



*Bay Creek at Cape Charles
Community Association*

NOTICE OF SETTLEMENT

As you may be aware, the Bay Creek at Cape Charles Community Association, Inc. (the "Association"), has been involved in litigation in the Virginia Beach Circuit Court. We are pleased to report that the litigation was settled by mediation which occurred on December 3 and 4.

The litigation began when the Association filed suit against Paul Galloway and Iberville Properties, Inc. a company owned by his brother, Robert Galloway (collectively, the "Galloways") for failure to pay assessments (the "Collection Action"). The Association obtained a judgment which was appealed by the Galloways and secured by a cash bond in the amount of \$194,141.60 (the "Cash Bond").

In response to the Collection Action, the Galloways, along with Robert Galloway and Galloway Corporation, filed a complaint against the Association, and others, including the Board of Directors of the Association and the current declarant, Bay Creek South, LLC and former declarants, Baymark Construction Corporation and Bay Creek, LLC, in the Virginia Beach Circuit Court, Case No. CL12-3252 (the "Complaint").

In addition to naming the Association as a Defendant, the Complaint asserted several counts derivatively on behalf of the members of the Association against the Directors, as well as the current and former declarants, seeking damages for breach of the business judgment rule, unpaid assessments and failure to complete the infrastructure in Marina Village East. The parties to the case have settled all matters raised in the dispute, and recommend approval of the settlement, including dismissal of the derivative claims.

The terms of the settlement with the Association provide that the Cash Bond will be paid to the Association. The property owners will continue to be liable for all assessments as and when they become due. All other claims will be dismissed with prejudice.

In addition, the Association will receive \$260,000 from the excess proceeds from the recent foreclosure sale of the Marina Property formerly owned by Bay Creek Marina and Resort, LLC ("BCMR"), the developer of Marina Village East. After the foreclosure sale, the proceeds of the sale, after satisfying the bank's lien, were deposited with the Court to determine the proper disposition of the excess funds. As part of the settlement, and in recognition of BCMR's acknowledged obligation to complete the infrastructure in MVE, the Court will disburse \$260,000 of the sale proceeds to an escrow account for the purpose of completing the road paving, security gates and other improvements to complete the Marina Village East neighborhood over the next 12 months.

If you have any objection to the settlement and dismissal of the derivative claims, please send a notice of objection, in writing, to the Association in care of its counsel at the following address:

Jeff Hunn, Esq.
Pender & Coward, P.C.
222 Central Park Ave., Suite 400
Virginia Beach, Virginia 23462

Please be sure that you state the Unit in Bay Creek that you own or represent and the specific basis of your objection. All objections must be received within 30 days of the date of this letter. Unless Unit owners representing more than 50% of the Units owned by Class A members object in writing to this settlement, the settlement shall be deemed accepted by the Unit owners. Any objections will be provided to the Court prior to entry of the final order dismissing the Complaint.