HARBOR BAY
COMMUNITY DEVELOPMENT DISTRICT

Revised Meeting Package
Time Stamped: 04/07/2020 at 3:15 PM

Special Meeting

Tuesday
April 7, 2020
6:00 p.m.

Location:
Telephonic Conference Call

Note: The Advanced Meeting Package is a working document and thus all materials are considered DRAFTS prior to presentation and Board acceptance, approval or adoption.
Dear Board Members:

The Regular Meeting of the Board of Supervisors of the Harbor Bay Community Development District is scheduled for **Tuesday, April 7, 2020 at 6:00 p.m.** via telephonic conference call.

*The advanced copy of the agenda for the meeting is attached along with associated documentation for your review and consideration.* Any additional support material will be distributed at the meeting.

The balance of the agenda is routine in nature. Staff will present their reports at the meeting. If you have any questions, please contact me. I look forward to seeing you there.

Sincerely,

*Patricia Comings-Thibault*

Patricia Comings-Thibault  
District Manager

Cc: Attorney  
Engineer  
District Records
District: HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

Date of Meeting: Tuesday, April 7, 2020
Time: 6:00 PM
Location: Telephonic

Dial-in Number: To Be Distributed

Agenda

I. Call to Order/Roll Call

II. Audience Comments on Agenda Items

III. Business Items
   A. Health, Safety, & Welfare of Our Community
      ➢ Essential Personnel Update
   B. Discussion on Seawall Damage at 611 Pinckney
   C. Upland Claims Revised Settlement Agreement

IV. Audience Comments

V. Adjournment
Dear Harbor Bay CDD Board of Supervisors and District Staff,

The above quotation truly applies to the current situation surrounding our MiraBay Family. Our family is made up of our CDD Supervisors, residents, District Staff, Vesta team and more. We were just starting to come together, we are keeping together, and we are working together during unprecedented times. During this time of nationwide concern over the Coronavirus we are working daily and diligently. We are adapting to daily changes in new guidelines, policies and procedures, daily (sometimes hourly) changes from the CDC, changes in county and state government mandates, etc. We want to assure you that our first thought was and still is the health, safety and wellness of not only the MiraBay community but of District assets, amenities and infrastructure, all under our charge.

In working together to formulate our crisis/emergency management and contingency plans, the constant thread throughout all of these is the challenge of dealing with so much uncertainty and planning for the unknown. For example: What is considered “essential?” When will we reopen? How will that work? These are questions that cannot be answered with absolute certainty at this time. However, we do have an initial outline for your consideration:

**Short-Term (March - April):** We’ve been performing essential duties and projects since our facilities closure; we’ve also handled a wide variety of tasks. Our list of tasks is anything but short and includes:

- Securing of all District property, posting signs, locking areas and more
- Telephones forwarded to staff members
- Staff on property daily to maintain pools, maintain clay tennis courts, and other vital pieces of infrastructure that should **not** be left unattended/unmaintained in order to prevent damage
- Performing preventative maintenance and janitorial/disinfecting functions
- Cleaning building interiors, organizing and “purging” closet/storage areas
- Security functions and facility inspections
- Processing of District invoices and other administrative duties
- We are working both remotely and onsite, increasing our communications with the residents via e-blast, e-newsletters, COVID-19 updates and more.
- Reviewing all documents for our childcare program, new resident information packets, fitness programming, etc.
- Employees are driving by and checking on property, checking for/handling any deliveries, etc.
- Completed tennis court bathroom renovations
- “All-hands-on-deck” cleaning and sanitizing of all pool furniture
- Gym has been “deep cleaned” three times
- Café deep cleaned and kitchen area painted
- Staff members polishing all the wood paneling in the Admiral’s Lounge
- Deep-cleaned Outfitters, Dockers, etc.
Some of these tasks are much easier to do in the absence of the residents and some would normally have to be completed by contractors due to time constraints. However, these were completed in-house at a cost savings to the District. Many of these items are going to continue into both of the following levels of planning and will become even more detailed.

**Medium Term (April – early-May):** Considering the recent executive order by the governor, we are in the process of understanding and adapting our operations. We want to continue to provide a high level of service, within the current health guidelines and in the best interests of the safety of our team members. Keep in mind that no matter how long this goes on, we are still dedicated to the oversight, maintenance and care for all District property including all contractors on property, as they fall under essential personnel. This would include our landscapers, pond vendors, pool maintenance/chemical deliveries, seawall vendor, and more. All of these vendors are still operating at full capacity, at this time. Please keep in mind, that all non-essential services and orders have been halted, wherever possible, to ensure proper and effective management of District funds.

We are also utilizing this opportunity to continue to develop an overall, long-term communications strategy for the District, as well as conduct online staff meetings and training. As you know, we are in the process of transitioning to our Square POS system. While we have lost the planned, initial training timeframe due to social distancing, etc., we are now on track to have all staff go through a series of online training to learn that system so we can be up-and-running as soon as possible.

Vesta is also in the process of preparing and implementing a variety of companywide training resources for our associates, including such areas as customer service and hospitality excellence, better utilizing IT resources, Food & Beverage operations, and maintenance skills. These will likely be delivered “remotely” due to the current social distancing guidelines, but we will provide further information on the specifics of these resources that are utilized by our MiraBay team at a near-future board meeting.

We are also working hard to deliver something we like to call the “Living Room Lifestyle.” We want residents to know that HOPE has NOT been canceled. We are working on keeping our residents engaged, moving, experiencing a sense of community, and instead of cancelling events, adapting them. For example, our Bunny Brunch and first ever Aqua Egg Hunt (in the pool) has been turned into a parade including the Carrot Cruiser, Bunny Brigade and more. (An Easter without at least a bunny sighting is something we couldn’t accept.) We have sent residents on virtual tours of museums, dance along videos, exercise-at-home for every level of enthusiast and linked them to sites to keep up on the latest and everchanging information on this health crisis.

A large portion of our Medium-Term (and Long-Term) planning is so that we minimize any potential delays in reopening the facilities. For example: Interviewing, hiring and training of new staff because we couldn’t or didn’t hold on to our existing employees would cause a delay and lapse in the experience that we strive to provide for our residents. We can all only imagine that once we receive the green light to open, we will have a slew of stir-crazy, cooped up residents excited to get back to normal and using their amenities (which we can’t wait for either).

It is imperative that we work together to keep our staff employed, engaged and ready. Again, by working together, being creative, and tapping into the full extent of our resources, we can well-handle the current challenges, persevere, and achieve positive, long-term improvements for everyone.
**Long-Term (mid-May/June):** This approach is very preliminary at this point; it will be based upon an estimated mid-to-late-May timeframe to reopen our facilities but it also will include the possibility that a reopen date isn’t as close on the horizon as we would like.

So, preparing for “normal;” what will that look like? Different on-site departments will likely have differing approaches and timeframes. Here are just three, brief examples of some initial considerations:

- We need to ensure that the pools and tennis courts are in opening-day condition, but there will likely be hurdles and time constraints on restoring everything to full service. We will plan for and deal with those as needed.
- The café team will need to re-stock the pantry and while normally you can order as little as three-days-out, ALL cafes, restaurants, etc. will be ordering and the vendors will be expected to restock everyone’s shelves simultaneously and immediately to fill those orders (not realistic.)
- Lifeguard Staffing is another key area. While we were ready to deploy lifeguards for Spring Break and weekends, this current time period was intended for our hiring timeframe for onboarding and training of our summer lifeguard staff. As with everything else, we are now starting to adapt those plans and preparations regarding recruiting, hiring, onboarding and training of the staff.

In sum, none of this will be as simple or easy as “flipping a switch” and “turning on the lights.”

Our team is working hard to ensure that (1) we fulfill all of our responsibilities and duties to the District, (2) we do everything in our power to retain, engage, and prepare our staff (and we know that is your goal and concern as well), creatively fully-utilizing the majority of the team, with the exception of those associates in the highest risk category, consistent with the governor’s executive orders (regarding “Safer At Home,” etc.) and (3) we restore the residents’ previous lifestyle ASAP. Please stay tuned as we are still formulating several ideas and more detailed plans, including the possibility of tapping into some governmental programs that could better enable us to further partner with both the District (with potential cost savings) as well as our staff.

We wanted to inform you, in writing, to make sure that you are fully aware of our executed items and ongoing efforts (so far) for today, tomorrow and this uncertain future. Please let this document serve as a current recap and status report as we will have some further details for you at the April 16 board meeting. To that end, we are evaluating all of Vesta’s scope of services and potential changes to payroll functions, staffing, and our invoicing. We are working on presenting this information that will be fair to all and balance multiple interests and needs in the possible event of a more long-term closure.

Due to our commitment to you and our partnership with you, our team will stay focused on being proactive and diligent in our efforts. While we work together to maintain our community, property, amenities, and lifestyle, we’ll continue to find solutions to keep the MiraBay Family strong and look forward to the time when we, along with our residents and nation, have triumphed over this adversity.

We thank you for your patience and support as well as your trust and continued cooperation.

Sincerely,

Margaret Alfano, Roy Deary,
General Manager President
Harbor Bay CDD Amenities Division
Harbor Bay
Community Development District

Agenda Request

To: Board of Supervisors
From: Matthew Davis, Upland Counsel
Date: March 31, 2020

ISSUE:
611 Pinckney DR., Apollo Beach, FL 33572 – Seawall Damage and Easement Encroachment

ANALYSIS/INFORMATION: (LOCATION – IF APPLICABLE)
The builder at 611 Pinkney has constructed a retaining wall within the District’s seawall easement. The builder has refused to remove it despite the District’s demand which is causing damages and will likely cause additional damages in the future. The purpose of the discussion is to consider the District’s legal options going forward.

EXPECTED COMPLETION DATE:
N/A

BUDGET IMPACT-AMOUNT( RECURRING/RESERVE/ETC):
N/A

DECISION TO BE MADE:
Proceed with Litigation or Not?

ATTACHMENTS:
2 Pictures
EXHIBIT 3
Harbor Bay
Community Development District

Agenda Request

To: Board of Supervisors

From: Matthew Davis, Uplands Counsel

Date: March 31, 2020

ISSUE:
Request that the Board approved revisions to the Uplands Claims Settlement Agreement per the request of several residents.

ANALYSIS/INFORMATION: (LOCATION – IF APPLICABLE)

The proposed changes maintain the intent of the Settlement Agreement to release the District from all claims related to the current seawall. The revisions expressly reserve claims related to the new seawall, but require the property owner to pursue the contractor for any issues caused during construction or in the 5 years (or the warranty period, whichever is shorter) following completion of the new seawall.

EXPECTED COMPLETION DATE:
N/A – revisions already made

DECISION TO BE MADE:
Approve or Deny the Changes

ATTACHMENTS:
Revised Settlement Agreement
UPLAND REPAIRS SETTLEMENT AGREEMENT AND RELEASE

This Upland Repairs Settlement Agreement and Release (“Agreement”) is made and entered into on this March 26, 2020, by and among the following parties:

HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT (“District”), a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes; and

PROPERTY OWNER, a married/single man/woman, as well as his/her heirs, assigns, successors, including, but not limited to any future owners of the Property, (“Landowner”), as the owner of certain property whose address is [INSERT ADDRESS], Apollo Beach, Florida 33572 (“Property”) and which Property is more fully described as:

[INSERT LEGAL DESCRIPTION]

TAX FOLIO NUMBER:

Collectively the District and the Landowner shall be referred to as the Parties. Whenever used herein, the terms “District,” Landowner” and “Parties” include the parties to this Agreement, including the heirs, legal representatives and assigns of individuals, and the successors in interest and assigns of trustees, partnerships, limited liability companies, governmental entities and corporations.

RECITALS

WHEREAS, the Landowner holds fee title to the Property, which is abutted by the District’s community seawall (a/k/a canal retaining wall) (“Seawall”) and over which certain easements have been placed in favor of the District;

WHEREAS, the District has taken, or will take, certain actions to stabilize the Seawall at the Property, (“Seawall Repairs”);
WHEREAS, upland from the District’s easements, the Property includes an upland retaining wall, along with other improvements, including but not limited to pool cages, and other landscaping (collectively the “Retaining Wall”);

WHEREAS, the Landowner wishes to repair the Retaining Wall (“Upland Repair”), and has requested that the District pay for the expenses associated with said repairs;

WHEREAS, in exchange for a binding release of all claims that may exist against the District by Landowner, the District desired to pay for such expense, under conditions set forth herein.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the Parties agree as follows:

**TERMS AND CONDITIONS**

For good and valuable consideration, as set forth herein, the Parties agree to the following terms and conditions:

1. **TERMS:** Within thirty (30) days of the date that the last party fully executed this Agreement (“Effective Date”), the District shall provide a lump sum payment to the Landowner in the amount of [INSERT SETTLEMENT AMOUNT] ($XXXX) (“Payment”).

2. **CONDITIONS:**
   a. The Payment shall be the only contribution by the District to any repair now or in the future regarding the Upland Repair, and the Landowner shall be responsible for any expenses or costs above and beyond the Payment.
   b. The Landowner shall be solely responsible for all aspects of the Upland Repair, including but not limited to defining the scope of work, selecting a Florida licensed contractor to perform the work, obtaining all applicable permits and governmental approvals, obtaining approvals from the homeowner’s associations, conducting and performing the work, and all other
aspects of the Upland Repair. In addition to the release set forth in Paragraph 3, below, the District shall have no responsibility or assume any liability for the Upland Repair whatsoever.

c. This Agreement shall be in full force and effect regardless of whether the Landowner conducts the Upland Repair. Furthermore, the Landowner shall be responsible for any damage arising from any failure of the Landowner to complete the Upland Repair.

d. The Landowner shall ensure that the Upland Repair does not encroach, damage, or otherwise interfere with Seawall and/or the District’s existing easement rights, and shall indemnify, defend and hold harmless the District, including but not limited to the District’s agents, supervisors, managers, staff, employees, engineers, lawyers, contractors and representatives from any and all claims, liabilities, damages, losses and costs, inclusive of attorney’s fees and costs and consultant’s fees and costs, relating to, in whole or in part, of any act or omission by the Landowner’s, or the Landowner’s contractors, engineers, agents or representatives, or otherwise relating to Landowner’s rights and/or responsibilities under this Agreement.

3. RELEASE:

a. The Landowner shall forever release, remise, acquit, satisfy and forever discharge the District, and its current and former officers, directors, agents, engineers, managers, management companies, staff, employees, attorneys, predecessors, successors and assigns of and from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, and any and all claims whether founded in contract or tort, whether existing now or in the future, arising out of or relating in any way to any matters raised or which could have been
or could possibly be raised in connection with: 1) the existing Seawall; 2) future Seawall Repairs; 3) the soil compaction or conditions at the Property; 4) the Retaining Wall and any other upland improvements of any kind; 5) the Upland Repair; and 6) or any other matters of any kind related to or arising out of the Seawall, Seawall Repairs, and the Upland Repairs and/or the Landowner’s failure to complete the Upland Repairs, except as set forth below. Notwithstanding anything herein to the contrary, the scope of Landowner’s release set forth herein shall in no way release, remise, acquit, satisfy or forever discharge the District, and its current and former officers, directors, agents, engineers, managers, management companies, staff, employees, attorneys, predecessors, successors and assigns from any liability for any future damages suffered by the Landowner which are caused by the failure of the Seawall after completion of the Seawall Repairs and expiration of the Seawall Repair contractor’s warranty period or 5 years following issuance of a certificate of substantial completion of the Seawall Repairs, whichever occurs first: 1) future deterioration or failure of the Seawall; 2) future Seawall Repairs; 3) future soil compaction or conditions at the Property; and/or 4) the District’s failure to maintain any easement(s) or any other obligations owed to the Landowner at law. The terms of this paragraph shall survive any termination of this Agreement.

b. If applicable, the Landowner shall dismiss with prejudice any claims he/she/they is/are pursuing in litigation against the District related to the Seawall and/or the Upland Repairs within 10 days of receipt and clearance of the Payment.

c. The Landowner acknowledges and voluntarily covenants and agrees that the Property shall be subject to the above-described restrictions that are intended and shall be deemed to be covenants running with the land and binding upon the Landowner of the Property, his/her/their heirs, successors, and assigns.
4. **WORK WITHIN AND/OR AFFECTING THE DISTRICT’S EASEMENT AND/OR THE SEAWALL:** To the extent the Upland Repair will occur within, or otherwise impact, the District’s Easement and/or the Seawall, the Landowner expressly agree:

   a. To comply with the Easement Repair Work Guidelines, available on the District’s website and incorporated herein by reference;

   b. Before its contractor(s) begins performing the Upland Repair, the Landowner shall require the contractor(s) to name the District as an Additional Insured to the contractor(s) general liability policy with a minimum limit of insurance in the amount of $500,000 per claim. The Landowner shall provide the District with a copy of the contractor’s Certificate of Insurance, as well as a copy of the general liability policy itself before commencing the Upland Repair.

   c. The Landowner agrees to indemnify and hold harmless the District for any damages the Landowner’s contractor(s) causes to the District’s Easement and/or Seawall as further set forth in Paragraph 2(d), above.

5. **ATTORNEYS’ FEES AND COSTS:** Each Party shall bear its own costs, expenses, and attorneys’ fees incurred in connection with this matter.

6. **REPRESENTATIONS AND WARRANTIES:** Each Party makes the following representations and warranties with the understanding that each Party is entering into this Agreement in reliance upon each of those representations and warranties, and that without these representations and warranties, such Party would not enter into this Agreement.

   a. Each Party represents and warrants that he/she/they is/are competent and authorized to enter into this Agreement.

   b. Each Party represents and warrants that he/she/they had an opportunity to review all of the provisions of this Agreement with their respective counsel, and regardless of whether
legal counsel was retained to review the same, each Party has read, understands and accepts all
the terms of this Agreement.

c. The Landowner represents that he did not cause, contribute, and/or exacerbate any
of the upland damage for which he is seeking the CDD’s financial contribution to repair; that he
has not been a party to, nor is he currently a party to, litigation against the CDD regarding the
seawall adjacent to his property; and that he has not contributed financially to any person and/or
entity currently in litigation against the CDD regarding the seawall.

d. The Landowner represents that he is the fee title owner of the Property.

e. The Landowner acknowledges and agrees that any transfer or conveyance of title
to the Property will require a disclosure to any future owner of the Property that there was a
settlement with the District and that any and all future claims against the District related to the
Seawall and/or the Upland Repair have been released, to the extent as set forth herein.

f. The Landowner acknowledges that the District, in its sole and absolute discretion,
may record this Agreement in the public records of Hillsborough County.

7. COMPROMISE: This Agreement is the result of a voluntary settlement and
nothing herein shall at any time or for any purpose be considered an admission of liability or
responsibility whatsoever by any Party.

8. NOTICE: Any notice, demand, request or communication required or
permitted hereunder (“Notice”) shall be in writing and sent by hand delivery, United States
Postal Service certified mail, or by any other recognized overnight delivery services to the
following address:

If to the District: Harbor Bay Community Development District
c/o DPFG
250 International Parkway
Suite 280
Lake Mary, Florida 32746
Attn: Patricia Thibault & Ken Joines
District Manager

With Copy to:
Mills Paskert Divers
100 North Tampa Street, Suite 3700
Tampa, FL 33602
Attn: Ty Thompson
Special Counsel to the District

If to Landowner:
PROPERTY OWNER
Apollo Beach, FL 33572

Except as otherwise provided in this Agreement, any Notice shall be deemed received upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for each Party may accept or deliver Notice on behalf of that Party. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties of any changes in the name or address to which Notices shall be send by providing the same on five (5) days written notice to the Parties.

9. DRAFTING: The fact that one of the Parties to this Agreement may be deemed to have drafted or structured any provisions of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor or against such Party.

10. ASSIGNMENT: No Party may assign, transfer or license all or any portion of his/her/their rights under this Agreement without the prior written consent of the other Party.
Any assignments attempted to be made by a Party without the prior written approval of the other Party are deemed void.

11. **CHOICE OF LAW AND VENUE:** This Agreement shall be construed, interpreted and controlled according to the laws of the State of Florida. Exclusive jurisdiction and venue for any litigation brought to enforce this Agreement shall be in the Circuit Court for Hillsborough County, Florida, and the Parties do hereby specifically waive any other jurisdiction and venue.

12. **SOVEREIGN IMMUNITY:** Nothing contained herein shall constitute a waiver of the District’s sovereign immunity protections or limits of liability established under Florida law. This paragraph shall survive the termination of this Agreement.

13. **SEVERABILITY:** In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

14. **AMENDMENTS:** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is fully executed by all the Parties hereto.

15. **ENTIRE AGREEMENT:** This instrument shall constitute the final and complete expression of the agreement among the Parties relating to the subject matter of this Agreement.

16. **COUNTERPARTS:** This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single
copy of this documents to physically form one document. If any Party uses a scanned or facsimile transmittal, that copy shall be deemed to be an original.

17. **AUTHORIZATION:** By executing below, the undersigned represent that they have been duly authorized by the appropriate body or official of their respective entity to execute this Agreement, and that each Party has complied with all the requirements of law and has full power and authority to comply with the terms and provisions of this instrument.

18. **EXPIRATION:** This Agreement shall expire and be deemed void, and the offer of Payment contained herein shall be rescinded if the Landowner does not accept the terms of this Agreement and execute it within 60 days of the District’s approval of the Landowner’s claim.

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement to be effective as of the date first written above.

**PROPERTY OWNER**

Witness: ___________________________  By: _____________________________

Printed Name: ______________________

Witness: ___________________________

Printed Name: ______________________

State of: __________________

County of: _________________

The foregoing instrument was acknowledged before me this ___ day of ____________, 2017, by PROPERTY OWNER, who is personally known to me or produced_______________ as identification and being duly sworn did take an oath under
penalty of perjury that I have read the foregoing document and all representations contained herein are truthful.

________________________
Notary Public

________________________ (Printed Name)

My commission Expires:_____
HARBOR BAY COMMUNITY DEVELOPMENT DISTRICT

Witness: ___________________________  By: ______________________________
Printed Name: _____________________  Printed Name: _____________________
Witness: ___________________________  Title: _____________________________
Printed Name: _____________________