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- OPERATING AGREEMENT
- DECLARATION
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## HODGE & HODGE

June 3, 2022

VIA ELECTRONIC MAIL

Marlon Hibbert  
Director  
Division of Coastal Zone Management  
Department of Planning and Natural Resources  
4611 Tutu Park Mall, Suite 300  
St. Thomas, VI 00802  
Email: [Marlon.Hibbert@dpnr.vi.gov](mailto:Marlon.Hibbert@dpnr.vi.gov)

Re: Cowpet Bay West Condominium Owners Association  
Parcels 8-1-2, 8-1-3, 8-1-4, and 8-1-5, Estate Nazareth, No. 1 Red Hook Qtr.  
St. Thomas, USVI

Dear Director Hibbert:

I am counsel for Cowpet Bay West ("CBW"), which is a condominium association for property located on Parcels 8-1-2, 8-1-3, 8-1-4, and 8-1-5, Estate Nazareth, No. 1 Red Hook Quarter (the "CBW Parcels"). CBW is currently in the process of submitting a permit application to the Division of Coastal Zone Management ("CZM") to perform improvements on portions of CBW's common areas and common facilities with the CBW Parcels. I understand that the CZM permit application process often involves a requirement that the applicant submit a tax clearance letter. As CBW does not receive property tax bills and there are no distinct property tax bills for common areas, CBW has asked that I address that requirement.

CBW is a condominium association organized and existing pursuant to the Virgin Islands Condominium Act. 28 V.I.C. § 901 *et. seq.* CBW was formed via the merger of two earlier condominium associations formed by the same sponsor, Tracy Leigh Development Corporation, in the late 1960's. In 1968, Cowpet Bay West – Stage One ("CBW-1") was formed.<sup>1</sup> In 1969, Cowpet Bay West – Stage Two ("CBW-2") was formed.<sup>2</sup> Finally, in 1974, CBW was formed by the recording of a declaration of merger by the Boards of Directors for CBW-1 and CBW-2.<sup>3</sup> As such, CBW is a distinct legal entity that came into existence upon the recording of CBW-1

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<sup>1</sup> See Declaration of Cowpet Bay Village – Stage One, recorded at the Virgin Islands Recorder of Deeds ("RoD") on October 31, 1968, in Book 9-Z, p. 125, no. 1 and at Aux. 21, Page 1, Aux. 18, Page 58, and Aux. 19, Page 82 ("CBW-1 Declaration").

<sup>2</sup> See Declaration of Cowpet Bay Village – Stage Two, recorded at RoD on September 21, 1969, in Book 11-B, p. 330, no. 367 and at Aux. 21, Page 45 ("CBW-2 Declaration").

<sup>3</sup> See Declaration of Cowpet Bay West, recorded at RoD on October 22, 1974, in Book 16-B, Page 77, Doc. No. 367 and at Aux. 21, Pages 1 and 45 ("CBW Declaration").

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Declaration, CBW-2 Declaration, and, finally, CBW Declaration (collectively the "Declaration").

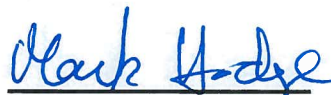
Pursuant to the terms of the Declaration, 100% of the title to all "common areas" and "common facilities" within the CBW is shared amongst the one hundred two (102) individual units as an "undivided percentage interest" in such common areas and common facilities as part of the deed for their respective units, allowing each unit owner the use of such "common areas" and "common facilities". Thus, the assessed value of each of the units necessarily includes the added benefits explicitly included in the deed for the use and undivided ownership of "common areas" and "common facilities". Each individual unit is assessed its own property tax bill for that unit, and that tax bill includes a small, undivided percentage of the title to the "common areas" and "common facilities" shared by all unit owners. Those 102 property tax bills for the 102 units are paid by the owners of those respective 102 units. Therefore, 100% of the property tax liability for the CBW common areas and common facilities are divided between the one hundred two (102) individual units as appropriate, and the owners of each of the units holds title to an "undivided percentage interest" in that shared common area.

As a result, CBW, as a legal entity, does not receive property tax bills and there is no separate parcel number or property tax bill attributed to the "common areas" and "common facilities" at CBW, for which CBW seeks a permit to perform work. However, under the Declaration, CBW has the duty to perform maintenance and upkeep on all "common areas" and "common facilities" including such maintenance and upkeep that might require a CZM permit.

In summary, while CBW exists as a separate legal entity that has the duty to maintain and perform upkeep on "common areas" and "common facilities" at CBW, there is no distinct parcel number for those "common areas" and "common facilities" and no property tax bills attributable solely to those common areas. However, the value of those "common areas" and "common facilities" are already part of the assessed value of the 102 individual CBW units, each of which are thereby liable for and pay their respective shares of the property taxes for their "undivided percentage interest" in those "common areas" and "common facilities".

I trust that the foregoing should suffice to establish CBWCOA's legal existence and right to proceed with this permit application without a tax clearance letter for the common areas where this work is to be performed. However, if you have any questions or require any additional information, please feel free to give me a call at any time.

Sincerely,



Mark D. Hodge, Esq.