



**SOUTH BAY
COMMUNITY DEVELOPMENT
DISTRICT**

**HILLSBOROUGH COUNTY
REGULAR BOARD MEETING
FEBRUARY 10, 2023
1:00 P.M.**

Special District Services, Inc.
The Oaks Center
2501A Burns Road
Palm Beach Gardens, FL 33410

www.sbaycdd.org
561.630.4922 Telephone
877.SDS.4922 Toll Free
561.630.4923 Facsimile

AGENDA
SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT
Sunset Grill & Beach Bar
602 Bahia del Sol Drive
Ruskin, Florida 33570
REGULAR BOARD MEETING
February 10, 2023
1:00 P.M.

- A. Call to Order
- B. Proof of Publication.....Page 1
- C. Establish Quorum
- D. Additions or Deletions to Agenda
- E. Approval of Minutes
 - 1. January 13, 2023 Regular Board Meeting.....Page 2
- F. Old Business
 - 1. Discussion Regarding TECO Lights
 - 2. Discussion Regarding Unapproved Signs
- G. New Business
 - 1. Review and Discussion of RFQ Proposals
 - 2. Review and Approval of Revocable Sidewalk Lease Agreement.....Page 7
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 - 1. Manager’s Report
 - 2. Legal Report
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 - 4. Chairman’s Report
 - 5. POA Report
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- I. Administrative Matters
- J. Comments by the Public for Matters not on the Agenda
- K. Board Members Comments
- L. Adjourn

**SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT
REGULAR BOARD MEETING
JANUARY 13, 2023**

A. CALL TO ORDER

The January 13, 2023, Regular Board Meeting of the South Bay Community Development District (the “District”) was called to order at 1:03 p.m. at the Sunset Grill and Beach Bar located at 602 Bahia del Sol Drive, Ruskin, Florida 33570.

B. PROOF OF PUBLICATION

Proof of publication was presented that indicated Notice of the Regular Board Meeting had been published in the *Tampa Bay Times* on September 28, 2022, as part of the District’s Fiscal Year 2022/2023 Meeting Schedule, as legally required.

C. ESTABLISH A QUORUM

It was determined that the following Supervisors constituted a quorum and was in order for the meeting to commence:

Chairman	Leah Popelka	Present
Vice Chairman	Kelly Evans	Present
Supervisor	Ian Brown	Present
Supervisor	W. Thomas Grimm	Present via phone
Supervisor	Mary Madden	Present

The following staff were in attendance:

District Manager	William Crosley	Special District Services, Inc.
District Manager	Michelle Krizen	Special District Services, Inc.
General Counsel	David Smith	GrayRobinson, P.A.
District Engineer	Rick Brylanski (via phone)	Hole Montes, Inc.

Also present were the following:

John McEneaney	Rick Sorran
Mary Jo Mandrick	Bill Mandrick
Tom Gunny	Kent and Bettie Wanninger
Antonio Garcia	Christine Trimmer
Steve Herrera	

D. ADDITIONS OR DELETIONS TO THE AGENDA

There were no additions or deletions to the agenda.

E. APPROVAL OF MINUTES

1. December 9, 2022, Public Hearing & Regular Board Meeting

The December 9, 2022, Public Hearing & Regular Board Meeting minutes were presented for consideration.

A **motion** was made by Ms. Popelka, seconded by Ms. Evans and passed unanimously approving the minutes of the December 9, 2022, Public Hearing & Regular Board Meeting, as presented.

F. OLD BUSINESS

1. Discussion Regarding TECO Lights

Mr. Wanninger advised that he had sent the agreement to the POA Board and legal counsel for review. The concern is that there is a liability issue.

A **motion** was made by Ms. Popelka, seconded by Ms. Madden and passed unanimously authorizing the Chair to execute the agreement as the owner after the POA signs as the customer with indemnifications of the District, as directed by District Counsel.

G. NEW BUSINESS

1. Consider Draft Lease of Private Sidewalk by HS Suites

Mr. Smith presented the draft lease and advised that HS Suites was agreeable, subject to the following terms and conditions:

1. HS Suites will lease the private sidewalk to the CDD from Bahia Beach Road to the South Parking Lot for a 3 month period, to be extended monthly unless otherwise terminated by either party upon 30 days written notice.

The lease cost will be \$1. and other consideration as set forth below.

The CDD will be responsible for all maintenance, repairs, necessary improvements or other costs associated with the sidewalk and will indemnify and hold HS Suites harmless from any and all types of claims, actions, etc. brought in conjunction with the sidewalk, and add HSS Suites as an additional insured under the CDD's Liability insurance policy. The CDD will at its sole expense fence off the sidewalk at the 20' Pedestrian Easement northerly line, extended from Bahia Beach Road to the South Parking lot and be responsible for its maintenance, repair and other costs of such fencing in order that there can be no access to the private road. The existing fence adjacent to the seawall at the down ramp will remain and the CDD shall be responsible to maintain it.

Additionally, in conjunction with the lease the CDD will abandon of record the 20' Pedestrian Easement around Hammer Head (HH) proper, starting at the last access ramp to the western leased T-dock around HH itself to the Jetty. As you will recall this was once approved by the CDD. The CDD understands that by HS Suites not requesting the abandonment of the remainder of the 20' Pedestrian Easement around the marina on the seawall itself and the adjacent riparian property owned by HS Suites, it may not be considered an acknowledgment that the CDD or any third party has any leasehold interest in same easement or underlying property.

At the present time people are walking to the South Parking Lot between the existing fence and the pilings on the HH Parking Lot. If the CDD becomes the lessee of the existing sidewalk as described above and the public continue to use that grassed area next to the fence as a path, then the CDD will pay to move the existing fence to the pilings to prevent the public from using this property.

The preparation of any lease or other documents shall be prepared by the CDD subject to the review and approval of HS Suites, and all costs thereof will be the responsibility of the CDD.

A discussion ensued. The District Engineer will need to inspect the property before we could assume maintenance.

A **motion** was made by Ms. Popelka, seconded by Ms. Evans authorizing District Counsel to draft a lease of private sidewalk by HS Suites to the District, as presented. Upon being put to a vote, the motion carried 4 to 0 with Mr. Grimm abstaining.

2. Consider Authorizing District Engineer and Counsel to Determine CDD Property Ownership

Mr. Grimm explained that there was conflicting information regarding what the CDD owns. Mr. Smith and Mr. Brylanski are recommending looking at the title information to determine which areas need to be mapped. We need to map the boundary and easements.

A **motion** was made by Ms. Popelka, seconded by Ms. Evans and passed unanimously authorizing Messrs. Smith and Brylanski to narrow the scope of work and obtain a quote to present to the Board

Ms. Mandrick questioned her seawall to which Mr. Smith showed the plat of Phase 1.

The Board explained that this was one of the reason that they authorized title work and a survey quote.

H. REPORTS

1. Manager's Report

Mr. Crosley presented the Board with a letter of resignation from Special District Services, Inc., effective March 10, 2023. The Board expressed gratitude for William Crosley and Special District Services.

A discussion ensued regarding the process of finding a new management company.

A **motion** was made by Ms. Popelka, seconded by Ms. Evans and passed unanimously directing staff to advertise a Request for Proposals for a Management Company.

a. Financial Report

The Financial Report was presented. There were no questions from the Board Members.

2. Legal Report

a. Update to Memo to South Bay Board of Directors

Mr. Smith went over the memo that lists the issues that need to be addressed by the Board.

The amendment to the settlement agreement to Harbor Side Suites has been approved, in substantial form. The document removes items from the settlement agreement that have already been completed in order to make the settlement agreement easier to understand.

b. Seawall Assessment Memo

Mr. Smith went over the Memo.

3. Engineer's Report

Mr. Brylanski is looking at the seawall in the community to see future needs as well as the areas that need to be prioritized with the \$200,000 the Board has authorized. Mr. Brylanski reminded the Board that working in consecutive areas instead of small sections was preferable.

4. Chairperson's Report

There was no Chairperson's Report at this time.

5. POA Report

The POA executed the towing agreement. There are new tow signs.

The paid parking will be implemented soon. The CDD directed the POA to email the residents to be sure they are aware of the process.

The POA reported issues on the beach such as beer pong, tents, gas grills and broken bottles and loitering. After sunset there are frequent activities. J. Mack has been handling the issues. The Board recommended calling the police when these issues arise.

To implement beach rules, proper procedure will need to be followed, including scheduling a public hearing.

J. ADMINISTRATIVE MATTERS

The next meeting is scheduled for February 10, 2023.

During the management firm transition, be sure to BCC David Smith, Tom Cloud and Rick Brylanski in all a-mails.

K. COMMENTS FROM THE PUBLIC FOR ITEMS NOT ON THE AGENDA

The Board thanked Mr. Crosley for his years in serving the District.

L. BOARD MEMBER COMMENTS

Mr. Grimm requested that "Signs" be included on the next meeting agenda.

M. ADJOURNMENT

There being no further business to come before the Board, a **motion** was made by Ms. Popelka, seconded by Ms. Evans adjourning the Regular Board Meeting at 2:35 p.m. That **motion** passed unanimously.

Secretary/Assistant Secretary

Chair/Vice-Chair

REVOCABLE SIDEWALK LEASE AGREEMENT

This Lease Agreement is made effective on February __, 2023 between the Harborside Suites LLC., a _____ limited liability corporation whose address is _____ ("Lessor") and South Bay Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, being situated in Hillsborough County, Florida, whose mailing address is c/o Thomas A. Cloud, GrayRobinson, P.A., 301 E. Pine Street, Suite 1400, Orlando, Florida 32801 ("Lessee").

WITNESSETH:

1. Lessor hereby leases to Lessee a portion of the Lessor's real property, more particularly described and designated in Exhibit A attached hereto and incorporated herein ("Premises"), constituting a sidewalk area and contiguous property for use by Lessee and its residents, guests and invitees.

2. The term of this Lease Agreement shall be for a period of three (3) months from the above date, and extended monthly thereafter unless otherwise terminated by either party upon thirty (30) days' prior written notice ("Termination Notice").

3. Lessee shall pay Lessor \$1.00 and other good and valuable consideration as provided herein as consideration for this Lease Agreement and use of the Premises through the date of termination.

4. The Lessee shall be responsible for all maintenance, repairs, necessary improvements as provided herein for the use of the Premises and will indemnify and hold harmless Lessor from any and all types of claims, actions and damages brought in conjunction with the use of the Premises by the Lessee and its residents, guests and invitees.

5. The Lessee must name Lessor as an additional insured under Lessee's existing liability insurance policy.

6. The Lessee shall at its sole cost, fee and expense fence off the Premises to be used as a sidewalk at the 20-foot Pedestrian Easement northerly line, extended from Bahia Beach Road to the South Parking lot located on the Lessee's property (required improvements under this Lease Agreement) and shall be responsible for the maintenance, repair and other costs of such fencing in order that there can be no access to the private road lying northerly thereof. The existing fence adjacent to the seawall at the down ramp just outside of the Premises shall remain and shall be the responsibility of Lessor.

7. The Lessee agrees that it will abandon of record the 20-foot Pedestrian Easement around the Hammer Head portion of Lessor's property other than the Premises starting with the access ramp to the western leased T-Docks around the Lessor's property itself to the jetty at the southern terminus of Lessor's Hammer Head property. The Lessor and Lessee agree that by virtue of the fact that the Lessor has not requested abandonment of the remainder of the 20-foot Pedestrian Easement around the marina on the seawall itself and the adjacent Riparian property owned by Lessor it shall not be considered an acknowledgment that the Lessee or any third party has any leasehold interest in such Pedestrian Easement or the underlying property.

8. The Lessee further agrees as follows:

a. To maintain and keep the Premises in good repair and in a clean state at the Lessee's expense. Maintenance also includes the trash pick-up along the sidewalk area.

b. To leave the Premises, on termination of this Lease Agreement, in the same condition and state of repair as it was at the commencement of this Lease Agreement.

9. Upon termination of this Lease Agreement, or upon failure by Lessee to perform any and all maintenance provided herein, the Lessor shall have the absolute right to enter onto the Premises in order to perform any such maintenance required by Lessee hereunder, but not performed by Lessee at the sole cost, fee and expense of the Lessee. Lessor shall provide an itemized statement of any such work to Lessee in conjunction with written notice thereof as provided under this Lease Agreement. Lessee shall have sixty (60) days from receipt of such invoice to pay same.

10. If any non-monetary default by Lessee occurs, Lessor may terminate Lessee's right of possession under this Lease Agreement following written notice hereunder and Lessee's failure to cure the default within twenty (20) days after receipt of the notice specifying the default.

11. The Lessee shall not be entitled to make any improvements, other than as described in paragraph 6 above, or to add furnishings, tables, seats or other accessories to the Premises without the written consent of the Lessor.

12. In the event that any dispute arises concerning the terms of this Lease Agreement, this Lease Agreement shall be interpreted and governed by the laws of the State of Florida. In the event that any litigation is initiated relating to this Lease Agreement, venue for any such litigation shall be in Hillsborough County, Florida.

13. Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property arising from any use of the Premises caused by or arising from any act or omission of Lessee, or any of its agents or employees, licensees or invitees.

14. For the purposes of any interpretation of this Lease Agreement, this Lease Agreement shall be considered as having been authored, drawn and written by both Lessor and Lessee and, in the interpretation of this Lease Agreement, there shall be no presumption of vagueness, ambiguity or unfairness against the Lessor.

15. Lessor and Lessee hereby agree and understand that time is of the essence as to the performance of all terms and conditions of this Lease Agreement.

16. All notices, pursuant to this Lease Agreement, shall be sent to Lessor or Lessee respectively at the address first above written.

17. Both Lessor and Lessee shall properly comply with all laws, ordinances, orders, rules, regulations and requirements of Federal, State and Local Governments in the use of the premises. No signs shall be permitted on the Premises except in compliance with applicable County Code provisions.

18. Lessee shall not create, permit, suffer any mechanics liens, other liens or any encumbrances to be imposed on the Premises that would affect the Lessor's title thereto.

19. This Lease Agreement is not assignable without the express prior written consent of Lessor.

20. This written agreement shall constitute a sole agreement between Lessor and Lessee with regard to the issues described herein and no previous discussions, negotiations or oral commitments shall remain binding on either party hereto.

21. No waiver shall be deemed to have occurred unless in writing and signed by the party against whom such waiver is sought to be enforced.

22. This agreement may be signed in multiple counterparts, all of which collectively constitute one binding agreement between and upon Lessor and Lessee.

23. Pursuant to the calculation of any time period applicable under this Lease Agreement, any holiday recognized by Hillsborough County shall be excluded therefrom.

24. Each party shall execute and deliver to another party upon request, any documents, evidence of good standing, certificates, agreements, resolutions, acknowledgements and consents as may be reasonably necessary in order to accomplish the purposes and intent of this Lease Agreement.

25. Amendments to and waivers of the provisions contained in this Lease Agreement may be made only by instrument in writing which is executed by the Lessor and Lessee.

26. None of the terms or provisions of this Lease Agreement shall be deemed to have been abrogated or waived by any reason of any failure or failures to enforce same. Nothing herein or in any other agreement, written or oral, entered into by or binding upon the Lessor or Lessee shall be deemed a limitation on the ability of the Lessor or Lessee to enter into this agreement and be valid in accordance with its terms.

27. The execution of this Lease Agreement has been duly authorized by the appropriate body or official of each of the Lessor and Lessee and Lessor and Lessee has complied with all of the requirements of law and has the full power and authority to comply with the terms and provisions of this Lease Agreement.

28. The Lessor and Lessee agree that this Lease Agreement is solely for the benefit of the Lessor and Lessee and Lessee's residents, guests and invitees and no right or cause of action shall accrue upon or by reason of, to or for the benefit of any third person not a signatory of this Lease Agreement. Nothing in this Lease Agreement express or implied is intended or shall be construed to confer upon any person or corporation other than Lessor and Lessee any right, remedy or claim under or by reason of this Lease Agreement or any of the provisions or conditions of this Lease Agreement and all of the provisions, representations, covenants and conditions contained in this Lease Agreement shall inure solely to the benefit and shall be binding upon Lessor and Lessee and their respective representatives, successors and permitted assigns.

29. LESSOR UNDERSTANDS AND AGREES THAT ALL DOCUMENTS OF ANY KIND PROVIDED TO THE LESSEE IN CONNECTION WITH THIS LEASE AGREEMENT MAY BE PUBLIC RECORDS AND TREATED AS SUCH IN ACCORDANCE WITH FLORIDA LAW.

30. Nothing in this Lease Agreement shall be deemed as a waiver of immunity or limits of liability of the Lessee beyond any statutory limited waiver or immunity or limits of liability which have been adopted by the Florida Legislature and Section 768.28, *Florida Statutes*.

31. **WAIVER OF JURY TRIAL. LESSOR AND LESSEE AGREE AS FOLLOWS: (A) EACH OF THEM KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION (AN "ACTION") BASED UPON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS LEASE AGREEMENT, SEEKING TO ENFORCE THE COLLECTION OF THE DELINQUENT ASSESSMENTS, OR ENFORCEMENT OF ANY RELATED DOCUMENTS, INSTRUMENTS OR AGREEMENTS (WHETHER ORAL OR WRITTEN) WHETHER EXPRESS OR IMPLIED AS A RESULT OF A COURSE OF DEALING, A COURSE OF CONDUCT, A STATEMENT, OR OTHER ACTION OF ANOTHER PARTY; (B) NEITHER LESSOR NOR LESSEE MAY SEEK A TRIAL BY JURY IN ANY SUCH ACTION; (C) NEITHER LESSOR NOR LESSEE WILL SEEK TO CONSOLIDATE ANY SUCH ACTION (IN WHICH A JURY TRIAL HAS BEEN WAIVED) WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED; AND (D) NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER OF THEM THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.**

Dated this _____ day of _____, 2023.

_____,
on behalf of Harborside Suites, LLC, Lessor

Witness on behalf of Harborside Suites, LLC

on behalf of South Bay Community Development District, Lessee

Witness on behalf of South Bay Community Development District

State of Florida
County of _____

Signed and sworn before me on this _____ day of _____ 20____.

By _____

Identification verified: _____ Oath sworn: ___ Yes ___ No

Notary Signature

My Commission expires: _____

MEMORANDUM

TO: South Bay Board of Directors
FROM: David L. Smith
DATE: October 3, 2022 Client-Matter Number: 40242-2
SUBJECT: Agenda Items - Fiscal Year 2022-2023

Board Members,

This memorandum is for the purpose of summarizing the primary issues that need to be addressed and resolved in the upcoming fiscal year for South Bay CDD prior to turnover of control. (See below.) For your ease of reference, I will consolidate here issues on which you have been briefed, at least in part, via various other memoranda previously.

The point is to resolve these matters while we have a Board, which has the institutional knowledge associated with most of these issues. It is also important to address these issues while we have the District Management, District Counsel and District Engineer with that background knowledge.

These items are identified as follows, with additional information to be provided subsequently so that each can be addressed thoroughly:

I. Harborside Suites Issues

A. Amendment to Settlement Agreement. The original Settlement Agreement with Harborside Suites was dated November 1, 2013. Since then, many of the requirements and conditions have been met or are no longer relevant. In order to provide a clear go-forward basis governing the District's relationship with Harborside Suites, it is important that we revise the Settlement Agreement to reflect the current state of affairs.

B. Harborside Seawall Repairs. Harborside Suites has previously undertaken to repair the seawalls along the eastern and southern edge of its properties contiguous to the Harborside Cove Marina. The question is whether this is part of a District-wide seawall repair obligation or is simply the obligation of Harborside Suites. Both the Settlement Agreement and the Seawall Repair and Assessment Methodology will need to be reviewed in answering this question.

II. Global Title and Survey Issues

A. District Engineer Efforts. The District Engineer has been gathering all available surveys that have been generated in conjunction with transfers and sales of property within the District. It is the goal to consolidate those surveys and get an overall understanding of the exact locations of the various boundaries of the property. It may nonetheless be necessary to incur expense for completion of this survey work. The survey and title work was not done with great care by the Developer and yet those matters have significant ramifications for many of the issues identified in this memorandum and otherwise applicable to the District.

B. Ownership Obligations. Many of the issues discussed herein relate to the actual ownership of the various properties comprising the District and the obligations attendant to that ownership. It is for this reason that the District needs to consider whether it wants to obtain a global title insurance policy to clarify once and for all the exact ownership situation. It could very well be that this title work, if done in conjunction with the above-referenced survey work could be immensely valuable on a go-forward basis. It is, however, not an inexpensive process.

III. Pending Litigation

A. SunTex Marinas. There is existing litigation with the successor-in-interest to Little Harbor Ltd. We need to attempt to resolve this litigation in conjunction with addressing other issues related to the property owned or controlled by SunTex Marinas.

B. SunTex Marinas Access. As per a recent settlement in conjunction with the T-Docks, the District agreed to attempt to assist Little Harbor Ltd. address its access issues. We will need to elaborate exactly what those problems are and what path there may be to their resolution. We do not currently know whether the new owner is fully aware of these issues. Nonetheless, it is in at least their interest to get these matters resolved.

C. Personal Injury Suit on Property Near Pier. There was a claim asserted with regard to a fall by a visitor on the property located near the pier in the Tiki Hut. There is a need to clarify the exact ownership of that property, which has bearing on whose obligation it is to defend and/or pay any associated damages that may become due. As you can see, a lot of these matters are inter-related.

IV. Assessment Methodology Review

A. Changes in Use. We need to evaluate whether the initial development concept has vestigial impact on the Assessment Methodology which should be corrected. That is, there was a resort concept initially. We need to determine whether the allocation of certain expenses was attendant to the resort amenities concept and was included in the Assessment Methodology.

B. Zoning and Land Use Changes. We need to review the various zoning and land use changes associated with the property to determine whether it has altered the potential development on various parcels, thereby possibly altering the allocation of assessments among the parcels.

C. Changes per Settlement Agreements. We need to review each Settlement Agreement and determine whether any of those obligations have been altered by virtue of related subsequent developments.

That then would need to be translated through to any implications it has on the assessment methodology. In all events, it is important that the new Board understand what obligations are still outstanding.

D. Board Action. We need to review the various actions taken by the Board to determine whether they have any impact on the applicable assessment methodology in allocation of assessments, or otherwise impact the District.

E. Seawall Maintenance Decisions. We need to summarize exactly what decisions have been made with regard to seawall maintenance and what that impact has with respect to the allocation of assessments on a go-forward basis, if any.

F. Existing Agreements. There are certain existing agreements that create contractual obligations regarding seawall maintenance and other matters. We need to evaluate those in terms of what impact, if any, they have on a global seawall maintenance approach for governance of the District.

G. Additions, Deletions or Changes to Infrastructure. We need to evaluate whether there have been any changes to the available infrastructure and any associated amenities that create financial obligations that must be assessed against all or portions of the property owners of the District.

V. Seawall Access Easement Agreement

A. Ownership and Methodology Outcomes. Depending upon the ownership determination and the methodology evaluations described above, we will need to determine exactly what the maintenance obligations are for the District and what they are for private property owners.

B. Execution and Recording of Agreement. Once the items identified in paragraph A above are determined, we need to get the Seawall Access Easement Agreement executed and recorded in the public records so this is established on a go-forward basis clearly for all concerned.

VI. Notice and Opportunity to be Heard

A. Sufficient Notice. It is important that all property owners receive notice of these pending decisions so that they may have an opportunity to provide input in that process. This summary is a continuing effort to make sure the notice is provided through the agenda process to all concerned in order to meet this goal.

B. Opportunity to be Heard. Part of the due process requirements for the District is that in addition to providing notice there must be a legitimate and sufficient opportunity for the property owners to provide their input and provide any evidence or argument related to the issues to be determined by the Board. Accordingly, we need to set specific time periods for such participation to occur so that all members have that opportunity and the Board has the benefit of all of the information related to the decision the Board must make.

VII. Turnover of Control

A. Completion of Above Information Gathering. It is in part and parcel in connection with the turnover of control that we complete all of the above-referenced items so that the membership has had an

opportunity to participate and that there is clarity on exactly what will occur on a go-forward basis and what items remain for the new Board to determine.

B. Process. There is a process that must be followed in order to make sure that turnover occurs in a manner consistent with applicable law. Essentially, it is that all relevant parties must have notice and opportunity to be heard before a decision is made. This will be elaborated on as will the other items above.

jsl

MEMORANDUM

TO: Board of Directors
South Bay Community Development District (“**District**”)

FROM: David L. Smith

DATE: November 17, 2022, Client-Matter Number: 40242-2
Final Revision
December 5, 2022

SUBJECT: Seawall Assessment Determination

This provides the information to the Board for making its final determination of seawall maintenance and the related assessment allocation. The primary concept is that the District will provide the appropriate structural improvements (“**Seawall Repairs**”) for sections of seawall owned by the District. This would include any seawalls for which third party owners authorize Seawall Repairs by the District. All other third parties will be left with the obligation of Seawall Repairs they determine appropriate for their respective properties.

I. Varieties of Seawalls to be Repaired/Maintained

Based upon my review of the documentation, surveys and ownership of the various parcels of property, I believe we have the following four different seawall/retaining wall ownership situations. Hereinafter I will use the term Seawall to refer to both a seawall and/or a retaining wall:

1. Seawalls subject to the South Bay CDD Drainage and Retaining Wall Maintenance Easement, dated August 31, 2006 and recorded at Office Records Book 17074, Page 1376 (“**Seawall Maintenance Agreement**”).
2. Seawalls owned by the District including District ownership of significant uplands adjacent to the seawall.
3. Seawalls owned by the District without significant uplands owned by the District adjacent to the seawall.
4. Seawalls and attendant uplands owned by third parties, i.e. not the District.

The balance of this Memorandum discusses the allocation of Assessments for Seawall Repairs.

II. **Distinction Between Maintenance/Repair Obligations and Assessments/Seawall Maintenance Agreement**

There is a conceptual distinction between who is obligated to undertake the Seawall Repairs and who is assessed for those repairs. In some cases they may be the same. In others they may not.

That is, it may be that pursuant to the above-referenced Seawall Maintenance Agreement, the District has the obligation to repair and maintain the seawalls described therein, but a determination must be made whether such repairs are to be reimbursed by special assessments imposed on the contiguous upland property owner or whether it is a common amenity that would be spread over every property owner in the District. The argument for the special assessment of the adjacent property owner is that such owner is the primary beneficiary of the existence and function of the seawall and is consistent with the primary concept mentioned at the outset.

The argument for it being a District-wide common expense is that the basin is a common amenity requiring that the assessment be shared by every property owner in the District. It is unclear, however, how that particular basin would be distinguished from any other waterway within the District. That is, was the Antigua Cove basin for some reason seen as a common amenity whereas all of the other waterways were not? What is the basis for such a distinction?

III. **Seawalls Owned by the District with District Owning Significant Adjacent Uplands**

With respect to a seawall which is owned by the District along with the adjacent uplands, it would seem that would serve a purpose that is common to the District, such as the provision of a roadway, parking area, greenspace or the like on the upland. If in fact the upland provides a common amenity, the assessment would be assessed against all property owners in the District.

IV. **Seawall Owned by District with No Adjacent Upland Ownership**

In a situation where the seawall is owned by the District but the adjacent upland is not owned by the District, it would seem that such Seawall Repairs would be subject to a special assessment allocated to those who own the upland, if not in fact undertaken directly by the upland owner.

V. **Seawalls Owned by Third Parties**

The seawalls and attendant upland that are owned by private property owners, with no specific other contractual obligation for the District to maintain, should be maintained by those property owners at their sole expense. If so, and if the District were to undertake that maintenance and repair obligation by virtue of the failure of the adjacent upland owner to do so, it would be a special assessment against the upland property owners.

VI. **Seawall Access Maintenance and Easement Agreement.**

Attached is a copy of the Seawall Easement and Maintenance Agreement which is intended to provide the District the access to maintain any and all of the seawalls within the District for which it lacks the access to do so. Again, the assessments associated with such repairs so undertaken would be allocated as described in the preceding sections above.

VII. **Notice of Opportunity to Provide Additional Evidence/Argument.**

In order to make a final determination with respect to the Seawall Repairs and the allocation of the assessments therefor, the District is providing this summary to all of the relevant stakeholders in the District in order to make sure they have an opportunity to provide any additional information, analysis or argument for a different treatment of the Seawall Repairs.

The Board will make a determination in fiscal year 2022/2023 at properly noticed, publicly attended Board Meetings. As such, all property owners will have an opportunity to be heard and should take advantage of that opportunity, if in fact they want to be heard on the issue.

jsl



ORLANDO OFFICE
407) 381-2727



800-352-5675 • rentnational.com

QUOTE FOR SERVICES

COMPANY INFO: CUSTOMER # NEW		JOB SITE INFO: SITE # NEW			
Company: JOHN MCENEANEY	Requested By: JOHN MCENEANEY	Phone: 813-277-4723	Job Name: LITTLE HARBOR POA		
E-mail: JMCENEANEY813@AOL.COM	Other Phone:	Billing Address:	Address: STREET ADDRESS RUSKIN, FL 33570		
			Cross Street:		
			Site Contact: Phone:		
			Site E-mail:		
			Customer Ref #:		
Expected Install Date	Payment Terms	Prevailing Wage	Job Type		
Tue. Feb 07, 2023	COD	No	Construction		
Quantity	UOM	Description	Rental Term (up to)	Unit Price	Amount
708	FT	6 FT TEMPORARY PANELS	6 Months	5.99	4,240.92
59	EA	SAND BAG(S)	6 Months	12.00	708.00
Fence Notes:		59-6X12 PANELS WITH 1 SANDBAG PER STAND			

Fence Subtotal: 4,948.92

*ence Minimum applies: If the total unit price times quantity of the above items does not exceed \$500, this minimum will be charged rather than the per unit price.
Note: Damaged, missing, and lease buyout charges are not included in minimum charge.*

Subtotal:	\$4,948.92	Sales Tax:	\$371.17	Grand Total:	\$5,320.09
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All prices include a one-time Delivery/Installation and a one-time Pick-Up/Removal.

Bids are based on quantity; if quantity changes, bid changes. Additional fees for hillside installations, hand carry, core drilling and inaccessibility. Deliveries and installs are scheduled Mon. - Fri. 7:00 a.m. - 3:00 p.m. Additional charges apply for weekends and after hours work. COD orders are to be paid in advance or upon delivery prior to installation. Orders with driven post(s) require 3-5 business days to complete underground markings. Remove and relocate charges are billed at the same rate as installation price. If services are subject to prevailing wage laws, any penalties or wages not included in this estimate will be paid by the lessee. Certified payroll is available upon request.

Customer's Signature: _____

Date: _____

Print Customer Name: _____

PO # _____

NOTE: Installation CANNOT be confirmed until quote is signed and returned. This bid expires in 14 days.

Date of Quote	Quote Number	Quote Prepared By	Email Address	Fax Signed Quote to
Tue. Jan 24, 2023	181326	EJIMENEZ	EJIMENEZ@RENTNATIONAL.COM	



ORLANDO OFFICE
407) 381-2727



800-352-5675 • rentnational.com

QUOTE FOR SERVICES

COMPANY INFO: CUSTOMER # NEW		JOB SITE INFO: SITE # NEW			
Company:	JOHN MCENEANEY	Job Name:	LITTLE HARBOR POA		
Requested By:	JOHN MCENEANEY Phone: 813-277-4723	Address:	STREET ADDRESS RUSKIN, FL 33570		
E-mail:	JMCENEANEY813@AOL.COM	Cross Street:			
Other Phone:		Site Contact:	Phone:		
Billing Address:		Site E-mail:			
		Customer Ref #:			
Expected Install Date	Payment Terms	Prevailing Wage	Job Type		
Tue. Feb 07, 2023	COD	No	Construction		
Quantity	UOM	Description	Rental Term (up to)	Unit Price	Amount
708	FT	6 FT TEMPORARY PANELS	1 Year	6.49	4,594.92
59	EA	SAND BAG(S)	1 Year	12.00	708.00
Fence Notes:		59-6X12 PANELS WITH 1 SANDBAG PER STAND			

Fence Subtotal: 5,302.92

*ence Minimum applies: If the total unit price times quantity of the above items does not exceed \$500, this minimum will be charged rather than the per unit price.
Note: Damaged, missing, and lease buyout charges are not included in minimum charge.*

Subtotal:	\$5,302.92	Sales Tax:	\$397.72	Grand Total:	\$5,700.64
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All prices include a one-time Delivery/Installation and a one-time Pick-Up/Removal.

Bids are based on quantity; if quantity changes, bid changes. Additional fees for hillside installations, hand carry, core drilling and inaccessibility. Deliveries and installs are scheduled Mon. - Fri. 7:00 a.m. - 3:00 p.m. Additional charges apply for weekends and after hours work. COD orders are to be paid in advance or upon delivery prior to installation. Orders with driven post(s) require 3-5 business days to complete underground markings. Remove and relocate charges are billed at the same rate as installation price. If services are subject to prevailing wage laws, any penalties or wages not included in this estimate will be paid by the lessee. Certified payroll is available upon request.

Customer's Signature: _____

Date: _____

Print Customer Name: _____

PO # _____

NOTE: Installation CANNOT be confirmed until quote is signed and returned. This bid expires in 14 days.

Date of Quote	Quote Number	Quote Prepared By	Email Address	Fax Signed Quote to
Tue. Jan 24, 2023	181326	EJIMENEZ	EJIMENEZ@RENTNATIONAL.COM	

SCAN & PARK SOUTH BEACH LOT



1



**Scan
QR**

2



**Add your
Mobile Number
& License Plate**

3



**Pay
to park
vehicle**

Unable to Scan? Go to ParkingPayments.com/FL320A
Validation Available at Restaurants.

DOWNLOAD TO PAY



PRIVATE PROPERTY ENFORCED 24/7

FAILURE TO PAY AND/OR VALIDATE IN ADVANCE, EXPIRED PAID OR VALIDATED TIME, INCLUDING DISABLED PERMITS, OR FAILURE TO COMPLY WITH RULES OF THIS FACILITY, WILL RESULT IN YOUR VEHICLE BEING ISSUED A \$100 PARKING CHARGE NOTICE (OR PORTION THEREOF) AND/OR BOOTED OR TOWED. FULL TERMS AND CONDITIONS DISPLAYED ON ENTRANCE PARKING CONTRACT SIGN.



SCAN & PARK LITTLE HARBOR LOT



1



**Scan
QR**

2



**Add your
Mobile Number
& License Plate**

3



**Pay
to park
vehicle**

Unable to Scan? Go to ParkingPayments.com/FL321
Validation Available at Restaurants.

DOWNLOAD TO PAY



PRIVATE PROPERTY ENFORCED 24/7

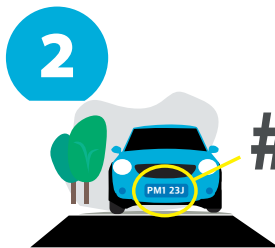
FAILURE TO PAY AND/OR VALIDATE IN ADVANCE, EXPIRED PAID OR VALIDATED TIME, INCLUDING DISABLED PERMITS, OR FAILURE TO COMPLY WITH RULES OF THIS FACILITY, WILL RESULT IN YOUR VEHICLE BEING ISSUED A \$100 PARKING CHARGE NOTICE (OR PORTION THEREOF) AND/OR BOOTED OR TOWED. FULL TERMS AND CONDITIONS DISPLAYED ON ENTRANCE PARKING CONTRACT SIGN.



SCAN & PARK NORTH BEACH LOT



1 Scan QR



2 Add your Mobile Number & License Plate



3 Pay to park vehicle

Unable to Scan? Go to ParkingPayments.com/FL320B
Validation Available at Restaurants.

DOWNLOAD TO PAY



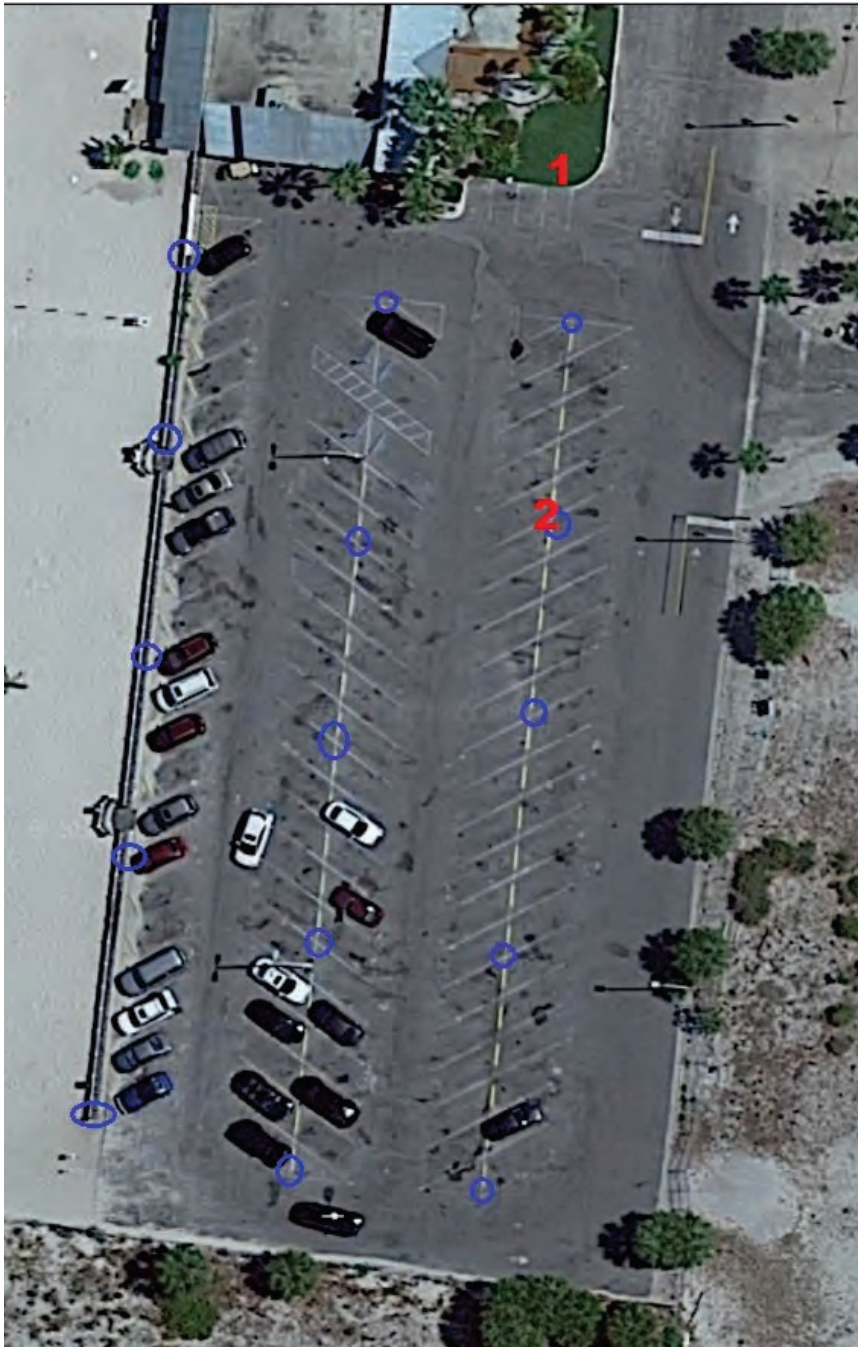
PRIVATE PROPERTY ENFORCED 24/7

FAILURE TO PAY AND/OR VALIDATE IN ADVANCE, EXPIRED PAID OR VALIDATED TIME, INCLUDING DISABLED PERMITS, OR FAILURE TO COMPLY WITH RULES OF THIS FACILITY, WILL RESULT IN YOUR VEHICLE BEING ISSUED A \$100 PARKING CHARGE NOTICE (OR PORTION THEREOF) AND/OR BOOTED OR TOWED. FULL TERMS AND CONDITIONS DISPLAYED ON ENTRANCE PARKING CONTRACT SIGN.



Little Harbor POA

South Beach Lot Camera and Signs



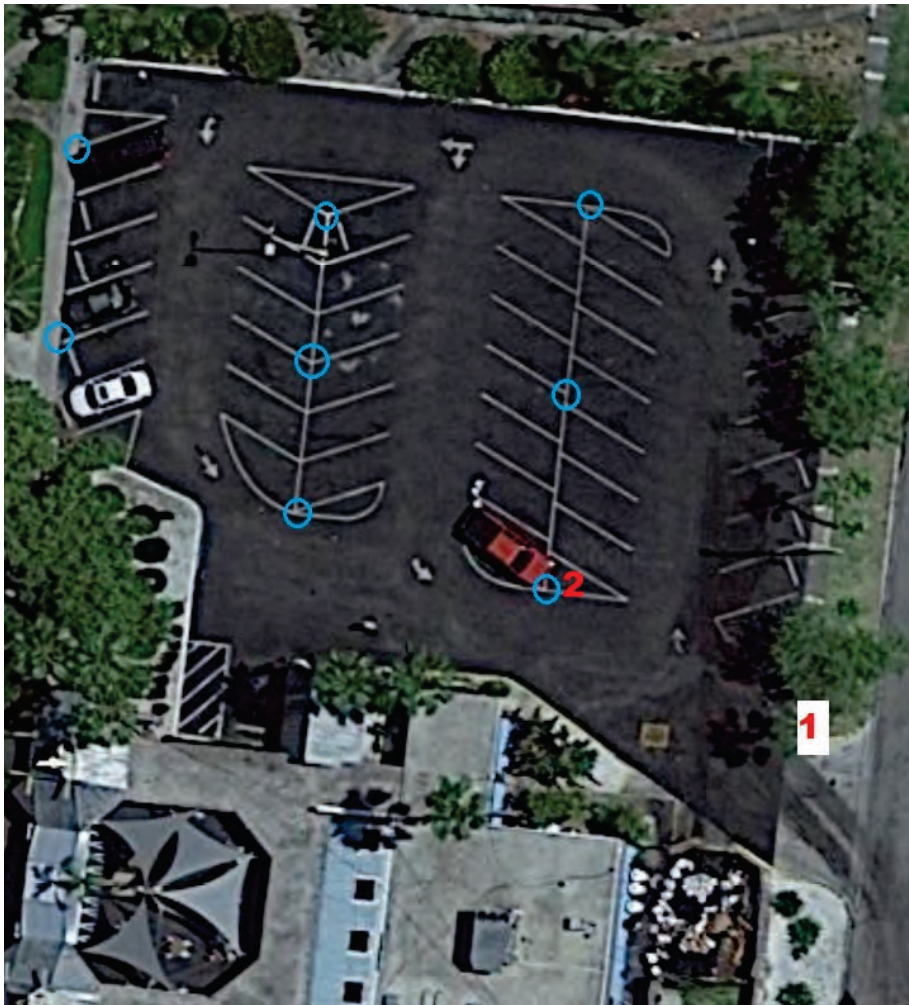
1= Pole, Entry Camera and Parking Contract Sign

2= Pole, Exit Camera and Parking Contract Sign

○ = ParkingPayments Sign, Disclaimer and 4 Camera Enforced Signs

Little Harbor POA

North Beach Lot Camera and Signs



1 = Pole, Entry Camera and Parking Contract Sign

2 = Pole, Exit Camera and Parking Contract Sign

○ = ParkingPayments Sign, Disclaimer and 2 Camera Enforced Signs

PARKING CONTRACT

You are entering private property. The posted parking rules are enforced 24 hours per day, 7 days a week, by PAVE Mobility, Inc. You must register, validate or pay for parking at all times.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS OFFER, YOU MAY NOT USE THIS FACILITY AND MUST LOCATE ALTERNATIVE PARKING.

FAILURE TO PAY AND/OR VALIDATE IN ADVANCE, EXPIRED PAID OR VALIDATED TIME, INCLUDING VEHICLES WITH DISABLED PERMITS, OR FAILURE TO COMPLY WITH RULES OF THIS FACILITY, WILL RESULT IN YOUR VEHICLE BEING ISSUED AN UP TO \$100 PARKING CHARGE NOTICE (OR PORTION THEREOF) AND/OR BOOTED OR TOWED.

Unpaid parking charge notices will be assigned for collection to a debt collector.

NOTICE OF ARBITRATION

AGREEMENT

By parking on this property, you hereby agree that the sole remedy for an unresolved dispute is binding arbitration and specifically waive the right to a jury trial, class action and/or class arbitration.

PAVE MOBILITY, INC. 1-888-444-1212

ATTENTION

 **PAID PARKING ONLY**
Parking Enforced 24/7 by video surveillance

-  **Expired time**
-  **Failure to pay in advance**
-  **Failure to comply with the rules of this facility**

Will result in your vehicle being issued a parking charge notice by mail or on the windshield of your car and/or your vehicle being booted or towed.

 **Disabled permit holders are required to pay for parking.**

Parking charge up to:
\$150

PARKING PAYMENTS.COM

**SCAN & PARK
NORTH BEACH LOT**

1 Scan QR
2 # Add your Mobile Number & License Plate
3 Pay to park vehicle
4 Validate parking at restaurants

No smart phone? Go to ParkingPayments.com/FL320B
Start your parking session & validate at restaurants.

DOWNLOAD TO PAY **PRIVATE PROPERTY ENFORCED 24/7**

FAILURE TO PAY AND/OR VALIDATE IN ADVANCE, EXPIRED PAID OR VALIDATED TIME, INCLUDING DISABLED PERMITS, OR FAILURE TO COMPLY WITH RULES OF THIS FACILITY, WILL RESULT IN YOUR VEHICLE BEING ISSUED A \$65 PARKING CHARGE NOTICE (OR PORTION THEREOF) AND/OR BOOTED OR TOWED. FULL TERMS AND CONDITIONS DISPLAYED ON ENTRANCE PARKING CONTRACT SIGN.

1826