Association. Should the actual number of units constructed differ from 545, the maintenance costs payment for each unit owner will be determined by a fraction, the numerator of which is 1, and the denominator of which is the actual number of units constructed multiplied by the total operating budget of the Association. After the equal individual unit assessments have been calculated the actual assessment to be levied upon the individual Affordable Condominiums as set forth in the Affordable Housing Plan shall be fixed at an amount equal to 33% of the assessment which would have been levied against all units were all units to pay equal assessments. The total difference between the equal assessment to be levied against Affordable Condominiums shall be evenly distributed among all remaining units which are not Affordable Condominiums. This allocation of Assessments among Affordable Condominiums and the remainder of the units may not be amended or altered except in accordance with the terms of the affordable Housing Plan. Commencing upon the date upon which the terms and restrictions of the Affordable Housing Plan shall cease to be applicable to a specific Affordable Condominium, such Affordable Condominium shall be assessed in the same manner as all other units which are not Affordable Condominiums. The budget shall provide the complete allocation of the total assessment collected from the unit owners without any unallocated surplus remaining.

14.00 Deposits Required.

Upon conveyance of a dwelling unit by Sponsor to an initial purchaser of said dwelling unit, said dwelling unit owner shall deposit with the Association three (3) months estimated monthly Association assessments.

The aforesaid deposits shall be refunded to the unit owner (less any assessments currently owed) upon resale of the dwelling unit by him, upon the condition that a deposit in an amount equal to three (3) months current monthly Association assessments (excluding any assessments currently owed) is received from the purchaser of the particular dwelling unit. In the event said deposits are not received by the Association within thirty (30) days from the date of closing of title to such resale, the initial deposits shall be deemed credited to the account of the new owner. Nothing herein shall affect any unit owners obligation for the payment of any Association assessments, charges or liens. The Association shall place all such deposits in interest bearing accounts and the interest so earned shall be considered income available for general operating purposes of the Association.

15.00 Reserves. The Board shall not be obligated to expend all of the revenues in any accounting period, and must, by regular installment maintenance payment, rather than by special assessments, maintain reasonable and adequate reserves for, among other things, maintenance, repairs and replacement of those elements of the common property that must be replaced on a periodic basis, emergencies, contingencies for bad weather or uncollected accounts. Notwithstanding anything herein to the contrary, the Board, in its determination of the Common Expenses and the preparation of a budget, shall specifically designate and identify what portion of the Common Expenses to be assessed against the unit owners is allocable to reserves for each separate item of repair and improvements and the same shall be kept in interest bearing savings accounts appropriately earmarked for each category. Interest earned on such interest bearing accounts shall remain allocable to such reserves and shall not be available for general purposes of the Association. The foregoing shall not be construed to mean that the Board shall not be permitted to keep additional cash on hand, in a checking or petty cash account, for the necessary discharge of functions. The Board shall at the time of adoption of the budget for the ensuing year evaluate the adequacy of the Reserves and adopt a resolution stating that the reserves are sufficient for the purposes set forth in this Article.

16.00 Agreement for Professional Management. Any agreement for professional management of the Association, or any other contract providing for services of the Sponsor, may not exceed one (1) year. Any such agreement must provide for termination by either party (a) without cause

EXHIBIT

K

SOCIETY HILL AT PISCATAWAY CONDOMINIUM ASSOCIATION, INC.

Managed by: Towne & Country Management, Inc.

711 Sycamore Avenue, Red Bank, NJ 07701

732-212-8200 FAX 732-212-8201

www.tc-mgt.com

Clubhouse Address: 550 Chesterfield Drive, Piscataway, NJ 08854

Office (732) 463-3434 Fax 732-284-4829

www.societyhillpiscataway.com

July 7, 2022

Dear Owner,

On Monday, June 27th 2022, the Board of Trustees held a Special Meeting to discuss the following.

In June 2021, the Township of Piscataway filed a complaint against the association for a violation of the association's site plan. Dating back to approximately 2014, under the Association's prior self-management, and under a past Board of Trustees, during multiple construction projects, large amounts of soil and debris were dredged from the Lancaster Court pond and left on the association's property. Over the years, the improper grading of the soil caused drainage concerns affecting several backyards and patios, on the adjacent street.

After multiple court appearances and adjournments throughout the end of 2021 into 2022, the association was given approximately six months from June 2, 2022 to rectify the violation or face significant additional fines. A \$2,000 fine was already assessed, as a penalty for creating these violations. This has since been paid to the Township of Piscataway. As a result of the violations and threat of fines, the violation must be corrected. The cost of remediation of the violations is in excess of \$800,000 resulting in the need for a significant increase in the common expense assessment or imposition of special assessment, that will be due from all unit owners of record, in the near future.

The Board of Trustees of SOCIETY HILL PISCATAWAY, C.A. has voted unanimously on a one-time \$2,000 Special Assessment, per unit, to cover the cost of these past violations. The special assessment amount will be applied to your maintenance account as of August 1, 2022. This payment is due by November 30, 2022.

Paragraph 5.11 of the bylaws states that the board of trustees shall have and exercise all lawful powers and duties necessary for the proper conduct and administration of the affairs of the association..... including but not limited to 5.11C of the bylaws which says that by majority vote of the Board, to adjust or increase the amount of any annual assessment and equal installments, and to levy and collect in addition thereto, special assessments in such amounts as the Board may deem proper, whenever the Board is of the opinion that it is necessary to do so in order to meet increased operating or maintenance costs, or additional capital expenses, or because of emergencies; provided, however, that all such increases or special assessments shall be made or levied against such owners and the units owned by them respectively, in the same manner as provided in Section 13.00.

With this special assessment, the Association's regular operating funds will remain intact, and can proceed with its scheduled repairs and replacements, including Phase III Roofing Project.

The Board has offered several discounts for advanced payment, as an incentive.

- If paid by **August 30, 2022 - 5% discount;**
- If paid by **September 30, 2022 - 3% discount;**
- If paid by **October 30, 2022 - 1% discount.**
- If you still carry a balance by November 30, 2022 - you will be subject to 6% interest charge thereafter and will be considered delinquent on your maintenance account.

For those owners on automatic monthly withdrawal, you will need to notify T&C, in writing, before August 15, 2022 if you wish to pay the special assessment via automatic withdrawal and **what, if any, discount you wish to apply**. There is a form attached to this letter for your completion.

For those owners not on automatic withdrawal, you may send in your payment, via check or through your financial institution's bill pay. The bank lock box address:

SOCIETY HILL PISCATAWAY, C.A. INC.
c/o TOWNE AND COUNTRY MANAGEMENT, INC.
PO BOX 12500
NEWARK NJ 07101-3600.

Sincerely,

The Board of Trustees
SOCIETY HILL PISCATAWAY, CA, Inc.

SOCIETY HILL AT PISCATAWAY CONDOMINIUM ASSOCIATION, INC.

Managed by: Towne & Country Management, Inc.
711 Sycamore Avenue, Red Bank, NJ 07701
732-212-8200 FAX 732-212-8201
www.tc-mgt.com

Clubhouse Address: 550 Chesterfield Drive, Piscataway, NJ 08854
Office (732) 463-3434 Fax 732-284-4829
www.societyhillpiscataway.com

Towne & Country Management, Inc. (T&C) will continue to process your automatic payment on the first of the month as indicated in the Direct Payment Authorization form. This authorization allows T&C to withdraw any fees due and owing to your association directly from the bank account you provided. This withdrawal includes maintenance fees, late fees, legal fees and any other special assessments the board may have authorized.

Please acknowledge you understand all fees due and owing will be withdrawn from your account as indicated in the Direct Debit form you previously submitted.

If you wish to rescind your Direct Payment Authorization, please indicate & sign where noted below.

If you do rescind your authorization, please be aware you will need to make your payments via check to the bank lock box. To avoid late fees and legal fees, please remit promptly.

If you should have any questions, please do not hesitate to call the office.

NAME _____

ASSOCIATION ADDRESS _____

_____ NO, I rescind my authorization and will send a check for ALL of my association fees, including the monthly fee and the special assessment.

_____ YES, I authorize the association to withdraw the special assessment with the following discount. **(Please initial which discount you wish to apply)**

_____ 5% by 8/30/2022 _____ 3% by 9/30/2022 _____ 1% by 10/30/2022
INITIAL INITIAL INITIAL

SIGNATURE _____ DATE _____