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This document was prepared by  
and should be returned to:

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216 South Monroe Street  
Tallahassee, Florida 32301

## **ASSESSMENT ACKNOWLEDGEMENT AND TRUE UP AGREEMENT**

**THIS TRUE-UP AGREEMENT** (this "Agreement") is made and entered into this 28th day of April, 2015, between Birchwood Acres Limited Partnership, LLLP, a Florida Limited Liability Limited Partnership, (the "Landowner/Developer") and the Harmony Community District, an independent, limited, special and single purpose local government (the "District").

### **ARTICLE 1: RECITALS**

1.1 The District is an independent special district created and chartered by the Uniform Community Development District Act, Chapter 190, Florida Statutes, as amended (the "Act") and was established by Ordinance No. 00-05 of the Board of County Commissioners of Osceola County effective March 6, 2000 ("the Ordinance"). Pursuant to the Act, the District has the authority to manage, including to acquire, finance and maintain various public facilities, including, without limitation, the facilities described in the Engineer's Report for the 2004 Capital Improvement Project as amended and supplemented (the "2004 Project").

1.2 The 2004 Project was financed by the District's Series 2004 Bonds (the "2004 Bonds"). To repay the Bonds, the District levied non-ad valorem special assessments (the "2004 Special Assessments") on lands within the District which are benefited specially and peculiarly by the Project (the "Benefited Parcels"). The allocation of assessments based upon apportionment of special benefits peculiar to the benefited land within the District is presented in the Final Special Assessment Methodology dated April 27, 2000, as supplemented and as particularly supplemented by the Amended and Restated Third Supplemental Special Assessment Methodology Report dated December 13, 2004, as supplemented, and as particularly supplemented by the Assessment Allocation Report for the Capital Improvement Revenue Refunding Bonds, Series 2015 dated April 15, 2015 (collectively, the "Assessment Methodology Report").

1.3 On or about the date hereof, the District is issuing its Capital Improvement Revenue Refunding Bonds, Series 2015 (the "2015 Bonds") to defease the 2004 Bonds and to pay certain costs of acquiring and constructing street lighting and other District Improvements (the "2015 Project"). To repay the 2015 Bonds, the District has pledged the revenues derived by the 2004 Special Assessments. The 2004 Assessments are levied upon the various platted product types as described in the Assessment Methodology Report which provides for a true-up mechanism so that debt on unplatted land never exceeds \$47,046 per acre (the "True-Up Threshold"). Thus, every time a plat is presented, the debt on the land remaining after the plat must remain at or below the True-Up Threshold. If the District determines that the amount of debt on the land remaining after the plat is ever greater than the True Up Threshold, the Landowner/Developer shall remit to the District a density reduction payment (the "True Up

Payment”) so that the True-Up Threshold is not exceeded and the District will use such payment to redeem or prepay the 2015 Bonds.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and for the sum of \$1.00 and other valuable bargained for consideration, it is agreed as follows:

## **ARTICLE 2: INCORPORATION OF RECITALS, EXHIBITS, ETC.**

The parties agree that the recitals are true and correct, and are hereby incorporated. The parties also agree that any referenced exhibits, schedules, documents, or instruments are hereby incorporated.

## **ARTICLE 3: ASSESSMENTS; TRUE UP MECHANISM**

3.1 Validity of Assessments. The Landowner/Developer agrees that the Special Assessments have been assessed, imposed and levied, duly and validly by the District and constitute legal, valid, binding, and enforceable first liens against the Benefited Parcels. The Landowner/Developer hereby waives and relinquishes any rights it may have to challenge, object to, or otherwise fail to pay the Special Assessments.

3.2 Prepayment Waiver. Developer and its successors and assigns hereby waives any rights it may have under Section 170.09, Florida Statutes, as amended, to prepay the Special Assessments without interest.

3.3 True Up Mechanism. From time to time as plats are submitted relating to the Development, the District (with the assistance of the Developer) shall determine the amount of debt remaining on the unplatted land. If the District determines that such debt exceeds the True-Up Threshold, defined above, the District will notify the Landowner/Developer of the amount of the True Up Payment and the Landowner/Developer shall remit immediately the True Up Payment to the District. The District shall use the True Up Payment to redeem or retire a corresponding amount of the 2015 Bonds.

## **ARTICLE 4: MISCELLANEOUS**

4.1 Miscellaneous. Any failure by any party to this Agreement to comply with any of its obligations, agreements, or covenants may be waived in writing by either party, provided that, in the written opinion of Bond Counsel, such waiver and failure to comply will not: (i) impair the legality, validity or enforceability of any special assessments, bonds or bond anticipation notes issued in relation thereto, or any document issued or executed in conjunction therewith, (ii) have an adverse effect on the federal income tax status of the interest of any bonds or bond anticipation notes, or (iii) be materially adverse to the holders of the bonds or bond anticipation notes.

4.2 Amendment. This Agreement cannot be amended or terminated orally but only by a writing executed by all parties and the Trustee for the 2015 Bonds acting at the direction of the majority 2015 Bondholders. No amendment shall be permitted or become effective unless there is obtained an opinion of Bond Counsel that such Amendment will not: (i)

impair the legality, validity or enforceability of any special assessments, bonds or bond anticipation notes issued in relation thereto, or any document issued or executed in conjunction therewith, (ii) have an adverse effect on the federal income tax status of the interest of any bonds or bond anticipation notes, or (iii) be materially adverse to the holders of the bonds or bond anticipation notes.

4.3 Applicable Law. This Agreement is made and shall be construed under the laws of the State of Florida. Any litigation arising out of this Agreement shall be in the applicable state or federal court for Collier County, Florida.

4.4 Third Party Beneficiaries. The Trustee for the 2015 Bonds acting at the direction of the majority 2015 Bondholders is hereby declared to be a third-party beneficiary hereof, and of the instruments described herein, and shall be entitled to enforce the same. The Trustee shall not be deemed to have any obligations hereunder.

4.5 Specific Performance. In the event the Landowner/Developer defaults under this Agreement, the parties agree that there is the absence of adequate remedies at law; therefore, the District shall have, in addition to such rights and remedies as provided by the general application of law, the right to obtain specific performance of the Landowner/Developer's obligations hereunder without being required to show any actual damage or to post any bond or other security, and, if required to litigate to enforce its rights, shall be entitled to receive its costs, expenses and attorneys fees from the defaulting parties.

4.6 Survival. The obligations, duties, rights and conditions herein shall be binding upon their respective successors, assigns and grantees; provided, however, that no assignment shall relieve the Landowner/Developer of its obligations hereunder.

4.7 Counterparts and Facsimile Signature. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument. A facsimile of this Agreement and any signatures thereon shall be considered for all purposes as originals.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**LANDOWNER/DEVELOPER**

By: [Signature]  
Name: Robert Glantz  
Title: Authorized Agent

**DISTRICT**

By: [Signature]  
Name: Steven P. Borde  
Title: Chairman

STATE OF FLORIDA

COUNTY OF Osceola

The foregoing instrument was acknowledged before me this 23 day of April 2015 by Robert Glantz, as Authorized Agent of Birchwood Acres Limited Partnership, LLP, a Florida Limited Liability Limited Partnership, on behalf of such company. The above-named person is personally known to me or has produced \_\_\_\_\_ as identification. If no type of identification is indicated, the above-named person is personally known to me.

(Notary Seal)



Catherine M. Bordes  
Signature of Notary Public

Catherine M. Bordes  
Print Name of Notary Public

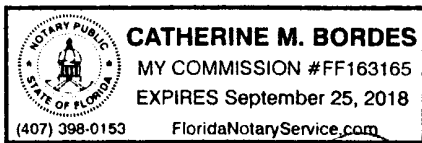
I am a Notary Public of the State of Florida,  
and my commission expires on Sept. 25, 2018.

STATE OF FLORIDA

COUNTY OF Osceola

The foregoing instrument was acknowledged before me this 23 day of April 2015 by Steve Bunkle, as Chairman of the Harmony Community Development District. The above-named person is personally known to me or has produced \_\_\_\_\_ as identification. If no type of identification is indicated, the above-named person is personally known to me.

(Notary Seal)



Catherine M. Bordes  
Signature of Notary Public

Catherine M. Bordes  
Print Name of Notary Public

I am a Notary Public of the State of Florida,  
and my commission expires on Sept. 25, 2018

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