

Tomoka Community Development District

12051 Corporate Boulevard, Orlando, FL 32817; 407-382-3256

The next meeting of the Board of Supervisors for the Tomoka Community Development District will be held **Friday, February 24, 2017 at 2:00 p.m. at the Hampton Inn, 150 Flagler Drive, Palm Coast, Florida.** The following is the proposed agenda for this meeting.

Conference Call Number:

Dial-In: 1-877-864-6450

Code: 974058

Board of Supervisors' Meeting

A. Organizational Matters

- Call to Order
- Roll Call
- Public Comment Period

B. Business Matters

1. Consideration of Minutes of the November 29, 2016 Board of Supervisors Meeting
2. Review of Series 2017 Bonds Pricing Details (Provided under separate cover: the Series 2017 Bonds are expected to price on Tuesday, February 21st and the details will be provided at that time.)
3. Consideration of Resolution 2017-02, Supplemental Assessment Resolution (The Series 2017 Bonds are expected to price on Tuesday, February 21st and the details will be circulated at that time.)
4. Consideration of Acquisition Agreement
5. Ratification of Payment Authorization Numbers 2017-2 and 2017-3
6. Review of District Financial Statements

B. Staff Reports

- Attorney
- Engineer
- Manager
- Audience Comments and Supervisors Requests

C. Adjournment

TOMOKA CDD

Minutes, November 29, 2016
Board of Supervisors' Meeting

MINUTES OF MEETING

*Tomoka Community Development District
Board of Supervisors Meeting
Hampton Inn: 150 Flagler Drive, Palm Coast, FL
Tuesday, November 29, 2016 at 2:00 p.m.*

Present and constituting a quorum:

| | |
|----------------|--|
| Dick Smith | Board Member |
| Gooch Cheatham | Board Member |
| Dennis Hoffman | Board Member |
| Ali Kargar | Board Member (arriving after the start of the Board Meeting) |
| Nellie Kargar | Board Member |

Also present were:

| | |
|-----------------|---|
| Katie Buchanan | Hopping Green & Sams |
| Jerry Finley | Finley Engineering Group |
| Ken Artin | Bryant Miller Olive |
| Kelly McCarrick | ICI Homes |
| Joe MacLaren | Fishkind & Associates |
| Pam Holton-Byrd | Stifel, Nicolaus, & Company (via phone) |
| Danny Tyler | Nabors, Giblin, & Nickerson (via phone) |
| Cynthia Wilhelm | Nabors, Giblin, & Nickerson (via phone) |

FIRST ORDER OF BUSINESS

Business Matters

Call to Order

This meeting was called to order at 2:10 p.m. and roll call was initiated. Quorum was established with the attendance of Board Members Nellie Kargar, Dennis Hoffman, Dick Smith, and Gooch Cheatham. Others in attendance are listed above.

Public Comment Period

There were no public comments.

Fill Vacant Seat

Mr. Hoffman stated that he sent an email in July to Ms. Burns with the suggestion of a name of a Plantation Bay resident and she said that she was going to run it by District Counsel but he has not heard back from her. Mr. MacLaren noted that he will talk to Ms. Burns when he gets back to the office. Mrs. Buchanan noted that Mr. Ali Kargar would continue in his seat for 90 days since no one else qualified to be elected to that seat. Thus, the Board would have the option of reappointing the current Board Member. If someone else came forward and qualified for the seat and Mr. Kargar did not, then he would not have a renewed term nor would he be allowed to continue to occupy the seat. The Board Members and staff discussed the fact that the Board Members did not necessarily have to qualify with the Supervisor of Elections to remain Board Members. However, qualifying with the Supervisor of Elections was more likely to ensure that a Board Member retained their seat on the Board.

**Consideration of the Minutes of
the September 28, 2016 Board of
Supervisors Meeting**

The Board reviewed the minutes from the September 28, 2016 Board of Supervisors Meeting. Mr. Cheatham provided comments and Mr. MacLaren noted that these would be incorporated into the final version of the minutes.

On MOTION by Mr. Hoffman, seconded by Ms. Kargar, with all in favor,
the Board approved the minutes of the September 28, 2016 Board of
Supervisors Meeting, as Amended.

**Consideration of Bond Counsel
Agreement with Bryant Miller
Olive**

Mr. Artin noted that the Board is considering financing of the improvements for the next phase of development of the community. In addition, there may be an opportunity to refund the District's existing 2004 Bonds for savings. To do this, the District needed to retain a bond counsel. Mr. Artin explained the purpose of a bond counsel. Bryant Miller Olive has been involved with this District since its creation. Ms. McCarrick noted that the various parties that are being engaged, like Mr. Artin with Bryant Miller Olive, will be paid as part of the bond costs of issuance. All existing homeowners were planned to receive a reduction in their annual bond assessments due to the refunding bond issuance. Mr. Artin noted that

the following documents need to be prepared to complete the new bond issuance: an offering statement, indenture, assessment methodology, and engineer's report, and the professional fees for these will also be paid out of the bond cost of issuance. Ms. McCarrick noted that the District may wait to issue bonds until the new year due to the volatility in the bond markets since the election. The new bond issuance would be contingent on the District's property owners receiving a reduction in their annual assessment payments. If no reduction is realized, then the new bond issuance would not take place.

On MOTION by Mr. Smith, seconded by Mr. Cheatham, with all in favor, the Board approved the Bond Counsel Agreement with Bryant Miller Olive.

Consideration of Resolution 2017-01, Authorizing the Issuance of up to \$15,000,000.00 in Bond Principle

Mr. Artin explained that what is being proposed by Resolution 2017-01 is the issuance of one series of Bonds that will refund the Series 2004 Bonds for a savings and issuance of Bonds to finish the next couple of phases in the community. This resolution authorizes several key documents which Mr. Artin explained. Her explained the parameters of the Bonds to include that the no Purchase Agreement would have to come back and issue Bonds in an amount not to exceed \$15,000,000.00 and the purchase price of those Bonds cannot be less than 98%. He noted the District can only have 30 annual principle payments and the maximum maturity date would be May 1, 2047 and the last deed is critical to the refunding of the 2004 Bonds. The District must realize at least the 3% savings in the difference of the debt service of the old Bonds and the new Bonds. The District can pay the Bonds off as soon as they issue the new Bonds. If the refunding goes away, then they will come back to the Board. Ms. McCarrick noted that the hope is that if there is no stabilization in the market in the next week or so then the District might find the opportunity in January. Ms. Holton noted that the District was hoping to have refinanced the bonds before the end of the calendar year and but may have to wait until the start of the new year to see if the market has settled down and if there are less supply that the District may be able to get the deal done within the first couple of weeks of January and the District might have to wait if it does not settle down. Ms. McCarrick noted that the District is approving the documents in substantial form today. Mr. Artin noted that if there are material changes that cause the District to do massive rewrites in the document then they would come back to the District for approval. Ms. McCarrick pointed out that the refunding component is

covered by the original not to exceed 30 principle installments. The maturities do not change and the principles do not change despite the no later than date that is for the new money. Mr. Artin mentioned that Mr. MacLaren is doing assessment work so the resolution is also approving the Assessment Methodology that the District will use for the Bond issue and Mr. Fineley's Engineer Report with respect to the improvements that had been constructed with the 2004 Bonds and where the new money is going.

On motion by Mr. Hoffman, seconded by Mr. Cheatham, with all in favor, the Board adopted Resolution 2017-01, Authorizing the issuance of up to \$15,000,000.00 in bonds principal.

Consideration of Acknowledgment of Acquisition Agreement

Ms. Buchanan explained that in 2004 the District approved similar documents to those in this agenda package when they issued the 2004 Bonds. One of the agreements that the District entered into with the developer when the District originally issued bonds was an acquisition agreement, which sets forth the process by which the District acquires improvements. The Acquisition Agreement outlines how the improvements transition ownership from the developer to the District. This document is an acknowledgment that that Acquisition Agreement still exists. Mrs. Buchanan requested approval in substantial form. It was noted that the address for Plantation Bay Partnership needs to be changed, as they had relocated from the listed address. Ms. Buchanan noted that the address would be changed and requested approval of the Acknowledgment of Acquisition Agreement.

On MOTION by Mr. Hoffman, seconded by Ms. Kargar, with all in favor, the Board approved the Acknowledgment of Acquisition Agreement, as amended.

Consideration of Collateral Assignment

Mrs. Buchanan noted that, if the developer fails to pay its special assessments, the District can foreclose on the developer-owned property, which the District would then sell and use those proceeds to repay its bondholders. She noted that the problem is that when the District

forecloses on property they do not necessarily get the development rights that go along with that property. Thus, the land is not as valuable as if they have title to the plats, declarations and covenants, and the entitlements that allow the property to be developed. With the collateral assignment, the developer agrees to assign the District all of these items in the event of a default, but the District only gets these rights if nonpayment of assessments occurs. Ms. McCarrick noted that every parcel is independently responsible for its own assessments. What is being addressed by the collateral assignment is the unplatted and undeveloped parcel and the entitlement rights that relate to that parcel. Mrs. Buchanan noted that it does not affect the platted parcels and the assignment terminates when the land is platted.

On MOTION by Mr. Hoffman, seconded by Mr. Smith, with all in favor, the Board approved the Collateral Assignment.

Consideration of Completion Agreement

Ms. Buchanan explained that the District is issuing approximately \$8,000,000.00 in new money bonds but it is not enough to completely fund the infrastructure that will be needed to develop the phases that are anticipated to secure the bonds so there is going to be an obligation on the part of the developer to finish the infrastructure improvement project. The Developer is agreeing to complete the infrastructure improvements that are necessary to put the development assessed to secure the District's current bond issuance in place.

On MOTION by Mr. Hoffman, seconded by Mr. Smith, with all in favor, the Board approved the Completion Agreement.

Consideration of Contribution Agreement

Mrs. Buchanan noted that the District initially decided to allocate the bond assessments based on lot size. However, when the District went to issue bonds it assessed all lots that had been platted at the time a flat assessment. Thus, every platted lot has the same principle amount of \$12,700.00. Ms. Buchanan noted that they would now like to revert to using the

allocation that the District originally decided on, which is the staggered rate based on lot size. However, for the refunding portion, the refunding Bonds are going to be secured by Phases 1, 2, 3, 4, and 5 and there is a parcel of unplatted land that is about to be platted but will be subject to the staggered allocation instead of the previous flat rate. The Developer has contributed improvements sufficient to offset the increased assessments that would have been assigned to larger units platted at the time of issuance. Mrs. Buchanan noted that she will review the contributions that have occurred and get the District Engineer to certify that the amounts that have been contributed are correct.

On MOTION by Mr. Hoffman, seconded by Ms. Kargar, with all in favor, the Board approved the Contribution Agreement.

Consideration of True-Up Agreement

Ms. Buchanan noted this true-up agreement is the last of the bond security agreements. The developer has put together a site plan that outlines how many types of homes they plan to build and the lot sizes for each. The mixture of the number and type of lot is how the District lays out the security for the Bonds that the District will issue. Mrs. Buchanan noted that, if the lot counts or types change from the plan, the true-up agreement provides for a mechanism in which the District can make sure it still has sufficient assessment collections. If the Developer changes the number of units such that a lower amount of bond assessments are collected than originally anticipated, then they would have an obligation to write the District a check for the assessments that would be necessary to pay off the portion of the bonds associated with the change.

On MOTION by Mr. Hoffman, seconded by Mr. Smith, with all in favor, the Board approved the True-Up Agreement.

Ms. Buchanan asked Mr. Finley to review the Engineer's Report and Mr. MacLaren to review the Assessment Methodology. Mr. Finley noted that the Engineer's Report deals with the infrastructure improvements necessary to make Phases 5, 6, and 7 developable. Phase 5 has been completed and there is a reimbursement amount of \$1,200,000 owed to the developer for these improvements. The construction is nearing completion in Phase 6,

and the improvements for that phase total \$3,360,000. Work just started on the Phase 7 infrastructure improvements and the amount for this work is a little over \$3,500,000. The infrastructure improvements that will be funded by the new money component of the bonds totals \$8,100,000. Ms. McCarrick noted that, included in the improvements is the utilities that were not previously included in Phases 1-4.

Mr. MacLaren presented the assessment methodology to the Board. He noted that appendix table 1 outlines the restatement of the District's Master Improvement Program and noted that, over all phases, it is estimated that it is going to take \$35,500,000 in infrastructure improvements to make the lands in the District developable. It is estimated that \$45,000,000 in Bonds will be required to fund these improvements, if all the improvements are funded through bond issuances. Table 2 applies that \$45,000,000 in Bond principle to the land uses that are planned for the District. There are 1,916 units planned for the District and the District uses those numbers to arrive at a numerical value for the benefit that each unit is going to get from the District's Improvement Program. These numbers serve as caps on the amount of Bond debt that can be assessed to each of the units planned for the District.

Table 3 outlines the District's previous and proposed bond financing efforts. Mr. MacLaren explained that Table 4 outlines the calculation of the contribution necessary to have flat assessments for all of Phase 1-5 platted lots which depicts the tiered assessments based on lot sizes. Mr. MacLaren noted that table 5 and Table 7 shows an approximately \$50 decrease in annual assessment levels if the District can achieve the savings in interest rate that this projects. Table 5 outlines the existing assignment of the \$4,700,000.00 in 2004A Bond Debt that has been assigned to the 465 platted lots that are currently located within the District. Table 6 outlines an increase in the principle assessment for the units from \$10,366.00 to \$10,900.00 which is a calculation of how much the Developer will need to offset to be sure that the District can bring the assessments back down. New residents in Phases 1-5 will have the benefit of the reduced assessments. Table 7 outlines the refunding component assessments that will be assigned to the platted units in Phases 1-5. The existing homes will have a principle assessment of \$10,366.00 and the annual assessment will drop to \$940, which is a \$50 reduction. Mr. MacLaren explained the assessments estimated to be assigned to the Phases 6-7 units, which is outlined in Table 7.

Ms. McCarrick noted that Phases 6 & 7 were always going to be needed to amortize the first Bond issuance. The new money bond assessments lie over all the unplatted lands for now, with the understanding that it will be absorbed b future phases and start with the remainder of Phase 7. Mr. MacLaren noted that Table 8 outlines the assessments for the future phases with the new money component.

**Approval of Payment
Authorizations 2016-22 & 2017-1**

Ms. Burns requested the Board ratify payment authorizations 2016-22 in the amount of \$933.50 to HGS and 2017-1 in the amount of \$10,565.09 to 4 other current District contractors.

On MOTION by Mr. Smith, seconded by Mr. Cheatham, with all in favor,
the Board approved Payment Authorizations 2016-22 & 2017-1.

**Review of District Financial
Statement**

The Board reviewed the financial statements. The District ended its fiscal year with \$125,000.00 in actual O&M expenses vs. a budget of \$142,000.00. Thus, the District ended its fiscal year under budget. No action was necessary and there were no questions or comments.

SECOND ORDER OF BUSINESS

Other Business

Staff Reports

Attorney – No Report

Engineer – No Report

Manager – Mr. Maclaren noted that, if the underwriter can successfully price bonds within the authorized parameters within the next week, the District May need to hold an additional Board meeting in the middle of December 2016. If not, the next meeting is scheduled for January 17, 2017.

THIRD ORDER OF BUSINESS

**Audience Comments and
Supervisors Requests**

There were no audience or Board comments.

FOURTH ORDER OF BUSINESS

Adjournment

There was no further business to discuss at this time. Mr. MacLaren requested a motion to adjourn.

On MOTION by Mr. Hoffman, seconded by Mr. Cheatham, with all in favor, the November 29, 2016 Board of Supervisors meeting of the Tomoka CDD was adjourned.

Secretary/Assistant Secretary

Chairperson/Vice Chairperson

TOMOKA CDD

Series 2017 Pricing Details
(Provided Under Separate Cover)

TOMOKA CDD

Resolution 2017-02

RESOLUTION 2017-02

A RESOLUTION AUTHORIZING THE REFINANCING OF DISTRICT BONDS; SETTING FORTH THE SPECIFIC TERMS OF THE DISTRICT'S CAPITAL IMPROVEMENT AND REFUNDING REVENUE BONDS, SERIES 2017; CONFIRMING DISTRICT'S PROVISION OF INFRASTRUCTURE IMPROVEMENTS AND ADOPTING A SUPPLEMENTAL IMPROVEMENT PLAN; CONFIRMING AND ADOPTING A SUPPLEMENTAL ASSESSMENT REPORT; CONFIRMING, ALLOCATING AND AUTHORIZING THE COLLECTION OF SPECIAL ASSESSMENTS SECURING THE SERIES 2017 BONDS; PROVIDING FOR THE APPLICATION OF TRUE-UP PAYMENTS; PROVIDING FOR THE SUPPLEMENT TO THE IMPROVEMENT LIEN BOOK; PROVIDING FOR THE RECORDING OF A NOTICE OF SERIES 2017 SPECIAL ASSESSMENTS; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE

RECITALS

WHEREAS, the Tomoka Community Development District ("District") has previously indicated its intention to construct certain types of infrastructure improvements and to finance such infrastructure improvements through the issuance of bonds, notes or other specific financing mechanisms, which bonds, notes or other specific financing mechanisms would be repaid by the imposition of special assessments on benefited property within the District; and

WHEREAS, the District previously issued its \$8,250,000 Capital Improvement Revenue Bonds, Series 2004A (the "Series 2004A Bonds"), for the purpose of financing certain improvements included with the *Tomoka Community Development District Improvement Plan Supplemental Engineers Report No. 1* (the "2004 Project"), dated April 1, 2004; and

WHEREAS, the District Board of Supervisors ("Board") has previously adopted, after notice and public hearing, Resolutions 2004-19 and 2004-24, relating to the imposition, levy, collection and enforcement of such special assessments to pay the Series 2004A Bonds (the "2004A Assessments"); and

WHEREAS, in order to achieve annual debt service savings, the District is issuing bonds to refund the outstanding Series 2004A Bonds; and

WHEREAS, the District is issuing additional bonds to fund additional improvements within the District's Capital Improvement Program; and

WHEREAS, pursuant to and consistent with the terms of Resolutions 2004-19 and 2004-24, this Resolution shall set forth the terms of bonds actually issued by the District, and apply the adopted special assessment methodology to the actual scope of the project to be completed with a series of bonds and the terms of the bond issue; and

WHEREAS, the District entered into a Bond Purchase Contract whereby it agreed to sell its \$[14,605,000] Capital Improvement and Refunding Revenue Bonds, Series 2017 (“Series 2017 Bonds”); and

WHEREAS, pursuant to and consistent with Resolutions 2004-19 and 2004-24, the District desires to set forth the particular terms of the sale of the Series 2017 Bonds and confirm the liens of the special assessments securing the Series 2017 Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE TOMOKA COMMUNITY DEVELOPMENT DISTRICT AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Florida law, including Chapters 170, 190 and 197, Florida Statutes, and Resolutions 2004-19 and 2004-24.

SECTION 2. FINDINGS. The Board hereby finds and determines as follows:

(a) On December 9, 2003, the District, after due notice and public hearing, adopted Resolution 2004-19, which, among other things, equalized, approved, confirmed and levied special assessments on property benefitting from the infrastructure improvements authorized by the District. That Resolution provided that as each series of bonds was issued to fund all or any portion of the District’s infrastructure improvements, a supplemental resolution would be adopted to set forth the specific terms of the bonds and certifying the amount of the lien of the special assessments securing any portion of the bonds, including interest, costs of issuance, the number of payments due, the True-Up amounts and the application of receipt of True-Up proceeds.

(b) On May 5, 2005, the District adopted Resolution 2004-24, which, reaffirmed and approved the supplemental allocation of special assessments pursuant to Resolution 2004-19.

(c) It is the best interest of the District that (i) the District provide refinancing of the 2004 Project; (ii) the cost of the 2004 Project be assessed against lands specially benefitted by the 2004 Project; and (iii) the District issue the Series 2017 Bonds to refund the Series 2004 Bonds to provide funds for such purposes (together, the “Refinancing”).

(d) It is further in the best interest of the District to use proceeds from the Series 2017 Bonds to finance the 2017 Project (as defined herein). The *Tomoka Community Development District 2017 Improvement Plan (Supplemental Engineer’s Report No. 2)* dated November 29, 2016, attached to this Resolution as **Exhibit A** (“Supplemental Improvement Plan”), identifies and describes the portion of the Capital Improvement Plan necessary to support Phase V, VI, and VII of the Development (“2017 Project”). The 2017 Project is estimated to cost \$6,950,000. The portion of the 2017 Project costs not funded with the proceeds of the Series 2017 Bonds, if any, will be funded by the developer pursuant to a completion agreement. The Supplemental Improvement Plan is consistent with the District’s *Improvement Plan* dated October 2003 and approved in Resolution 2004-19. The District hereby confirms that the 2017 Project serves a proper, essential and valid public purpose. The Supplemental Improvement Plan is hereby

approved, adopted, and confirmed. The District ratifies its use in connection with the sale of the Series 2017 Bonds.

(e) The *Series 2017 Bonds Supplemental Assessment Methodology Report* dated February 2, 2017, attached to this Resolution as **Exhibit B** (“Supplemental Assessment Report”), applies the *Adopted Master Assessment Methodology*, dated December 9, 2003 and approved by Resolution 2004-19 (“Master Assessment Methodology”), and the *Supplemental Assessment Report for the Series 2004A Bonds*, dated April 26, 2004 and approved by Resolution 2004-24, to the 2017 Project and the actual terms of the Series 2017 Bonds. The Supplemental Assessment Report is hereby approved, adopted and confirmed. The District ratifies its use in connection with the sale of the Series 2017 Bonds.

(f) The Refinancing and the 2017 Project will specially benefit, to the degree set forth in the Supplemental Assessment Report, the specified developable acreage described in the Supplemental Assessment Report. It is reasonable, proper, just and right to assess the costs of the Refinancing and the 2017 Project financed with the Series 2017 Bonds to the specially benefitted properties within the District as set forth in Resolutions 2004-19 and 2004-24, this Resolution and the Supplemental Assessment Report.

SECTION 3. CONFIRMATION OF MAXIMUM ASSESSMENT LIEN FOR SERIES 2017 BONDS. As provided in Resolutions 2004-19 and 2004-24, this Resolution is intended to set forth the terms of the Series 2017 Bonds and the final amount of the liens of the special assessments securing those bonds.

The Series 2017 Bonds, in a par amount of \$[14,605,000], shall bear such rates of interest and maturity as shown on **Exhibit C** attached hereto. The sources and uses of funds of the Series 2017 Bonds shall be as set forth in **Exhibit D**. The debt service due on the Series 2017 Bonds is set forth on **Exhibit E** attached hereto. The lien of the special assessments securing the Series 2017 Bonds on all developable land as such land is described in Exhibit B, shall be the principal amount due on the Series 2017 Bonds, together with accrued but unpaid interest thereon, and together with the amount by which the annual assessments shall be grossed up to include early payment discounts required by law and costs of collection.

SECTION 4. ALLOCATION OF ASSESSMENTS SECURING SERIES 2017 BONDS. (a) The special assessments for the Series 2017 Bonds shall be allocated in accordance with Exhibit B, which allocation shall initially be on an acreage basis and further allocated as lands are sold, platted or otherwise subdivided. The Supplemental Assessment Report is consistent with the District’s Master Assessment Methodology. The Supplemental Assessment Report, considered herein, reflects the actual terms of the issuance of the District’s Series 2017 Bonds. The estimated costs of collection of the special assessments for the Series 2015B Bonds are as set forth in the Supplemental Assessment Report.

(b) The lien of the special assessments securing the Series 2017 Bonds includes the assessable acreage within the District, as such land is ultimately defined and set forth in plats or other designations of developable acreage. To the extent land is added to the District, the District may, by supplemental resolution, determine such land to be benefitted by the 2017 Project and reallocate the special assessments securing the Series 2017 Bonds and impose special assessments on the newly added and benefitted property.

(c) Taking into account capitalized interest and earnings on certain funds and accounts as set forth in the Trust Indenture, the District shall, for Fiscal Year 2016/2017, begin annual collection of special assessments for the Series 2017 Bonds debt service payments using the methods available to it by law, with such collection to begin at the beginning of Fiscal Year 2018. Beginning at that time there shall be 30 years of annual installments of principal and interest as reflected on Exhibit E for the Series 2017 Bonds.¹

(d) The District hereby certifies the special assessments for collection and directs staff to take all actions necessary to meet the time and other deadlines imposed for collection by Flagler County and other Florida law. The District's Board each year shall adopt a resolution addressing the manner in which the special assessments shall be collected for the upcoming fiscal year. The decision to collect special assessments by any particular method – e.g., on the tax roll or by direct bill – does not mean that such method will be used to collect special assessments in future years, and the District reserves the right in its sole discretion to select collection methods in any given year, regardless of past practices. The District Manager shall prepare or cause to be prepared each year a tax roll for purposes of effecting the collection of the special assessments and present same to the District Board as required by law. The District Manager is further directed and authorized to take all actions necessary to collect any prepayments of debt as and when due and to collect special assessments on unplatted property using methods available to the District authorized by Florida law.

SECTION 5. CALCULATION AND APPLICATION OF TRUE-UP PAYMENTS.

The terms of Resolutions 2004-19 and 2004-24 and the Supplemental Assessment Report addressing True-Up Payments shall continue to apply in full force and effect.

SECTION 6. IMPROVEMENT LIEN BOOK. Immediately following the adoption of this Resolution these special assessments as reflected herein shall be recorded by the Secretary of the Board of the District in the District's Improvement Lien Book. The special assessment or assessments against each respective parcel shall be and shall remain a legal, valid and binding first lien on such parcel until paid and such lien shall be coequal with the lien of all state, county, district, municipal or other governmental taxes and superior in dignity to all other liens, titles, and claims.

SECTION 7. OTHER PROVISIONS REMAIN IN EFFECT. This Resolution is intended to supplement Resolutions 2004-19 and 2004-24, which remains in full force and effect. This Resolution and Resolutions 2004-19 and 2004-24 shall be construed to the maximum extent possible to give full force and effect to the provisions of each resolution. All District resolutions or parts thereof in actual conflict with this Resolution are, to the extent of such conflict, superseded and repealed.

SECTION 8. ASSESSMENT NOTICE. The District's Secretary is hereby directed to record a Notice of Special Assessments Securing the Series 2017 Bonds in the Official Records of Flagler County, Florida, or such other instrument evidencing the actions taken by the District.

¹ The assessment collection schedule for the portion of the 2017 Assessments securing the refunding portion of the Series 2017 bonds shall not exceed 30 years from the date of the original bonds. See Exhibit E for additional details.

SECTION 9. SEVERABILITY. If any section or part of a section of this Resolution be declared invalid or unconstitutional, the validity, force and effect of any other section or part of a section of this Resolution shall not thereby be affected or impaired unless it clearly appears that such other section or part of a section of this Resolution is wholly or necessarily dependent upon the section or part of a section so held to be invalid or unconstitutional.

SECTION 10. EFFECTIVE DATE. This Resolution shall become effective upon its adoption.

PASSED in Public Session of the Board of Supervisors of the Tomoka Community Development District, this ___ day of _____, 2017.

ATTEST:

**TOMOKA COMMUNITY
DEVELOPMENT DISTRICT**

Secretary

Chairman

- Exhibit A:** *Tomoka Community Development District 2017 Improvement Plan (Supplemental Engineer's Report No. 2) dated November 29, 2017*
- Exhibit B:** Supplemental Assessment Methodology Report dated February 2, 2017
- Exhibit C:** Maturities and Coupon of Series 2017 Bonds
- Exhibit D:** Sources and Uses of Funds for Series 2017 Bonds
- Exhibit E:** Annual Debt Service Payment Due on Series 2017 Bonds

TOMOKA CDD

Acquisition Agreement

**AGREEMENT REGARDING THE ACQUISITION OF
CERTAIN WORK PRODUCT, INFRASTRUCTURE AND REAL PROPERTY**

THIS AGREEMENT is made and entered into this ____ day of _____, 2017,
by and among:

Tomoka Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, and located in Flagler County, Florida whose address is 12051 Corporate Boulevard, Orlando, Florida 32817 ("District"); and

Intervest at Plantation Bay Partnership, a Florida general partnership, whose address is 2359 Beville Road, Daytona Beach, Florida 32119 ("Developer").

RECITALS

WHEREAS, the District was established by Rule 42LL-1 of the Florida Land and Water Adjudicatory Commission, effective as of October 2, 2003, for the purpose of planning, financing, constructing, installing, operating and/or maintaining certain infrastructure, including, but not limited to, water management, water distribution, wastewater collection and transmission, roadway improvements and other basic infrastructure projects within the boundaries of the District; and

WHEREAS, the Developer is the owner of certain lands in Flagler County, Florida, located within the boundaries of the District ("**Development**"); and

WHEREAS, the District presently intends to finance, in part, the planning, design, acquisition, construction, and installation of certain infrastructure improvements, facilities, and services, as detailed in the *Tomoka Community Development District 2017 Improvement Plan (Supplemental Engineer's Report No. 2)* dated November 29, 2017 ("**Engineer's Report**"), attached to this Agreement as **Exhibit A** ("**District Improvements**"), through the sale of capital improvement revenue bonds ("**Bonds**"); and

WHEREAS, the District has not had sufficient monies on hand to allow the District to contract directly for the preparation of the necessary surveys, reports, drawings, plans, permits, specifications, and related documents which would allow the timely commencement and completion of construction of the infrastructure improvements, facilities, and services ("**Work Product**"); and

WHEREAS, the District acknowledges the Developer's need to commence development of the lands within the District in an expeditious and timely manner; and

WHEREAS, the District agrees that it will not have sufficient monies to proceed with either the preparation of the Work Product or the commencement of construction of the infrastructure described in **Exhibit A** until such time as the District has closed on the sale of the Bonds; and

WHEREAS, in order to avoid a delay in the commencement of the construction of infrastructure, which delay would also delay the Developer from implementing its planned development program, the Developer has advanced, funded, commenced, and completed and/or will complete or assign certain work to enable the District to expeditiously provide the infrastructure; and

WHEREAS, the Developer is under contract to create or has created the Work Product for the District and wishes to convey to the District any and all of Developer's right, title and interest in the Work Product and provide for the parties who actually created the Work Product to allow the District to use and rely on the Work Product, as it is completed; and

WHEREAS, the Developer acknowledges that upon its conveyance, the District will have the right to use and rely upon the Work Product for any and all purposes and further desires to release to the District all of its right, title, and interest in and to the Work Product (except as provided for in this Agreement); and

WHEREAS, the District desires to acquire ownership of the completed Work Product, as well as the unrestricted right to use and rely upon the Work Product for any and all purposes; and

WHEREAS, in order to allow the District to avoid delay as a result of the lengthy process incident to the sale and closing on the District's Bonds, the Developer has commenced construction of some portion of the District Improvements; and

WHEREAS, the Developer agrees to convey to the District all right, title and interest in the portion of the District Improvements completed as of the Acquisition Date (as hereinafter defined) upon payment from proceeds of any future series of bonds issued by the District (or as otherwise provided for herein); and

WHEREAS, in conjunction with the acquisition of the District Improvements, the Developer desires to convey to the District interests in real property sufficient to allow the District to own, operate, maintain, construct, or install the District Improvements described in **Exhibit A**, if any such conveyances are appropriate, and such conveyances shall be in fee simple, perpetual easement, or other interest as may be in the best interests of the District ("**Real Property**"); and

WHEREAS, the Developer agrees to convey such Real Property to the District and in a form satisfactory to the District and subject to the conditions set forth herein; and

WHEREAS, the Developer acknowledges that upon its conveyance, the District will have the right to use the Real Property for any and all lawful public purposes and further desires to release to the District its right, title, and interest in and to the Real Property (except as provided for in this Agreement); and

WHEREAS, the District and the Developer are entering into this Agreement to ensure the timely provision of the infrastructure and development.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which are hereby acknowledged, the District and the Developer agree as follows:

1. **INCORPORATION OF RECITALS.** The recitals stated above are true and correct and by this reference are incorporated as a material part of this Agreement.

2. **WORK PRODUCT.** The District agrees to pay the actual reasonable cost incurred by the Developer in preparation of the Work Product in accordance with the provisions of this Agreement. The Developer shall provide copies of any and all invoices, bills, receipts, or other evidence of costs incurred by the Developer for the Work Product. The parties agree to cooperate and use good faith and best efforts to undertake and complete the acquisition process contemplated by this Agreement on such date as the parties may jointly agree upon (“**Acquisition Date**”). The parties agree that separate or multiple Acquisition Dates may be established for any portion of the acquisitions contemplated by this Agreement. The District Engineer shall review all evidence of cost and shall certify to the District Board the total actual amount of cost, which in the District Engineer’s sole opinion, is reasonable for the Work Product. The District Engineer’s opinion as to cost shall be set forth in an Engineer’s Certificate which shall accompany the requisition for the funds from the District’s Bond Trustee. In the event that the Developer disputes the District Engineer’s opinion as to cost, the District and the Developer agree to use good faith efforts to resolve such dispute. If the parties are unable to resolve any such dispute, the parties agree to jointly select a third party engineer whose decision as to any such dispute shall be binding upon the parties. Such a decision by a third party engineer shall be set forth in an Engineer’s Affidavit which shall accompany the requisition for the funds from the District’s Bond Trustee. The parties acknowledge that the Work Product is being acquired for use by the District in connection with the construction of the District Improvements.

A. The Developer agrees to convey to the District the Work Product upon payment of the sums determined to be reasonable by the District Engineer and approved by the District’s Board of Supervisors pursuant to and as set forth in this Agreement.

B. The Developer agrees to release to the District all right, title, and interest which the Developer may have in and to the above described Work Product, as well as all common law, statutory, and other reserved rights, including all copyrights in the Work Product and extensions and renewals thereof under United States law and throughout the world, and all publication rights and all subsidiary rights and other rights in and to the Work Product in all forms, mediums, and media, now known or hereinafter devised. To the extent determined necessary by the District, the Developer shall obtain all releases from any professional providing services in connection with the Work Product to enable the District to use and rely upon the Work Product. Such releases may include, but are not limited to, any architectural, engineering, or other

professional services. Such releases shall be provided in a timely manner in the sole discretion of the District.

C. The Developer acknowledges the District's right to use and rely upon the Work Product for any and all purposes.

D. The Developer hereby agrees to indemnify and hold the District harmless from any cost, judgment, claim or other action arising as a result of any defect in such Work Product which renders such Work Product unfit for the uses intended by the District, which uses the Developer hereby acknowledges and understands, provided, however, the District agrees to seek primary recovery for any such loss from any person or entity who has provided an applicable warranty that has been assigned to the District pursuant to section 2(E) of this Agreement.

E. The Developer agrees to provide or cause to be provided to the District, either by assignment or directly from such third parties as may be necessary and desirable to the mutual satisfaction of the parties hereto, a warranty that the Work Product is fit for the purposes to which it will be put by the District, as contemplated by the Engineer's Report.

F. The District agrees to allow the Developer access to and use of the Work Product without the payment of any fee by the Developer. However, to the extent the Developer's access to and use of the Work Product causes the District to incur any cost or expense, such as copying costs, the Developer agrees to pay such cost or expense.

3. ACQUISITION OF DISTRICT IMPROVEMENTS. The Developer has constructed, is constructing, or has under contract to construct and complete certain District Improvements. The District agrees to acquire those portions of the District Improvements which have been commenced or completed prior to the issuance of District debt. When a portion of the District Improvements is ready for conveyance by the Developer to the District, the Developer shall notify the District in writing, describing the nature of the improvement, its general location, and its estimated cost. Developer agrees to provide, at or prior to the Acquisition Date, the following: (i) documentation of actual costs paid, (ii) instruments of conveyance such as warranty bills of sale or such other instruments as may be requested by the District, and (iii) any other releases, indemnifications or documentation as may be reasonably requested by the District. Any real property interests necessary for the functioning of the District Improvements to be acquired under this paragraph shall be reviewed and conveyed in accordance with the provisions of section 4. The District Engineer in consultation with Counsel shall determine in writing whether or not the infrastructure to be conveyed is a part of the District Improvements contemplated by the Engineer's Report, and if so, shall provide Developer with a list of items necessary to complete the acquisition. Each such acquisition shall also be subject to the engineering review and certification process described in section 2 above. The District Manager shall determine, in writing, whether the District has, based on the Developer's estimate of cost, sufficient unencumbered funds to acquire the improvement.

A. All documentation of any acquisition (e.g., bills of sale, receipts, maintenance bonds, as-builts, evidence of costs, deeds or easements, etc.) shall be to the satisfaction of the District. If any item acquired is to be conveyed to a third party governmental body, then the Developer agrees to cooperate and provide such certifications or documents as may be required by that governmental body, if any.

B. The District Engineer shall certify as to the actual cost of any improvement built or constructed by or at the direction of the Developer, and the District shall pay no more than the actual cost incurred, or the reasonable cost of the improvement, whichever is less, as determined by the District Engineer.

C. The Developer agrees to cooperate fully in the transfer of any permits to the District or a governmental entity with maintenance obligations for any District Improvements conveyed pursuant to this Agreement.

4. ACQUISITION OF REAL PROPERTY. The District agrees to accept the dedication or conveyance of some or all of the real property over which the District Improvements have been or will be constructed or which otherwise facilitates the operation and maintenance of the District's Improvements. Such dedication or conveyance shall be at no cost to the District. Landowner agrees to provide to the District the following: (i) appropriate special warranty deeds or other instruments of conveyance acceptable to the District, and (ii) legal descriptions, whether by metes and bounds or other reference to plats or recorded data to the satisfaction of the District. Landowner and the District agree that reasonable future adjustments to the legal descriptions may be made in order to accurately describe lands conveyed to the District and lands which remain in Landowner's ownership. The parties agree to cooperate and act in good faith in relation to any such adjustment(s) to legal descriptions. The parties agree that any land transfers made to accommodate such adjustments shall be accomplished by donation. However, the party requesting such adjustment shall pay any transaction costs resulting from the adjustment, including but not limited to taxes, title insurance, recording fees or other costs. The District may, in its discretion, require title insurance on any real property conveyed pursuant to this Agreement, which cost shall be borne by the Landowner. Landowner agrees that it has, or shall at the time of conveyance provide, good and marketable title to the real property to be acquired which shall be free from all liens and encumbrances. Landowner here indemnifies and hold the District harmless from any and all claims, demands, liabilities, judgments, costs, or other actions which may be brought against or imposed upon the District as a result of Landowner's failure, whether intentional, negligent or otherwise, to comply with the terms of this section.

5. DEFERRED COSTS. Payment for the Work Product and the District's Improvements described in and contemplated by this Agreement shall be payable solely from the proceeds of the Bonds available for that purpose at the times and in the manner provided in the Trust Indenture relating thereto; provided, however, if such proceeds are not available, the District's obligation to pay any unpaid portion of the applicable purchase price (less the value of any contribution of Improvements required to be made by the Developer to the District under any agreement regarding the completion or contribution of Improvements) shall become

Deferred Obligations and shall be paid, if ever, solely from funds available from the proceeds of the applicable series of Bonds for the particular Improvements or specifically made available under the Trust Indenture as Excess Revenues, as such term is defined in the Trust Indenture and/or any supplements thereto or from any funds made available from the Trust Estate after a particular series of bonds is retired. Provided, however, that should the District refund a particular series of bonds, such refunding shall not be deemed a retirement of such bonds as such term is used in the previous sentence and nothing in this Agreement shall prohibit the District from transferring funds in the Trust Estate, as such terms is defined in the Trust Indenture, to a trust estate established for the purpose of refunding a particular series of bonds. Deferred Obligations shall also be payable from Excess Revenues available under any Trust Indenture and/or supplements thereto entered into in connection with any bonds the District may issue in the future for the purpose of refunding previously-issued District bonds (“Refunding Bonds”) or from any funds made available from the Trust Estate after a particular series of Refunding Bonds is retired.

The District shall be obligated to pay Deferred Obligations only upon its receipt of a certificate from the District Engineer establishing the date of completion of a particular project and identifying the amount of the unpaid portion of the particular project. Payment of Deferred Obligations shall be specifically conditioned upon the Developer’s compliance with the balance of the terms and conditions of this Agreement and any default hereunder shall toll the District’s obligation to pay such Deferred Obligations until any such default is cured, if ever. Such Deferred Obligations shall be subordinate, in all respects, to the District’s obligation to pay debt service and make other required payments under the Trust Indenture with respect to any series of Bonds issued thereunder. The Developer shall be obligated to construct and complete the District’s Improvements, and to convey the same and any real property, all as provided by this Agreement or other agreements between the parties, regardless of whether the proceeds of a particular series of Bonds or other amounts for that purpose under the Trust Indenture are available to pay the applicable acquisition price.

6. LIMITATION ON ACQUISITIONS. The Developer and the District agree and acknowledge that any and all acquisitions, whether for improvements, work product or related real property, shall be limited to those items which may legally be acquired by the District in conformance with all applicable state and federal laws and regulations and that nothing herein shall be deemed or construed to require the acquisition of any item in contravention of these authorities.

7. TAXES, ASSESSMENTS, AND COSTS.

A. Taxes, assessments and costs resulting from Agreement. The Developer agrees to indemnify the District from and make payment for any and all taxes (ad valorem, personal property, intangibles, or otherwise), non-ad valorem assessments, and costs which may be imposed upon the District, or which the District is legally obligated to pay, as a result of the parties entering into this Agreement, if any, whether such taxes, assessments, or costs are imposed upon the District’s property or property interest, or the Developer’s property or property interest, or any other such expense. As to any parcel of Real Property conveyed by Developer

pursuant to this Agreement, the potential obligations of the Developer to pay such taxes, assessments and cost that may be incurred as a result of the parties entering into this Agreement shall terminate one (1) year after conveyance of such parcel of Real Property.

B. Taxes and assessments on property being acquired. The District is an exempt governmental unit acquiring property pursuant to this Agreement for use exclusively for public purposes. Accordingly, in accordance with Florida law, the Developer agrees to place in escrow with the Flagler County tax collector an amount equal to the current ad valorem taxes and non-ad valorem assessments (with the exception of those ad valorem taxes and non-ad valorem assessments levied by the District) prorated to the date of transfer of title, based upon the expected assessment and millage rates giving effect to the greatest discount available for early payment.

1. If and only to the extent the property acquired by the District is subject to ad valorem taxes or non-ad valorem assessments, the Developer agrees to reimburse the District for payment, or pay on its behalf, any and all ad valorem taxes and non-ad valorem assessments imposed during the calendar year in which each parcel of property is conveyed. For example, if the District acquires property in October 2017, the Developer shall escrow the pro rata amount of taxes due for the tax bill payable in November 2017. If any additional taxes are imposed on the District's property in 2017, then the Developer agrees to reimburse the District for that additional amount.
2. Nothing in this Agreement shall prevent the District from asserting any rights to challenge any taxes or assessments imposed, if any, on any property of the District.

C. Notice. The parties agree to provide notice to the other within ten (10) calendar days of receipt of any notice of potential or actual taxes, assessments, or costs, as a result of any transaction pursuant to this Agreement, or notice of any other taxes assessments or costs imposed on the property acquired by the District as described in subsection B above. The Developer covenants to make any payments due hereunder in a timely manner in accord with Florida law. In the event that the Developer fails to make timely payment of any such taxes or costs, the Developer acknowledges the District's right to make such payment. If the District makes such payment, the Developer agrees to reimburse the District within thirty (30) calendar days of receiving notice of such payment, and to include in such reimbursement any fees, costs, penalties, or other expenses which accrued to the District as a result of making such a payment, including interest at the maximum rate allowed by law from the date of the payment made by the District.

D. Tax liability not created. Nothing herein is intended to create or shall create any new or additional tax liability on behalf of the Developer or the District. Furthermore, the parties reserve all respective rights to challenge, pay under protest, contest or litigate the imposition of any tax, assessment, or cost in good faith they believe is unlawfully or inequitably imposed and agree to cooperate in good faith in the challenge of any such imposition.

8. **DEFAULT.** A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of damages and/or specific performance.

9. **INDEMNIFICATION.** For all actions or activities which occur prior to the date of the acquisition or assignment of the relevant Real Property, District Improvement or Work Product hereunder, the Developer agrees to indemnify and hold harmless the District and its officers, staff, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or claims of any nature arising out of, or in connection with, this Agreement or the use by the Developer, its officers, agents, employees, invitees or affiliates, of the Real Property, District Improvement, or Work Product, including litigation or any appellate proceedings with respect thereto, irrespective of the date of the initiation or notice of the claim, suit, etc.; provided, however, that the Developer shall not indemnify the District for a default by the District under this Agreement.

10. **ENFORCEMENT OF AGREEMENT.** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

11. **AGREEMENT.** This instrument shall constitute the final and complete expression of this Agreement between the District and the Developer relating to the subject matter of this Agreement.

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

13. **AUTHORIZATION.** The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Developer. The District and the Developer have complied with all the requirements of law. The District and the Developer have full power and authority to comply with the terms and provisions of this instrument.

14. **NOTICES.** All notices, requests, consents and other communications under this Agreement ("**Notices**") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to District: Tomoka Community Development District
12051 Corporate Boulevard
Orlando, Florida 32817
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300

Tallahassee, Florida 32301
Attn: Katie S. Buchanan

B. If to Developer:

Interwest at Plantation Bay Partnership
2359 Beville Road
Daytona Beach, Florida 32119
Attn: Andrew Hagan

Except as otherwise provided in this Agreement, any Notice shall be deemed received only 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 the District and counsel for the Developer may deliver Notice on behalf of the District and the Developer. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth in this Agreement.

15. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Developer as an arm's length transaction. All parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against any party hereto.

16. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Developer and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or entity other than the District and the Developer any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Developer and their respective representatives, successors, and assigns. Notwithstanding the foregoing, nothing in this paragraph shall be construed as impairing or modifying the rights of any holders of bonds issued by the District for the purpose of acquiring any Work Product, Real Property, or portion of the District Improvements.

17. ASSIGNMENT. This Agreement may be assigned, in whole or in part, by either party only upon the written consent of the other, which consent shall not be unreasonably withheld. Upon the merger, amendment, or name change of the District, the Agreement will be assumed by operation of law by the District's successor in interest and no consent to such assumption shall be required.

18. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Each party consents that the venue for any litigation arising out of or related to this Agreement shall be in Flagler County, Florida.

19. EFFECTIVE DATE. This Agreement shall be effective upon its execution by the District and the Developer.

20. TERMINATION. This Agreement may be terminated by the District without penalty in the event that the District does not issue its proposed Bonds within five (5) years from the date of this Agreement.

21. PUBLIC RECORDS. The Developer understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and will be treated as such in accordance with Florida law.

22. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

23. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

24. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

25. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but 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 document to physically form one document.

26. EFFECT ON PRIOR AGREEMENTS; WAIVER OF CLAIMS. This Agreement is intended to fully replace that Agreement by and between the Tomoka Community Development District and Intervest at Plantation Bay Partnership regarding the Acquisition of Certain Work Product and Infrastructure dated May 6, 2107 (“Prior Acquisition Agreement”). Moreover, with the execution of this Agreement the Developer fully and completely waives any claims for reimbursement, deferred costs, or similar matters under the Prior Acquisition Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement to be effective the day and year first written above.

Attest:

**TOMOKA COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

By: Richard Smith
Its: Chairperson

WITNESSES:

**INTERVEST AT PLANTATION BAY
PARTNERSHIP,**
a Florida general partnership

(Print Name of Witness)

By its Managing General Partner:
PLANMOR, INC., a Florida
corporation

By: _____
Its: _____

Exhibit A: *Engineer's Report*

TOMOKA CDD

Payment Authorization Numbers
2017-2 & 2017-3

**TOMOKA
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization 2017-3
12/12/2016

| Item No. | Payee | Invoice # | General Fund |
|--------------|---|--|----------------------|
| 1 | Clear Waters, Inc. | | |
| | Lake Maint 1-17 | 79456 | \$1,510.00 |
| | Lake Maint 19-23 & 24-26 | 79457 | \$350.00 |
| 2 | Fountain Design Group, Inc Replaced Three light bulbs | 12339 | \$415.00 |
| 3 | FPL | | |
| | Acct# 70868-78597 | Nov | \$93.87 |
| | Acct# 43768-60427 | Nov | \$359.02 |
| | Acct# 52826-54275 | Nov | \$84.04 |
| | Acct# 56589-03421 | Nov | \$202.49 |
| | Acct# 79959-72424 | Nov | \$83.11 |
| | Acct# 69851-81426 | Nov | \$83.49 |
| | Acct# 57897-75599 | Nov | \$90.03 |
| | Acct# 16257-77592 | Nov | \$131.69 |
| | Acct# 81025-76421 | Nov | \$108.99 |
| | Acct# 70868-78597 | Sep | \$96.69 |
| | Acct# 70868-78597 | Oct | \$75.74 |
| | Acct# 43768-60427 | Sep | \$346.80 |
| | Acct# 43768-60427 | Oct | \$282.86 |
| | Acct# 52826-54275 | Sep | \$83.30 |
| | Acct# 52826-54275 | Oct | \$67.01 |
| | Acct# 56589-03421 | Sep | \$204.76 |
| | Acct# 56589-03421 | Oct | \$160.76 |
| | Acct# 79959-72424 | Sep | \$74.65 |
| | Acct# 79959-72424 | Oct | \$66.16 |
| | Acct# 69851-81426 | Sep | \$88.32 |
| | Acct# 69851-81426 | Oct | \$87.63 |
| | Acct# 57897-75599 | Sep | \$96.42 |
| | Acct# 57897-75599 | Oct | \$76.66 |
| | Acct# 16257-77592 | Sep | \$92.68 |
| | Acct# 16257-77592 | Oct | \$78.56 |
| | Acct# 81025-76421 | Sep | \$107.90 |
| | Acct# 81025-76421 | Oct | \$86.23 |
| | Acct#80795-77055 | Sep | \$221.12 |
| 4 | Hopping Green & Sams General Counsel 10/1/16 - 10/31/16 | 91023 | \$1,068.68 |
| 5 | JD Weber Construstion Fill Dirst Over Existing Pip | 1936 | \$3,978.00 |
| 6 | Landcare Management, Inc. December Maintenance | 10966 | \$1,974.00 |
| 7 | News-Journal Legal Advertising Legal Advertising | 102222640-11222016 102221219-11142016 | \$206.42 \$206.42 |
| 8 | Westlake At Plantation Bay Management Fee for December | TOM120116 | \$1,500.00 |
| 9 | November 29, 2016 Board Meeting Amos Cheatham Dennis Hoffman | | \$200.00 \$200.00 |
| TOTAL | | | \$15,219.50 |

Secretary/Assistant Secretary

Chairperson

**TOMOKA
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization 2017-2

11/17/2016

| Item No. | Payee | Invoice # | General Fund |
|-------------|--|-----------|-----------------|
| 1 | Fishkind & Associates, Inc. | | |
| | Oct 2016 Dist Mgmt Fee, Website fee | 19534 | \$961.12 |
| | Nov 2016 Dist Mgmt Fee, Website fee | 19694 | \$972.40 |
| 2 | Clear Waters, Inc. | | |
| | Lake Maint 1-17 | 78847 | \$1,510.00 |
| | Lake Maint 19-26 | 78848 | \$350.00 |
| 3 | FPL | | |
| | Acct# 80795-77055 | 1-Nov-16 | \$221.12 |

TOTAL \$3,793.52

Secretary/Assistant Secretary

Chairperson

TOMOKA CDD

District Financial Statements

Tomoka Community Development District
Statement of Activities (YTD) (Columnar, By Sub Type Landscape)
As of 1/31/2017

| | General Fund | Debt Service Fund | Capital Project Fund | Long Term Debt Group | Total |
|---|---------------------|---------------------|----------------------|----------------------|---------------------|
| Revenues | | | | | |
| On-Roll Assessments | \$464,749.20 | | | | \$464,749.20 |
| Off-Roll Assessments | 19,496.48 | | | | 19,496.48 |
| Inter-Fund Transfers In | (792.00) | | | | (792.00) |
| Inter-Fund Transfers In | | | \$792.00 | | 792.00 |
| Total Revenues | \$483,453.68 | \$0.00 | \$792.00 | \$0.00 | \$484,245.68 |
| Expenses | | | | | |
| Supervisor Fees | \$400.00 | | | | \$400.00 |
| Insurance | 3,000.00 | | | | 3,000.00 |
| Trustee Services | 3,450.00 | | | | 3,450.00 |
| Management | 3,335.72 | | | | 3,335.72 |
| Field Management | 6,000.00 | | | | 6,000.00 |
| District Counsel | 3,102.18 | | | | 3,102.18 |
| Assessment Administration | 5,000.00 | | | | 5,000.00 |
| Telephone | 70.66 | | | | 70.66 |
| Postage & Shipping | 10.69 | | | | 10.69 |
| Copies | 3.00 | | | | 3.00 |
| Legal Advertising | 619.26 | | | | 619.26 |
| Miscellaneous | 37.00 | | | | 37.00 |
| Web Site Maintenance | 500.00 | | | | 500.00 |
| Dues, Licenses, and Fees | 175.00 | | | | 175.00 |
| Electric | 5,805.53 | | | | 5,805.53 |
| General | 3,042.00 | | | | 3,042.00 |
| Fountains | 774.87 | | | | 774.87 |
| Lake Maintenance | 7,440.00 | | | | 7,440.00 |
| Landscaping Maintenance & Material | 7,896.00 | | | | 7,896.00 |
| Streetlights | 61.61 | | | | 61.61 |
| Interest Payments - A1 bond | | \$205,722.50 | | | 205,722.50 |
| Engineering | | | \$792.00 | | 792.00 |
| Total Expenses | \$50,723.52 | \$205,722.50 | \$792.00 | \$0.00 | \$257,238.02 |
| Other Revenues (Expenses) & Gains (Losses) | | | | | |
| Interest Income | \$25.73 | | | | \$25.73 |
| Interest Income | | \$1,862.93 | \$1.54 | | 1,862.93 |
| Interest Income | | | | | 1.54 |
| Total Other Revenues (Expenses) & Gains (Losses) | \$25.73 | \$1,862.93 | \$1.54 | \$0.00 | \$1,890.20 |

Tomoka Community Development District
Statement of Activities (YTD) (Columnar, By SubType Landscape)
As of 1/31/2017

| | General Fund | Debt Service Fund | Capital Project Fund | Long Term Debt Group | Total |
|---------------------------------|--------------|-------------------|----------------------|----------------------|----------------|
| Change In Net Assets | \$432,755.89 | (\$203,859.57) | \$1.54 | \$0.00 | \$228,897.86 |
| Net Assets At Beginning Of Year | \$50,797.81 | \$793,987.95 | \$2,084.18 | \$0.00 | \$846,869.94 |
| Net Assets At End Of Year | \$483,553.70 | \$590,128.38 | \$2,085.72 | \$0.00 | \$1,075,767.80 |

Tomoka Community Development District
Statement of Financial Position
(Columnar Landscape)
As of 1/31/2017

| | General Fund | Debt Service Fund | Capital Project Fund | Long Term Debt Group | Total |
|-------------------------------|---------------------|---------------------|----------------------|----------------------|-----------------------|
| <u>Assets</u> | | | | | |
| <u>Current Assets</u> | | | | | |
| General Checking Account | \$475,085.18 | | | | \$475,085.18 |
| State Board of Administration | 8,468.52 | | | | 8,468.52 |
| Debt Service Reserve A1 Bond | | \$514,163.19 | | | 514,163.19 |
| Revenue A1 Bond | | 75,963.70 | | | 75,963.70 |
| Interest A1 Bond | | 1.49 | | | 1.49 |
| Deferred Cost A1 Bond | | \$2,085.72 | | | 2,085.72 |
| Total Current Assets | <u>\$483,553.70</u> | <u>\$590,128.38</u> | <u>\$2,085.72</u> | <u>\$0.00</u> | <u>\$1,075,767.80</u> |

| | | | | | |
|--|--|---------------|--|---------------|-----------------------|
| <u>Investments</u> | | | | | |
| Amount Available in Debt Service Funds | | | | \$592,214.10 | \$592,214.10 |
| Amount To Be Provided | | | | 6,152,785.90 | 6,152,785.90 |
| Total Investments | | <u>\$0.00</u> | | <u>\$0.00</u> | <u>\$6,745,000.00</u> |

| | | | | | |
|---------------------|---------------------|---------------------|-------------------|-----------------------|-----------------------|
| Total Assets | <u>\$483,553.70</u> | <u>\$590,128.38</u> | <u>\$2,085.72</u> | <u>\$6,745,000.00</u> | <u>\$7,820,767.80</u> |
|---------------------|---------------------|---------------------|-------------------|-----------------------|-----------------------|

Liabilities and Net Assets

| | | | | | |
|--------------------------------|--|---------------|--|----------------|-----------------------|
| <u>Long Term Liabilities</u> | | | | | |
| Revenue Bonds Payable LongTerm | | | | \$6,745,000.00 | \$6,745,000.00 |
| Total Long Term Liabilities | | <u>\$0.00</u> | | <u>\$0.00</u> | <u>\$6,745,000.00</u> |

| | | | | | |
|--------------------------|--|---------------|--|---------------|-----------------------|
| Total Liabilities | | <u>\$0.00</u> | | <u>\$0.00</u> | <u>\$6,745,000.00</u> |
|--------------------------|--|---------------|--|---------------|-----------------------|

| | | | | | |
|---------------------------------------|-------------|--|--|--|-------------|
| <u>Net Assets</u> | | | | | |
| Net Assets, Unrestricted | \$68,217.29 | | | | \$68,217.29 |
| Current Year Net Assets, Unrestricted | (792.00) | | | | (792.00) |
| Net Assets - General Government | (17,419.48) | | | | (17,419.48) |

Tomoka Community Development District
Statement of Financial Position
(Columnar Landscape)
As of 1/31/2017

| | General Fund | Debt Service Fund | Capital Project Fund | Long Term Debt Group | Total |
|--|---------------------|---------------------|----------------------|-----------------------|-----------------------|
| Current Year Net Assets - General Government | 433,547.89 | | | | 433,547.89 |
| Net Assets, Unrestricted | | \$793,987.95 | | | 793,987.95 |
| Current Year Net Assets, Unrestricted | | (203,859.57) | | | (203,859.57) |
| Net Assets, Unrestricted | | | \$2,084.18 | | 2,084.18 |
| Current Year Net Assets, Unrestricted | | | 1.54 | | 1.54 |
| Total Net Assets | \$483,553.70 | \$590,128.38 | \$2,085.72 | \$0.00 | \$1,075,767.80 |
| Total Liabilities and Net Assets | \$483,553.70 | \$590,128.38 | \$2,085.72 | \$6,745,000.00 | \$7,820,767.80 |

Tomoka Community Development District
Budget to Actual
For the Period Ended 1/31/2017

| | Actual | Year To Date Budget | Variance | Adopted FY 2017 Budget |
|---|---------------------|------------------------|--------------------|---------------------------|
| <u>Revenues</u> | | | | |
| Maintenance Assessments | \$104,685.02 | \$44,808.33 | \$59,876.69 | \$134,425.00 |
| Carry Forward Revenue | 20,000.00 | 6,666.67 | 13,333.33 | \$20,000.00 |
| Net Revenues | \$124,685.02 | \$38,606.25 | \$73,210.02 | \$154,425.00 |
| <u>General & Administrative Expenses</u> | | | | |
| Supervisor Fees | \$400.00 | \$466.67 | \$(66.67) | \$1,400.00 |
| Engineering Fees | 0.00 | 500.00 | (500.00) | 1,500.00 |
| Trustee Fees | 3,450.00 | 1,033.33 | 2,416.67 | 3,100.00 |
| District Counsel | 3,102.18 | 1,000.00 | 2,102.18 | 3,000.00 |
| Audit Fees | 0.00 | 1,833.33 | (1,833.33) | 5,500.00 |
| Arbitrage | 0.00 | 333.33 | (333.33) | 1,000.00 |
| Dissemination Agent | 0.00 | 1,666.67 | (1,666.67) | 5,000.00 |
| Assessment Roll | 5,000.00 | 1,666.67 | 3,333.33 | 5,000.00 |
| District Management Fees | 3,335.72 | 3,333.33 | 2.39 | 10,000.00 |
| Management Fees - Field | 6,000.00 | 6,000.00 | 0.00 | 18,000.00 |
| Travel & Per Diem | 0.00 | 83.33 | (83.33) | 250.00 |
| Electric | 5,805.53 | 7,600.00 | (1,794.47) | 22,800.00 |
| Telephone | 70.66 | 0.00 | 70.66 | 0.00 |
| Postage | 10.69 | 0.00 | 10.69 | 0.00 |
| Public Official Insurance | 3,000.00 | 1,000.00 | 2,000.00 | 3,000.00 |
| General Insurance | 3,042.00 | 1,266.67 | 1,775.33 | 3,800.00 |
| Copies | 3.00 | 0.00 | 3.00 | 0.00 |
| Legal Advertising | 619.26 | 500.00 | 119.26 | 1,500.00 |
| Bank Fees | 0.00 | 66.67 | (66.67) | 200.00 |
| Office Supplies | 0.00 | 0.00 | 0.00 | 0.00 |
| Office Misc (Phone/Postage/Copies/Supplies/etc) | 0.00 | 166.67 | (166.67) | 500.00 |
| Website | 500.00 | 500.00 | 0.00 | 1,500.00 |
| Dues, Licenses & Fees | 175.00 | 58.33 | 116.67 | 175.00 |
| Landscape Maintenance | 7,896.00 | 8,800.00 | (904.00) | 26,400.00 |
| Stormwater R&M | 0.00 | 1,666.67 | (1,666.67) | 5,000.00 |
| Lake Maintenance | 7,440.00 | 8,833.33 | (1,393.33) | 26,500.00 |
| Lake Fountain & Maintenance | 774.87 | 2,500.00 | (1,725.13) | 7,500.00 |
| Meeting Room | 0.00 | 166.67 | (166.67) | 500.00 |
| Miscellaneous Charges | 37.00 | 266.67 | (229.67) | 800.00 |
| Streetlights | 61.61 | 166.67 | (105.06) | 500.00 |
| Total General & Administrative Expenses | \$50,723.52 | \$51,475.00 | \$(751.48) | \$154,425.00 |
| Total Expenses | \$50,723.52 | \$51,475.00 | \$(751.48) | |
| Income (Loss) from Operations | \$73,961.50 | \$(12,868.75) | \$86,830.25 | |
| <u>Other Income (Expense)</u> | | | | |
| Interest Income | \$61.47 | \$0.00 | \$61.47 | |
| Total Other Income (Expense) | \$61.47 | \$0.00 | \$61.47 | |
| Net Income (Loss) | \$74,022.97 | \$(12,868.75) | \$86,891.72 | |