

# HERITAGE LANDING COMMUNITY DEVELOPMENT DISTRICT

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Board of Supervisors  
Heritage Landing Community  
Development District

August 9, 2023

## REVISED AGENDA

Dear Board Members:

The **regular** meeting of the Board of Supervisors of the Heritage Landing Community Development District will be held on **August 10, 2023 at 6:00 p.m.** at the Heritage Landing Amenity Center, located at 370 Heritage Landing Parkway, St. Augustine, Florida 32092. The following is the agenda for this meeting:

1. **CALL TO ORDER/ROLL CALL**
2. **AUDIENCE COMMENTS ON AGENDA ITEMS**
3. **BUSINESS ADMINISTRATION**
  - A. Consent Agenda
    1. Consideration of the Minutes of the Board of Supervisors' Meeting held on July 13, 2023 ..... Tab 1
    2. Ratification of the Operation and Maintenance Expenditures for June 2023 ..... Tab 2
4. **STAFF REPORTS - PART A**
  - A. District Engineer
  - B. Landscape and Maintenance..... Tab 3
5. **BUSINESS ITEMS**
  - A. Consideration of HOA Median Power Supply Proposal..... Tab 4
  - B. Public Hearing on Fiscal Year 2023-2024 Budget
    1. Consideration of Resolution 2023-06; Adopting Fiscal Year 2023-2024 Budget..... Tab 5
  - C. Public Hearing on Special Assessments
    1. Consideration of Resolution 2023-07; Imposing Special Assessments..... Tab 6
6. **STAFF REPORTS - PART B**
  - A. District Counsel
    1. *Consideration of Settlement Agreement*
  - B. Amenity Center and Field Maintenance
    1. Amenity Manager Report ..... Tab 7
    2. Field Manager Report ..... Tab 8
      - i. Consideration of Tree Removal Proposals
      - ii. Consideration of HOA Bike Rack Proposal Requests
    3. Charles Aquatics Report..... Tab 9
  - C. District Manager
7. **AUDIENCE COMMENTS AND SUPERVISOR REQUESTS**
8. **ADJOURNMENT**

I look forward to seeing you at the meeting. In the meantime, if you have any questions, please do not hesitate to contact me at (904) 436-6270.

Very truly yours,  
**Melissa Dobbins**  
Melissa Dobbins,

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into and effective as of this \_\_\_\_\_<sup>th</sup> day of August, 2023, by and among the following (each, individually, a “Party” and collectively, the “Parties”): Heritage Landing Community Development District (“Heritage”), Adkins Construction, LLC (“Adkins”) and BMT Capital Group, Inc. (“BMT Capital”).

### R E C I T A L S

R-1. BMT Capital and Adkins were parties to that certain Future Receivables Sale and Purchase Agreement. After Adkins breached the Future Receivables Sale and Purchase Agreement, BMT Capital served notice upon Heritage demanding payment of accounts receivables that Adkins claimed were due and owing to Adkins from Heritage in connection with Adkins’ performance of certain repairs and other work for Heritage (“Project”).

R-2 In response to BMT Capital and Adkins’ competing claims, Heritage commenced the case captioned *Heritage Landing Community Development District v. Adkins Construction Co., LLC, et al.*, Case No. 3:22-cv-907-MMH-JBT pending in the United States District Court for the Middle District of Florida (hereafter, the “Interpleader”), and deposited the disputed funds in the Court registry.

R-3. The Parties wish to resolve the Interpleader and the dispute between BMT Capital and Adkins in accordance with the terms of this Agreement. This Agreement is entered into for the purpose of settlement and compromise and to avoid the expense and risk of further litigation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. RECITALS.

The recitals to this Agreement are true and correct and are incorporated into and made a substantive part of this Agreement.

2. OBLIGATIONS.

2.1. Settlement Amount. Adkins agrees to pay and BMT Capital agrees to accept the sum of Two-Hundred-Fifteen-Thousand-Eight-Hundred-Sixty-Five Dollars and Five Cents (\$215,865.05) (the “Settlement Amount”) paid as follows:

(a) The Parties shall execute and file in the Interpleader a Consent Order directing payment of \$10,000.00 from the funds deposited in the Court registry to Heritage to satisfy Heritage’s claim for attorneys’ fees and expenses incurred in the Interpleader. The Parties agree that the Consent Order shall provide for payment of the balance in the Court registry to BMT Capital and such amount shall be credited to Adkins obligation to pay the Settlement Amount. The Parties agree that the payment of \$10,000.00 from the Court registry to Heritage is subject to approval by Heritage’s board of supervisors at the board meeting scheduled for August 10, 2023.

The Parties agree to fully cooperate and execute any and all Consent Orders or other filings necessary for the resolution of the Interpleader action consistent with the intent described herein.

(b) The Parties acknowledge that there is final punch list work to be performed on the Project, after which Heritage shall owe a final payment to Adkins per the terms of the agreement between Heritage and Adkins. Heritage has agreed to undertake this work on behalf of Adkins in order to complete the Project. Adkins has agreed to permit Heritage to set off the reasonable expenses incurred by Heritage in the completion of the punch list items against the final amount owed by Heritage to Adkins. The Parties agree the expected set off amount of \$13,850 is reasonable. Adkins also agrees to forgo receipt of final payment following the set off by Heritage, and instead has agreed to direct Heritage to make the final payment on the Project directly to BMT Capital and that such payment shall be credited against the Settlement Amount. Heritage has agreed to remit such final payment directly to BMT Capital. BMT Capital has agreed to accept the payment from Heritage and to credit the payment against the Settlement Amount owed by Adkins herein. The Parties acknowledge and agree that \$26,625.50 remains due and payable for the Project, less the set off by Heritage to complete the punch list for the Project. The Parties agree and acknowledge that the cost to complete the punch list, and therefore the set off amount, is estimated to be approximately \$13,850, such amount to be finalized based on the actual costs incurred upon completion of the punch list by Heritage. The Parties expect that final payment shall be remitted during the month of August, 2023.

(c) Adkins shall pay the balance of the Settlement Amount to BMT Capital in six (6) equal monthly payments beginning September 15, 2023, and on or before the 15<sup>th</sup> day of each consecutive month thereafter until the Settlement Amount is paid in full. All payments shall be remitted by wire transfer payment at BMT Capital's direction.

(d) Adkins and BMT Capital agree to bear their own attorneys' fees and expenses incurred in the Interpleader and that Heritage's recovery of its fees and expenses in connection with the Interpleader shall be \$10,000.00 paid from the Court registry as provided in paragraph (a) of this Section.

(e) BMT Capital agrees to dismiss all claims against Heritage without prejudice and Heritage acknowledges that on July 31, 2023, BMT Capital filed a Notice of Voluntary Dismissal Without Prejudice.

(f) In connection with the Consent Order and conditioned on the Court ordering payment consistent with paragraph 2.1(a), Heritage agrees to dismiss all claims in the Interpleader against BMT Capital and Adkins with prejudice.

2.4. Costs and Expenses. Each Party will bear its own costs and expenses in connection with this Settlement Agreement.

### 3. RELEASE.

3.1. Release of Adkins and Heritage by BMT. Except for the terms and conditions set forth herein, and upon performance of the Parties' obligations hereunder, BMT Capital, on behalf of itself, its agents and its current and former officers, directors, members,

agents, employees, parent companies, subsidiaries, affiliates, representatives, successors, assigns, transferees, and attorneys, agrees to release and forever discharge Adkins, only after Adkins pays the full Settlement Amount, and Heritage and their current and former officers, directors, members, agents, employees, supervisors, parent companies, subsidiaries, affiliates, representatives, successors, assigns, transferees, and attorneys from all liabilities, charges, complaints, claims, judgments, causes of action, or suits, of whatever kind or nature, whether accrued, absolute, contingent, unliquidated, or otherwise, or known or unknown, which BMT Capital ever had, now have, or hereafter can, shall, or may have against Adkins and Heritage, respectively, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of this Settlement Agreement arising from or concerning the facts and circumstances giving rise to the Interpleader.

3.2. Release of BMT Capital and Adkins by Heritage. Except for the terms and conditions set forth herein, and upon performance of the Parties' obligations hereunder, Heritage, on behalf of itself, its agents and its current and former officers, directors, members, agents, employees, supervisors, parent companies, subsidiaries, affiliates, representatives, successors, assigns, transferees, and attorneys, hereby releases and forever discharges Adkins and BMT Capital and their current and former officers, directors, members, agents, employees, parent companies, subsidiaries, affiliates, representatives, successors, assigns, transferees, and attorneys from all liabilities, charges, complaints, claims, judgments, causes of action, or suits, of whatever kind or nature, whether accrued, absolute, contingent, unliquidated, or otherwise, or known or unknown, which Heritage ever had, now have, or hereafter can, shall, or may have against Adkins and BMT Capital, respectively, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of this Settlement Agreement arising from or concerning the facts and circumstances giving rise to the Interpleader.

3.3. Release of BMT Capital and Heritage by Adkins. Except for the terms and conditions set forth herein, and upon execution of this Agreement, , Adkins, on behalf of itself, its agents and its current and former officers, directors, members, agents, employees, parent companies, subsidiaries, affiliates, representatives, successors, assigns, transferees, and attorneys, hereby releases and forever discharges BMT Capital and Heritage and their current and former officers, directors, members, agents, employees, supervisors, parent companies, subsidiaries, affiliates, representatives, successors, assigns, transferees, and attorneys from all liabilities, charges, complaints, claims, judgments, causes of action, or suits, of whatever kind or nature, whether accrued, absolute, contingent, unliquidated, or otherwise, or known or unknown, which Adkins ever had, now have, or hereafter can, shall, or may have against Heritage and BMT Capital, respectively, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of this Settlement Agreement arising from or concerning the facts and circumstances giving rise to the Interpleader.

3.4. Breach of Settlement Agreement. Notwithstanding anything to the contrary in this Agreement, the release provisions set forth in Section 3 of this Agreement shall not constitute a release of any claims or causes of action pertaining to the enforcement of this Agreement, the settlement payments set forth above. The parties shall bear their own attorneys' fees and expenses incurred in connection with this Settlement Agreement.

#### 4. REPRESENTATIONS AND WARRANTIES.

As inducement to enter into this Agreement, each of the Parties hereby represents and warrants as follows:

4.1. Authorization and Validity. The execution and delivery of this Agreement by the Parties and the performance of their obligations hereunder have been duly authorized, and this Agreement constitutes the legal, valid and binding obligation of the parties in accordance with its terms.

4.2. Benefit. The Parties have derived direct or indirect benefit from this Agreement and the transactions contemplated hereby.

4.3. Arms-Length Agreement. The Parties acknowledge that: (a) they have had access to independent legal counsel in the negotiation of the terms of and in the preparation and execution of this Agreement, and that they have had the opportunity to review, analyze and discuss with counsel this Agreement and the underlying factual matters relevant to this Agreement for a sufficient period of time before the execution and delivery hereof; (b) all of the terms of this Agreement were negotiated at arms-length; (c) this Agreement was executed without fraud, duress, undue influence or coercion of any kind exerted by any of the Parties; and (d) the execution and delivery of this Agreement is the free and voluntary act of each Party.

## 5. GENERAL PROVISIONS.

5.1. Headings. The headings and subheadings in this Agreement are intended for convenience only and shall not be used or deemed to limit or diminish any of the provisions hereof.

5.2. Construction. Unless the context requires otherwise, singular nouns and pronouns used in this Agreement shall be deemed to include the plural, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

5.3. Interpretation. The parties to this Agreement acknowledge that each of them has participated in the negotiation of this Agreement, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured, dictated or drafted such provision.

5.4. Survival; Successors and Assigns. Whenever in this Agreement any of the Parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such Party. All covenants, agreements, representations and warranties made herein, and in any documents executed in connection with this Agreement, shall survive this Agreement and continue in full force and effect.

5.5. Modification. No modification of any provision of this Agreement shall be effective unless the same is in writing and signed by all parties, and then such modification shall be effective only in the specific instance or for the purpose for which given.

5.6. Severability. If any term, provision or condition, or any part thereof, of this

Agreement, or any document executed in connection with this Agreement, shall for any reason be found or held to be invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition or any other term, provision or condition, and this Agreement, and all documents executed in connection with this Agreement, shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

5.7. Merger and Integration. This Agreement, and any documents executed in connection with this Agreement, contains the entire agreement of the Parties with respect to the settlement hereby effected, and no other agreement, statement or promise made by any Party hereto, or any employee, officer, attorney, agent or other representative of any Party hereto, shall be valid or binding. Any prior agreement, whether written or oral, is voided and subsumed into this Agreement.

5.8. Applicable Law. The performance, construction and enforcement of this Agreement and the documents executed in connection with this Agreement shall be governed by the laws of the State of Florida.

5.9. Counterparts. This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

5.10. Binding Effect. This Agreement shall have no effect unless and until it has been executed by all Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed or caused to be executed this Agreement under seal as of the day and year first written above.

**HERITAGE LANDING COMMUNITY DEVELOPMENT DISTRICT**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_

**ADKINS CONSTRUCTION, LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_

**BMT CAPITAL GROUP, INC.**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_