

ARBITRAGE AND TAX CERTIFICATE

\$6,895,000

BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT SPECIAL ASSESSMENT BONDS, SERIES 2020 (PHASE ONE ASSESSMENT AREA)

December 17, 2020

The undersigned is the Chairperson of the Board of Supervisors (the “Board”) of the Banyan Cay Community Development District (the “District”) and hereby certifies to the statements contained in this certificate (this “Tax Certificate”). The undersigned has the responsibility of executing and delivering this Tax Certificate for the purpose of establishing the reasonable expectations of the District regarding future events with respect to the District’s above-captioned Special Assessment Bonds, Series 2020 (Phase One Assessment Area) (the “Series 2020 Bonds”) regarding the requirements of the Internal Revenue Code of 1986, as amended (the “Code”). The District was created pursuant to the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended (the “Act”), and the terms of Ordinance No. 4823-19 enacted by City Commission of the City of West Palm Beach, Florida (the “City”), on January 28, 2019 (the “Ordinance”). The District is issuing the Series 2020 Bonds pursuant to the Act, the Ordinance, Resolutions No. 2019-25 and 2019-31 adopted by the Board of Supervisors of the District (the “Board”) on May 21, 2019 and October 15, 2019, respectively (together, the “Resolution”), the related Master Trust Indenture, dated as of December 1, 2020 (the “Master Indenture”), between the District and U.S. Bank National Association, as trustee (the “Trustee”), as supplemented by a First Supplemental Trust Indenture between the District and the Trustee dated as of December 1, 2020 (the “First Supplemental Indenture,” and together with the Master Indenture, the Act, and the Ordinance, the “Authorizing Documents”). The factual representations contained in this Tax Certificate, to the undersigned’s best knowledge, are true and correct and, to the best of the knowledge, information, and belief of the undersigned, the expectations contained in this Tax Certificate are reasonable. This Tax Certificate also contains certain covenants of the District regarding future compliance under federal tax law. Non-compliance with these covenants may adversely affect the excludability of interest on the Series 2020 Bonds from federal gross income of the holders of the Series 2020 Bonds. Capitalized terms not otherwise defined herein have the meanings set forth in *Exhibit A* hereto and in the Authorizing Documents referred to in Section 1 below.

1. **Purpose of the Series 2020 Bonds.** The District is issuing the Series 2020 Bonds to provide funds to (a) make a deposit into the Series 2020 Acquisition and Construction Account (the “Series 2020 Acquisition and Construction Account”) within the Acquisition and Construction Fund, to provide funds to finance certain costs of acquiring and/or constructing all or a portion of public infrastructure for the development of the Phase One Assessment Area, as further described in the Banyan Cay Community Development District Report of the Engineer, dated June 20, 2019, as supplemented (the “Engineer’s Report”), prepared for the District by Engenuity Group, Inc. (the “District Engineer”), and which is summarized on *Schedule 1* hereto; (b) fund a deposit into the Series 2020 Reserve Account (the “Series 2020 Reserve Account”) of the Debt Service Reserve Fund to satisfy the Series 2020 Reserve Requirement; (c) fund a deposit into the Series 2020 Capitalized Interest Account (the “Series 2020 Capitalized Interest

Account”) of the Debt Service Fund to pay capitalized interest on the Series 2020 Bonds through at least November 1, 2021 (the “Capitalized Interest”); and (d) fund a deposit into the Series 2020 Costs of Issuance Account (the “Series 2020 Costs of Issuance Account”) of the Series 2020 Acquisition and Construction Fund to pay costs of issuance of the Series 2020 Bonds (the “Costs of Issuance”), and to pay underwriter’s discount (the “Underwriter’s Discount”).

2. **Source and Disbursement of Funds.** The District sold the Series 2020 Bonds to FMSbonds, Inc., as underwriter (the “Underwriter”) on December 2, 2020, at a total purchase price equal to \$6,895,000.00 (constituting the par amount of the Series 2020 Bonds). Accordingly, the “Sale Proceeds” from the sale of the Series 2020 Bonds equal \$6,895,000.00. After the Underwriter’s Discount of \$137,900.00, the District will receive a net amount of Proceeds from the sale of the Series 2020 Bonds of \$6,757,100.00 (“Net Sale Proceeds”). There is no Pre-Issuance Accrued Interest on the Series 2020 Bonds.

(a) The District reasonably expects to need and fully expend the \$6,757,100.00 Net Sale Proceeds as follows:

(i) \$400,000.00 (which is equal to the initial Series 2020 Reserve Requirement) will be deposited into the Series 2020 Reserve Account (the “Series 2020 Reserve Account”) of the Debt Service Reserve Fund;

(ii) \$234,725.90 will be deposited into the Series 2020 Capitalized Interest Account to pay Capitalized Interest on the Series 2020 Bonds through at least November 1, 2021 (the “Capitalized Interest Amount”);

(iii) \$263,241.50 will be deposited into the Series 2020 Costs of Issuance Account, and will be used along with any earnings thereon, for payment of the Costs of Issuance, and any moneys remaining in such account no later than six months after the date hereof will be transferred to the Series 2020 Interest Account (the “Series 2020 Interest Account”) of the Debt Service Fund for payment of the next upcoming interest on the Series 2020 Bonds; and

(iv) \$5,859,132.60, representing the balance of the Net Sale Proceeds, will be deposited into the Series 2020 Acquisition and Construction Account to be used, together with investment earnings and amounts transferred thereto, to pay the costs of the Phase One Assessment Area Project, as further described below.

(b) No Sale Proceeds of the Series 2020 Bonds will be allocated to reimburse expenditures that were paid by the District before the date hereof.

(c) The Sale Proceeds to be used to finance the purposes described in this Section, together with any Investment Proceeds, do not exceed the amount necessary, based on all facts and circumstances known to the District on this date, to provide financing for such purposes.

(d) The District covenants to retain with its books and records for the Series 2020 Bonds all requisition forms for draws from the Series 2020 Acquisition and Construction Account and the Series 2020 Costs of Issuance Account, for a period of at least seven years after

the later of the final payment on the Series 2020 Bonds or any obligation issued or executed and delivered to refund the Series 2020 Bonds (or such longer period as may be required by the Indenture).

3. **Security for and Payment of the Series 2020 Bonds.**

(a) The expected source of payment of the principal of and interest on the Series 2020 Bonds will be the Series 2020 Pledged Revenues. The Series 2020 Pledged Revenues, as more specifically defined in the Indenture, consist of (i) all revenues received by the District from the Series 2020 Special Assessments levied and collected on assessable lands within the Phase One Assessment Area, including, without limitation, amounts received from any foreclosure proceeding for the enforcement of collection of such Series 2020 Special Assessments or from the issuance and sale of tax certificates with respect to such Series 2020 Special Assessments, and (ii) all moneys on deposit in the funds, accounts and subaccounts established under the Indenture with respect to or for the benefit of the Series 2020 Bonds, but excluding any moneys transferred to the Series 2020 Rebate Fund and investment earnings thereon, moneys on deposit in the Series 2020 Costs of Issuance Account, and certain special assessments and maintenance assessments.

(b) The Trustee will deposit the Series 2020 Special Assessments (except for Prepayments of the Series 2020 Special Assessments which will be deposited in the Series 2020 Prepayment Subaccount) in a separate account, namely the Series 2020 Revenue Account (the “Series 2020 Revenue Account”) in the Revenue Fund to be applied as follows:

(i) upon receipt but no later than the Business Day next preceding each May 1 commencing May 1, 2021, to the Series 2020 Interest Account, an amount equal to the interest on the Series 2020 Bonds becoming due on the next succeeding May 1, less any amount on deposit in the Series 2020 Interest Account and Series 2020 Capitalized Interest Account not previously credited;

(ii) upon receipt but no later than the Business Day next preceding each November 1 commencing November 1, 2021, to the Series 2020 Interest Account, an amount equal to the interest on the Series 2020 Bonds becoming due on the next succeeding November 1, less any amounts on deposit in the Series 2020 Interest Account and Series 2020 Capitalized Interest Account not previously credited;

(iii) no later than the Business Day next preceding each November 1, commencing November 1, 2022, to the Series 2020 Sinking Fund Account (the “Series 2020 Sinking Fund Account”) of the Debt Service Fund, an amount equal to the principal amount of Series 2020 Bonds subject to sinking fund redemption on such November 1, less any amount on deposit in the Series 2020 Sinking Fund Account not previously credited;

(iv) no later than the Business Day next preceding the November 1, which is the principal payment date for any Series 2020 Bonds, to the Series 2020 Principal Account (the “Series 2020 Principal Account”) of the Debt Service Fund, an amount equal to the principal amount of Series 2020 Bonds Outstanding maturing on such November 1, less any amounts on deposit in the Series 2020 Principal Account not previously credited;

(v) notwithstanding the foregoing, at any time the Series 2020 Bonds are subject to redemption on a date which is not a May 1 or November 1 Interest Payment Date, the Trustee shall be authorized to transfer to the Series 2020 Interest Account, the amount necessary to pay interest on the Series 2020 Bonds subject to redemption on such date; and

(vi) upon receipt but no later than the Business Day next preceding each Interest Payment Date while Series 2020 Bonds remain Outstanding, to the Series 2020 Reserve Account, an amount equal to the amount, if any, which is necessary to make the amount on deposit therein equal to the Series 2020 Reserve Requirement;

(vii) subject to the foregoing paragraphs, the balance of any moneys remaining after making the foregoing deposits shall be deposited into the Series 2020 Costs of Issuance Account to cover any deficiencies in the amount allocated to pay the cost of issuing the Series 2020 Bonds and next, any balance in the Series 2020 Revenue Account shall remain on deposit in such Series 2020 Revenue Account, unless pursuant to the Arbitrage Certificate, it is necessary to make a deposit into the Series 2020 Rebate Fund, in which case, the Issuer shall direct the Trustee to make such deposit thereto.

The Series 2020 Revenue Account (to the extent of transfers to the Series 2020 Interest Account, the Series 2020 Principal Account, and the Series 2020 Sinking Fund Account), the Series 2020 Interest Account, the Series 2020 Principal Account, the Series 2020 Sinking Fund Account, and the Series 2020 Prepayment Account, are collectively referred to herein as the “*Bond Fund*.”

(c) *Bond Fund*. The Bond Fund is established to achieve a proper matching of revenues with principal and interest payments on the Series 2020 Bonds within each Bond Year. Accordingly, the District will treat the amounts accounted for as part of the Bond Fund that are to be expended to pay the principal of and interest on the Series 2020 Bonds as the same become due and that will be depleted at least once each Bond Year (except for a reasonable carryover amount not to exceed the greater of (a) the earnings on the Bond Fund for the immediately preceding Bond Year, or (b) one-twelfth of the principal and interest payments on the Series 2020 Bonds for the immediately preceding Bond Year) as a bona fide debt service fund. It is reasonably expected that all amounts, if any, received by the District as income from the investment of the Bond Fund will be expended to pay the principal of and interest on the Series 2020 Bonds within one year of receipt. Such moneys in the Bond Fund may be invested without regard to investment yield limitation for a period of 13 months from the date of receipt, and thereafter, or at any time to the extent that such amounts exceed the amounts described in this subsection, may not be invested in obligations bearing a Yield higher than the Bond Yield. To the extent required by the Code, such amounts are subject to the Rebate Requirement.

(d) *Series 2020 Reserve Account of the Debt Service Reserve Fund*.

(i) The First Supplemental Indenture creates the Series 2020 Reserve Account and requires such account to be funded in an amount equal to the maximum annual debt service with respect to the initial principal amount of the Series 2020 Bonds, which amount is \$400,000. Such amounts do not exceed 10% of the stated principal amount of the Series 2020 Bonds (or, if the issue has more than a de minimis amount of original issue discount or premium, the issue price of the Series 2020 Bonds). Any amount in the Series 2020 Reserve Account may,

upon final maturity or redemption of all Outstanding Series 2020 Bonds, be used to pay principal of and interest on the Series 2020 Bonds at that time.

(ii) On each March 15 and September 15 (or, if such date is not a Business Day, on the Business Day next preceding such day), the Trustee shall transfer any excess in the Series 2020 Reserve Account above the Series 2020 Reserve Requirement attributable to investment earnings to the Series 2020 Acquisition and Construction Account, and after the Completion Date, to the Revenue Account to be used to pay the next succeeding debt service on the Series 2020 Bonds.

(iii) Notwithstanding any of the foregoing, amounts on deposit in the Series 2020 Reserve Account shall be transferred by the Trustee, in the amounts directed in writing by a majority of the Holders of the Series 2020 Bonds, to the Series 2020 General Redemption Subaccount of the Series 2020 Bond Redemption Account, if as a result of the application of the Master Indenture, the proceeds received from lands sold subject to the Series 2020 Special Assessments and applied to redeem a portion of the Series 2020 Bonds is less than the principal amount of Series 2020 Bonds indebtedness attributable to such lands.

(iv) Based on representations of the Underwriter in the Certificate of the Underwriter attached hereto as *Exhibit D*, the establishment of the Series 2020 Reserve Account for the Series 2020 Bonds in the amount of the Series 2020 Reserve Requirement is reasonably required. The total amount deposited into the Series 2020 Reserve Account may be invested without regard to investment yield limitation to the extent that such amounts do not exceed the least (the "Size Limitation") of (i) 10 percent of the stated principal amount of the Series 2020 Bonds (or of the Issue Price of the Series 2020 Bonds if original issue discount exceeds two percent times the stated redemption price of the Series 2020 Bonds), (ii) the maximum annual debt service on the Series 2020 Bonds, and (iii) 125 percent of average annual debt service on the Series 2020 Bonds. Amounts in excess of such Size Limitation must be invested at a Yield not higher than the Bond Yield. In measuring whether the Size Limitation has been reached, any discount on the purchase of investments bearing a Yield higher than the Bond Yield must be accounted for ratably each Bond Year as additional amounts invested at the Yield on such investment. (The District will be permitted to make yield reduction payments in measuring whether the investment limits have been reached.)

(v) Amounts in the Series 2020 Reserve Account are subject to the Rebate Requirement from the date of issuance of the Series 2020 Bonds.

(e) *Investment Earnings.* Except as described above, net investment earnings on amounts in any fund or account described in this Section will be retained therein and used for the purposes thereof.

(f) *No Other Sources.* Except for the establishment of the funds and accounts described above, none of the District, a related person (as defined in Code Section 147), or any other substantial beneficiary of the Series 2020 Bonds has created or established, and none of the foregoing parties are expected to create or establish, any other fund to pay debt service on the Series 2020 Bonds, or a debt service reserve fund or any other similar fund with respect to the Series 2020 Bonds, or a negative pledge or right of set-off in any funds, accounts, or assets of the

District. Further, no other funds are reasonably expected to be used to pay debt service on the Series 2020 Bonds and for which there is a reasonable assurance that amounts on deposit therein or the investment income earned thereon will be available to pay debt service on the Series 2020 Bonds if the District encounters financial difficulties. The District will not create or establish, and will not allow to be created or established, any such fund, account, negative pledge, or right of set-off unless the District obtains an opinion of Bond Counsel to the effect that the creation or establishment of such fund, account, negative pledge, or right of set-off will not adversely affect the excludability of interest on the Series 2020 Bonds from the gross income of the registered owners thereof for federal income tax purposes.

(g) *Series 2020 Rebate Fund.* Any moneys of the District deposited into the Series 2020 Rebate Fund from time to time and not constituting Gross Proceeds of the Series 2020 Bonds, together with any Investment earnings on such moneys, may be invested without regard to investment yield limitation, and any such earnings are not subject to the Rebate Requirement described herein. Investment Proceeds of the Series 2020 Bonds deposited into the Series 2020 Rebate Fund may be invested without regard to investment yield limitation for a period of one year beginning on the date of receipt and thereafter at a Yield not higher than the Bond Yield. Investment of such Proceeds of the Series 2020 Bonds in the Series 2020 Rebate Fund is subject to the Rebate Requirement described herein. No Sale Proceeds of the Series 2020 Bonds will be deposited into the Series 2020 Rebate Fund.

4. **Issue Price and Yield of the Series 2020 Bonds.**

(a) As used in this Tax Certificate, the term “Yield” refers to the discount rate that, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the Issue Price. The calculations of Yield are to be made on the basis of semiannual compounding using a 360-day year and upon the assumption that payments are made on the last day of each semiannual interest payment period (unless a different reasonable standard financial convention is explicitly adopted in accordance with Regulations Section 1.148-4(a)). For purposes of computing Yield, Issue Price is the aggregate of the first price at which a substantial amount of each Maturity of the Series 2020 Bonds was sold to the public, determined under Treasury Regulations Section 1.148-1(b) and (f)(2)(i)(the General Rule). The Underwriter has certified in the Certificate of the Underwriter attached hereto as *Exhibit D* that the aggregate Issue Price of the Series 2020 Bonds is \$6,895,000 (representing the aggregate principal amount of the Series 2020 Bonds). The Yield on the Series 2020 Bonds (the “Bond Yield”) has been calculated by the Underwriter to be not less than 3.9763 percent per annum (using a 360-day year of twelve 30-day months, as such convention has been adopted in the Authorizing Documents).

(b) The District does not currently expect to enter into any hedging transactions with respect to the Series 2020 Bonds. The District acknowledges that entering into a hedging transaction may change the yield on the Series 2020 Bonds, and that bond counsel should be contacted prior to entering into any hedging transaction in order to determine whether payments or receipts pursuant to the hedging transaction are to be taken into account in computing the yield on the Series 2020 Bonds.

5. Phase One Assessment Area Project; Series 2020 Acquisition and Construction Account; Essential Governmental Function.

(a) The Engineer Report, completed in June 2019, provides that the cost of the Capital Improvement Plan would be approximately \$7,463,830, of which approximately \$5,859,132.60 will be associated with Phase One Assessment Area Project. Sale Proceeds in the total amount of \$5,859,132.60, together with all investment earnings thereon and amounts transferred thereto, will be used by the District to pay all or a portion of the costs directly related to and necessary for the financing of Capital Expenditures for the Phase One Assessment Area Project. To date, the Developer has spent approximately \$12,800,000 in the development, a portion of which includes costs of the Capital Improvement Plan. With the Phase One Assessment Area Project being 90% complete and based on the costs that the Developer has expended to date, the Developer expects the costs of the Phase One Assessment Area Project will equal or exceed the amount of proceeds deposited in the Series 2020 Acquisition and Construction Account (including earnings thereon and amounts transferred thereto). Any moneys remaining in the Series 2020 Acquisition and Construction Account after the Completion Date and payment of cost for the Phase One Assessment Area Project will be transferred to the Series 2020 General Redemption Subaccount of the Series 2020 Bond Redemption Account and will be used to redeem the Series 2020 Bonds. The Developer will enter into a completion agreement that will obligate the Developer to complete any portion of the Phase One Assessment Area One Project not funded with proceeds of the Series 2020 Bonds.

(b) The District reasonably expects as follows: (i) it will allocate at least 85 percent of the Net Sale Proceeds to Expenditures for Capital Projects within three years of the date hereof; (ii) within six months of the date hereof, the District will have entered into contracts with third parties constituting substantial binding obligations (*i.e.*, not subject to contingencies within the control of the District or a related party) to make Expenditures for Capital Projects for the Phase One Assessment Area Project obligating Expenditures in excess of five percent of the Net Sale Proceeds; and (iii) the completion of the Phase One Assessment Area Project and the allocation of Net Sale Proceeds to Expenditures for Capital Projects will proceed with due diligence to completion. Net Proceeds deposited in the Capitalized Interest Account is reasonably expected to be used to pay capitalized interest on the Series 2020 Bonds through November 1, 2021 but will be used for such purpose no later than three years from the date hereof. Proceeds of the Series 2020 Bonds deposited into the Series 2020 Acquisition and Construction Account and into the Series 2020 Capitalized Interest Account for payment of Capitalized Interest, may be invested without regard to investment yield limitation until the date that is three years from the date hereof. After such date, any such proceeds may not be invested in obligations that bear a Yield in excess of the Bond Yield.

(c) The Phase One Assessment Area Project consists of facilities that will be owned by a governmental person and, except as specifically provided herein, will serve an essential governmental function for the benefit of the general public, including residents of the District. As indicated in the Certificate of the Engineer included as part of the transcript of proceedings for the Series 2020 Bonds, all improvements comprising the Phase One Assessment Area Project are or will be constructed on land that is or will be, when the Proceeds of the Series 2020 Bonds are allocated to such Phase One Assessment Area Project, owned by the District or other governmental entity, and no earthwork, grading, or other improvements will be constructed

or performed on private lots or private property (and, if applicable, no water or sewer laterals will be extended to private lots or private property), in accordance with Treasury Regulations Section 1.141-5(d)(4).

(d) The District Engineer has certified in the certificate included in the transcript of proceedings for the Series 2020 Bonds, that the proposed improvements constituting the public infrastructure for the District and their estimated costs are fair and reasonable, and that the residential lots and other land use within the Phase One Assessment Area will receive a special benefit equal to or greater than the cost of such improvements. The District Engineer has further certified that the improvements can be permitted, constructed, and installed at the costs described in the Engineer's Report, and that the District will pay the Developer for acquisition of the improvements, and land, if any, the lesser of the Developer's actual costs of the public infrastructure and or the fair market value. *See also Schedule 1* and the Engineer's Report.

(e) In reliance on the statements and certifications of the Developer set forth in *Exhibit E* hereto, and on the statements and certifications of the District Engineer set forth in the Engineer's Report and *Schedule 1* hereto, the District reasonably expects that there will be sufficient funds to complete the Phase One Assessment Area Project.

6. The Development.

(a) The District lands encompass approximately 95.24+/- gross acres, located within the City in Palm Beach County, Florida (the "County". The District lands, which were previously used as two golf courses, are being developed as a mixed-use commercial and residential planned development to be known as "Banyan Cay Resort & Golf" (the "Development").

(b) Two assessment areas have been created to facilitate the District's financing program and to coincide with development of the Development. The Series 2020 Bonds are secured by the Series 2020 Special Assessments which are levied against the land within the Phase One Assessment Area. The Phase One Assessment Area consists of approximately 92.03+/- gross acres and is planned to contain 74 residential units consisting of 52 estate home units (the "Estate Home Portion") and 22 resort villa units (the "Villa Portion" and, together with the Estate Home Portion, the "Residential Portion"), a 150-room hotel with a 200-car parking garage (the "Hotel"), and an 18,243 square foot clubhouse facility (the "Clubhouse" and, together with the Hotel, the "Resort Portion"). The Phase Two Assessment Area is planned to contain a 179-unit high-rise condominium building (the "Condominium Portion"). The Series 2020 Special Assessments are levied against the assessable lands within the Phase One Assessment Area, land that is separate from the Phase Two Assessment Area.

(c) The Development is connected to and a part of the Banyan Cay Golf Course, which is located outside the boundaries of the District. No proceeds will be used to finance improvements on any private lots, or to finance costs of the Hotel, the Banyan Cay Golf Course, or the Clubhouse.

(d) Land development in the Residential Portion is expected to be completed in the third quarter of 2021 and marketing of residential units commenced in the fourth quarter of

2020. Land Development in the Hotel is complete, and the Hotel is expected to be completed and open by December 2021. The Clubhouse was completed in March 2019. Assessment Area One is 90% complete.

(e) Banyan Cay Dev. LLC, a Delaware limited liability company, is the land developer and is expected to be the homebuilder of some or all of the Estate Home Portion and will be the land developer and builder in the Condominium Portion of the Development. Banyan Cay Villas, LLC, a Delaware limited liability company, is the land developer and homebuilder of the Villa Portion of the Development. Banyan Cay Resort & Golf LLC, a Delaware limited liability company, is the developer and owner of the Resort Portion. Banyan Cay Dev. LLC, Banyan Cay Villas, LLC and Banyan Cay Resort & Golf LLC are herein referred to collectively as the “Developer,” however, each entity is only responsible for the development of its respective portion of the Development. In connection with the operation of the Resort Portion, Banyan Cay Resort & Golf LLC has entered into a franchise agreement with Hyatt Franchising, L.L.C. under the brand “Destination Hotels.”

(f) The Developer acquired the lands within the District and an additional 94 lots outside of the District on August 15, 2015 for approximately \$26,000,000. The acquisition was financed with \$14,000,000 in cash from the Developer and a purchase money mortgage on the property financed the remainder of the purchase price. The Developer subsequently sold the 94 undeveloped lots to SS Banyan Cay Developer, LLC, a Florida limited liability company affiliated with the Sobel Co. for \$10,000,000. The purchase money mortgage has since been refinanced. On September 30, 2020, the Developer closed on two construction loans in the amount of \$61,000,000 (the “First Construction Loan”) and \$19,000,000 (the “Second Construction Loan”). The First Construction Loan provides funds to finance the construction of the Hotel, which is currently under construction, and to refinance a construction loan used for the construction of the Hotel and the Club. The Second Construction Loan provides up to \$11,000,000 to finance the construction of the Villa Portion and up to \$8,000,000 to finance the completion of the Hotel. Approximately \$30,000,000 is available to be drawn upon under the First Construction Loan and approximately \$19,000,000 is available to be drawn upon under the Second Construction Loan.

(g) The District expects that the Developer will act with all due diligence and reasonable speed in the construction of the remainder of the Development and the sale of residential units.

(h) The Board is reasonably anticipated to transition to a majority of the board elected by “qualified electors” within the meaning of section 190.006 of Chapter 190, Florida Statutes (the “Act”) by November 2028 (“Expected Transition Date”). The undersigned, on behalf of the Board, certifies that the District was not organized and will not be operated to perpetuate private control by the Developer or other nongovernmental persons, and that the District will not act or fail to act in a manner that delays the transition of the Board to a board that is elected by “qualified electors” in accordance with the Act.

(i) The Developer’s certificate in support of the above is attached hereto at *Exhibit E*.

7. Arbitrage Restriction and Rebate.

(a) The District agrees to comply with the arbitrage rebate covenants attached hereto as *Exhibit B*. In connection with such covenants, the District (i) will use a reasonable, Consistently Applied Accounting Method to account for Gross Proceeds, Investments, and Expenditures allocable to the Series 2020 Bonds, (ii) will use a Consistently Applied Accounting Method for allocating Gross Proceeds of the Series 2020 Bonds to Expenditures, and (iii) will not commingle Proceeds of the Series 2020 Bonds with any other moneys, funds or accounts owned, controlled or otherwise maintained by the District.

(b) In connection with the Series 2020 Bonds, there has not been established, and the District does not expect that there will be established, any sinking fund, pledged fund, or similar fund (other than as specifically identified in this Tax Certificate), including, without limitation, any arrangement under which money, securities, or obligations are pledged directly or indirectly to secure the Series 2020 Bonds, any contract securing the Series 2020 Bonds, or any arrangement providing for compensating or minimum balances to be maintained by the District with any owner or credit enhancer of the Series 2020 Bonds.

(c) The District will not enter into or engage in any action that has the effect of (i) enabling the District to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage and (ii) overburdening the tax-exempt bond market as defined in Regulations Section 1.148-10. If the District invests any of the Gross Proceeds of the Series 2020 Bonds in certificates of deposit or pursuant to an investment contract, the District will obtain certifications in the forms necessary to comply with the safe harbors for establishing the Fair Market Value thereof pursuant to Regulations Section 1.148-5(d).

(d) The District (i) does not expect to pledge funds (other than those described in the Authorizing Documents) to the payment of the Series 2020 Bonds, (ii) expects to expend Proceeds of the Series 2020 Bonds within the expected temporary periods, and (iii) does not expect to retire any portion of the Series 2020 Bonds earlier than shown in the Indenture.

8. Allocation of Proceeds and Recordkeeping. In accordance with Regulations Section 1.148-6(d)(1)(iii), the District will account for the allocation of Proceeds of the Series 2020 Bonds to Expenditures not later than 18 months after the date the Financed Property is placed in service, but in any event by the date 60 days after the fifth anniversary of the date hereof or the date 60 days after the retirement of the Series 2020 Bonds, if earlier. The District will maintain complete records of all investment earnings and disbursements of Proceeds of the Series 2020 Bonds for a period of at least seven years after the later of the final payment on the Series 2020 Bonds or any obligation issued or executed and delivered to refund the Series 2020 Bonds (or such longer period as may be required by the Indenture). With respect to disbursements, the District will include the date, the amount, the payee and the purpose of each expenditure, and will maintain copies of all related invoices.

9. Private Business Test Representations and Covenants.

(a) The District will comply with the covenants set forth on *Exhibit F* hereto.

(b) The District reasonably expects that the Series 2020 Bonds will not meet the private business test of Code Section 141(b) for the entire term of the Series 2020 Bonds (the “Private Business Test”). The District recognizes, however, as provided in *Exhibit F*, that violations of the Private Business Test are based on actual facts, and not on reasonable expectations.

(c) The Phase One Assessment Area Project is reasonably expected to be and will be owned by one or more governmental persons. All improvements comprising the Phase One Assessment Area Project will be constructed on land that is or will be allocated to such property, owned by the District, and no earthwork, grading, or other improvements will be constructed or performed on private lots or private property (and, if applicable, no water or sewer laterals will be extended to private lots or private property).

(d) The District represents that the Phase One Assessment Area Project will be owned and operated in a manner that complies with the requirements set forth in this Section and *Exhibit F*, and reasonably expects that the Phase One Assessment Area Project will continue to be so owned and operated throughout the term of the Series 2020 Bonds.

(e) Except as otherwise advised by Bond Counsel, during the period that the Series 2020 Bonds are outstanding, the District will not enter into: (i) any management or service contract with any entity other than a governmental entity (including any management contract with a homeowner’s association) for the operation of any portion of the Phase One Assessment Area Project unless the management or service contract complies with the requirements of Revenue Procedure 2017-13 or such other authority as may control at the time; and (ii) any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to the Phase One Assessment Area Project. The District will consult with bond counsel to ensure compliance with this provision. Further, the District will ensure that any other governmental entity to which any financed improvement is transferred will comply with these provisions.

(f) The District is expected to use proceeds of the Series 2020 Bonds to pay capitalized interest on such bonds after completion of the Series 2020 Project. The District understands that such use of the proceeds of the Series 2020 Bonds may be treated as an expenditure that is not an essential governmental function, and as such, should be treated as unrelated expenditure that should be aggregated with other any future unrelated or disproportionate expenditures for purposes of determining whether 5% of the proceeds of the Series 2020 Bonds are used for costs that are unrelated or disproportionate to the governmental purpose of the Series 2020 Bonds.

(g) The Engineer Report lists \$181,900 installation fees for potable water only as a Capital Improvement Cost. The District understands that if this fee is financed with proceeds of the Series 2020 Bonds, it may not be a qualified cost and should be aggregated with other nonqualified costs for purpose of determining whether the 5% limit on nonqualified costs is met.

10. **Other Tax Representations.**

(a) The payment of principal and interest with respect to the Series 2020 Bonds will not be guaranteed (in whole or in part) by the United States of America or any agency or instrumentality of the United States of America. The Proceeds of the Series 2020 Bonds, or amounts treated as Proceeds of the Series 2020 Bonds, will not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds (i) may be so invested for an initial temporary period until needed for the purpose for which the Series 2020 Bonds are being issued, (ii) may be so used in making investments of a bona fide debt service fund, or (iii) may be invested in obligations issued by the United States Treasury.

(b) The Weighted Average Maturity of the Series 2020 Bonds is 19.2065 years, as calculated by the Underwriter, which does not exceed 120 percent of the average reasonably expected useful life of the Phase One Assessment Area Project.

(c) The Series 2020 Bonds are not “hedge bonds” within the meaning of Code Section 149(g) and Regulations Section 1.149(g)-1 because on the date hereof, the District reasonably expects that 85 percent of the spendable proceeds of the Series 2020 Bonds will be used to carry out the governmental purposes of such bonds within the three-year period beginning on the date hereof and not more than 50 percent of the Proceeds of such Series 2020 Bonds will be invested in nonpurpose investments having a substantially guaranteed yield for four years or more.

(d) Except as otherwise provided in this Tax Certificate, any amounts constituting Gross Proceeds of the Series 2020 Bonds may not be invested in Investments bearing a Yield higher than the Bond Yield.

(e) The District has not sold and will not sell any other obligations of the District the interest on which is intended to be excludable from the gross income of the registered owners thereof for federal income tax purposes (including, without limitation, any notes, bonds, lease obligations, loans, or installment purchase obligations) during the 31-day period beginning 15 days prior to the Sale Date defined in the Certificate of the Underwriter, attached hereto as *Exhibit D*, that are being sold pursuant to the same plan of financing as the Series 2020 Bonds and that are payable from the same source of funds from which the Series 2020 Bonds are payable.

(f) Code Section 149(e) requires as a condition to qualification of interest on the Series 2020 Bonds for tax exemption for federal income tax purposes that the District provide to the Secretary of the Treasury certain information with respect to the Series 2020 Bonds and the application of the Proceeds derived therefrom. The District represents, for the benefit of Bond Counsel and the registered owners of the Series 2020 Bonds, that it has reviewed the Internal Revenue Form 8038-G (including any schedules attached thereto) prepared by Bond Counsel and that the information contained therein is true, complete and correct to the best knowledge of the District as of the date hereof.

(g) As of the date hereof, the District has levied assessments against the identified landowners representing 100 percent of the net proceeds of the Series 2020 Bonds.

Accordingly, the District reasonably expects that within one year from the date hereof the District will have used at least 30 percent and within three years at least 95 percent of the net proceeds of the Series 2020 Bonds within the meaning of Code Section 149(f)(2)(C) to finance tax assessment loans within the meaning of Regulations Section 1.141-5(d)(1). The payment of legal and other costs associated with the issuance of the Series 2020 Bonds is not contingent. The District covenants that at least 95 percent of the reasonably expected legal and underwriting costs associated with the issuance of the Series 2020 Bonds will be paid not later than 180 days after the date hereof.

(h) The District is not aware of any facts or circumstances that would cause it to question the accuracy of the representations made by the Underwriter in the Certificate of the Underwriter or the Developer in the Certificate of the Developer.

11. **Audit Risk.** The District acknowledges and understands that the Internal Revenue Service routinely examines bonds issued by state and local governments, including bonds issued by community development Districts. Many such audits are initiated on a random basis. Others are initiated as part of an audit program or on the basis of information obtained by the Internal Revenue Service. The Internal Revenue Service examined bonds (the “Audited Bonds”) issued by the Village Center Community Development District (“Village Center”). On October 31, 2012, Village Center posted an “Event Notice” on the Electronic Municipal Market Access website (“EMMA”) of the Municipal Securities Rulemaking Board indicating that the Office of Chief Counsel (“Chief Counsel”) of the Internal Revenue Service had tentatively concluded that Village Center is not a political subdivision for purposes of Section 103(a) of the Code because a controlling portion of the governing board of Village Center at the time Village Center issued the Audited Bonds was elected by one property owner. Village Center subsequently received a ruling dated May 30, 2013, in the form of a non-precedential technical advice memorandum (“TAM”), concluding that Village Center is not a political subdivision for purposes of Section 103(a) of the Code because Village Center was organized and operated to perpetuate private control and to avoid indefinitely responsibility to an electorate, either directly or through another elected state or local government body.

Bond Counsel has brought to our attention that on February 23, 2016, the IRS published proposed regulations, that were amended on March 9, 2016, providing a new definition of “political subdivision” for purposes of tax-exempt bonds that, if finalized in their current form, may treat an entity, such as the District whose governing body is controlled by a private party such as the District, as an ineligible issuer of tax-exempt bonds and as a private user of bond-financed facilities. The proposed regulations require that a political subdivision (i) have the power to exercise at least one sovereign power, (ii) be formed and operated for a governmental purpose, and (iii) have a governing body controlled by or have significant uses of its funds or assets otherwise controlled by a government unit with all three sovereign powers or by an electorate that is not controlled by an unreasonably small number of unrelated electors. Treasury withdrew those regulations on October 20, 2017, following a October 16, 2017, Treasury Report in which Treasury stated that the proposed regulations were being withdrawn because Treasury and the IRS believe that “regulations having as far-reaching an impact on exiting legal structures as the proposed regulations are not justified.” The Treasury Report further states that “Treasury and the IRS will continue to study the legal issues relating to political subdivisions,” and,

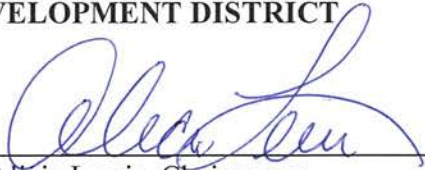
“Treasury and the IRS may propose more targeted guidance in the future after further study of the relevant legal issues.”

While the proposed regulations have been withdrawn, the TAM was issued under the current state of the law. Accordingly, no assurance can be given that an audit by the Internal Revenue Service of the Series 2020 Bonds will not be commenced either on the basis of the concerns raised by the TAM or on a random or other basis. The Issuer could settle such an audit if the Internal Revenue Service were to determine that interest on such bonds was not excludable from gross income, or the District could file an administrative appeal within the Internal Revenue Service. If the District were to lose such an appeal, interest on the Series 2020 Bonds would be declared subject to inclusion in the gross income of the holder of the Series 2020 Bonds from its issue date, unless the District were to enter into a settlement with the Internal Revenue Service. In the event that the Internal Revenue Service determines in an audit that interest on the Series 2020 Bonds is not excludable from gross income for federal income tax purposes, no procedural avenue currently exists to bring the Internal Revenue Service determination to a court for review unless a bondholder refuses to pay tax on the interest it receives or pays such tax and sues the Internal Revenue Service for a refund.

12. **Written Procedures.** The District has attached as *Exhibit C* hereto its post-issuance compliance policy. The District agrees to comply with such policy in connection with the Series 2020 Bonds and any other tax-advantaged bonds, notes, leases, loans, or similar types of obligations heretofore or hereafter issued, reissued, or executed and delivered by it or for its benefit.

IN WITNESS WHEREOF, the undersigned has set his hand to this Arbitrage and Tax Certificate as of the date first written above.

**BANYAN CAY COMMUNITY
DEVELOPMENT DISTRICT**

By  _____
Alicia Lewis, Chairperson
Board of Supervisors

[Signature Page to Arbitrage and Tax Certificate]

**LIST OF EXHIBITS AND SCHEDULES
TO ARBITRAGE AND TAX CERTIFICATE**

Exhibit A	Definitions
Exhibit B	Arbitrage Rebate Covenants
Exhibit C	Written Procedures
Exhibit D	Certificate of the Underwriter
Exhibit E	Certificate of the Developer
Exhibit F	Private Business Covenants
Schedule 1	Phase One Assessment Area Project Description

**EXHIBIT A
TO ARBITRAGE AND TAX CERTIFICATE**

DEFINITIONS

“*Accounting Method*” means both the overall method used to account for Gross Proceeds of obligations (e.g., the cash method or a modified accrual method) and the method used to account for or allocate any particular item within that overall accounting method (e.g., accounting for Investments, Expenditures, allocations to and from different sources, and particular items of the foregoing).

“*Average Economic Life*” means the remaining average reasonably expected economic life defined in Code Section 147(b).

“*Average Maturity*” means the average maturity of obligations as defined in Code Section 147(b).

“*Bond Counsel*” means a law firm of nationally recognized bond counsel requested to deliver its approving opinion with respect to the issuance of and the exclusion from federal income taxation of interest on obligations. Bond Counsel with respect to the obligations issued or executed and delivered in connection with this Arbitrage and Tax Certificate is Greenberg Traurig, P.A.

“*Bond Year*” means, with respect to an issue of obligations, the period commencing not later than the date of issuance of the obligations and ending one calendar year thereafter. Bond Year is further described under the heading “Arbitrage Restriction and Rebate” in this Arbitrage and Tax Certificate.

“*Bond Yield*” means the Yield of the obligations issued or executed and delivered in connection with this Arbitrage and Tax Certificate calculated in accordance with Regulations Section 1.148-4.

“*Capital Expenditure*” means any cost of a type properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of “placed in service” under Regulations Section 1.150-2(c)) under general federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are Capital Expenditures. Whether an Expenditure is a Capital Expenditure is determined at the time the Expenditure is paid with respect to the property. Future changes in law do not affect whether an Expenditure is a Capital Expenditure.

“*Capital Project*” means all Capital Expenditures, plus related working capital expenditures to which the *de minimis* rule under Regulations Section 1.148-6(d)(3)(ii)(A) applies, that carry out the governmental purposes of an issue. For example, a Capital Project may include Capital Expenditures for one or more building improvements or equipment, plus related start-up operating costs and capitalized interest through the placed-in-service date for the Capital Project.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

“Computation Date” means an Installment Computation Date or the Final Computation Date.

“Consistently Applied” means applied uniformly within a fiscal period and between fiscal periods to account for Gross Proceeds of an issue and any amounts that are in a commingled fund.

“Costs of Issuance” means, with respect to an issue of obligations, all costs incurred in connection with, and allocable to, the issuance or execution and delivery of such obligations, other than fees paid to or on behalf of credit enhancers as fees for Qualified Guarantees. Examples of Costs of Issuance include (but are not limited to): (a) Underwriter fees (whether realized directly or derived through purchase of the obligation at a discount below the price at which a substantial number of the obligations are sold to the public); (b) counsel fees (including bond counsel, placement agent’s or Underwriter’s counsel, issuer’s counsel, borrower’s counsel, trustee’s counsel, and any other specialized counsel fees incurred in connection with the issuance of the obligation); (c) financial advisor or placement agent fees incurred in connection with the issuance of the obligation; (d) fees paid to an organization to evaluate the credit quality of the issue (except for any such fee paid in connection with or as a part of the fee for credit enhancement of the obligation); (e) trustee fees incurred in connection with the issuance of the obligation; (f) paying agent and certifying and authenticating agent fees incurred in connection with the issuance of the obligation; (g) accountant fees incurred in connection with the issuance of the obligation; (h) printing costs (for the obligation and for the preliminary and final official statements or placement memoranda); (i) costs incurred in connection with the engineering and feasibility studies necessary to the issuance of the obligation (as opposed to such studies related to completion of the Financed Property, and not to the financing); and (j) fees to cover administrative costs and expenses incurred in connection with the issuance of the obligation.

“Exempt Person” means any state or a local governmental unit of any state established pursuant to state law.

“Expenditure” means a book or record entry that allocates Proceeds of an obligation in connection with a “current outlay of cash” (an outlay reasonably expected to occur not later than five banking days after the date as of which the allocation of Gross Proceeds to the Expenditure is made).

“Fair Market Value” means the price at which a willing buyer would purchase an Investment from a willing seller in a bona fide, arm’s-length transaction. Fair Market Value is generally determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (*i.e.*, the trade date rather than the settlement date). Except as otherwise provided in this definition, an Investment that is not of a type traded on an established securities market (within the meaning of Code Section 1273) is rebuttably presumed to be acquired or disposed of for a price that is *not* equal to its Fair Market Value. The Fair Market Value of a United States Treasury obligation purchased directly from the United States Treasury is its purchase price. The following guidelines apply for purposes of determining the Fair Market Value of the obligations described below:

(a) ***Certificates of Deposit.*** The purchase of certificates of deposit with fixed interest rates, fixed payment schedules, and substantial penalties for early withdrawal will be deemed to have been purchased at its Fair Market Value on the purchase date if the Yield on the certificate of deposit is not less than: (i) the Yield on reasonably comparable direct obligations of the United States of America; and (ii) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(b) ***Investment Contracts and Yield Restricted Escrow Investments.*** The purchase price of a guaranteed “investment contract” and the purchase price of an Investment purchased for a Yield-restricted defeasance escrow will be treated as purchased at its Fair Market Value on the purchase date if all requirements set forth below are satisfied. (An investment contract is a contract that is not a certificate of deposit entered into for purposes of investing Gross Proceeds of tax-exempt obligations with a party other than the issuer or borrower of tax-exempt obligations at an interest rate or rates specified in the contract if all obligations under the investment contract are purchased at par and retired or redeemed at par plus accrued interest.)

(i) A *bona fide* solicitation for the purchase of the investment is made. A *bona fide* solicitation is one that satisfies all of the following requirements: (A) the bid specifications are in writing and are timely forwarded to potential providers; (B) the bid specifications include all material terms of the bid (a term is material if it may directly or indirectly affect the Yield or the costs of the investment); (C) the bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the entity soliciting the investment, the trustee or any other person (whether or not in connection with the obligation described in this tax document), and that the bid is not being submitted solely as a courtesy to the entity soliciting the investment, the trustee, or any other person for purposes of satisfying the requirements of Regulations Section 1.148-5(d)(6)(iii)(B)(1) or (2); (D) the terms of the bid specifications are commercially reasonable (*i.e.*, there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield on the Investment); (E) for guaranteed investment contracts only, the terms of the solicitation take into account the reasonably expected deposit and drawdown schedule for the amounts to be invested; (F) all potential providers have an equal opportunity to bid (*e.g.*, no potential provider is given the opportunity to review other bids before providing a bid); and (G) at least three reasonably competitive providers are solicited for bids (a “reasonably competitive provider” is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased).

(ii) The bids received by the entity soliciting the investment meet all of the following requirements: (A) the entity soliciting the investment receives at least three bids from providers that such entity solicited under a *bona fide* solicitation meeting the requirements of paragraph (i) above that do not have a material financial interest in the issue, such as a lead Underwriter, financial

advisor, or a related party of the entity soliciting the investment or the trustee (a lead Underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue; any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue; a provider that is related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue); (B) at least one of the three bids is from a reasonably competitive provider; and (C) if the entity soliciting the investment uses an agent to conduct the bidding process, such agent did not bid to provide the investment.

(iii) For guaranteed investment contracts, the winning bid is the highest yielding *bona fide* bid (determined net of any broker's fees). If the investment is not a guaranteed investment contract, the requirements of Regulations Section 1.148-5(d)(6)(iii)(C)(2) are met.

(iv) The provider of the investments or the obligor on the guaranteed investment contract must certify the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the investment.

(v) The entity soliciting the investment (or a trustee on behalf of such entity), must retain the following items with the obligation documents until at least three years (but if a longer period is required elsewhere in this tax document for such types of records, such longer period) after the obligations are paid: (A) for purchases of guaranteed investment contracts, a copy of the contract, and for purchases of investments other than guaranteed investment contracts, the purchase agreement or confirmation; (B) the receipt or other record of the amount actually paid for the investments, including a record of any administrative costs paid by such entity, and the certification referred to in paragraph (iv) above; (C) for each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results; (D) the bid solicitation form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation; and (E) for purchases of investments other than guaranteed investment contracts, the cost of the most efficient portfolio of SLGS, determined at the time that the bids were required to be submitted pursuant to the terms of the bid specifications.

“*Final Computation Date*” means the date the last obligation is discharged.

“*Financed Property*” means the property financed with proceeds of obligations. Such term is further defined or referred to in Section 2 of this Arbitrage and Tax Certificate.

“*Future Value*” means the Value of a Receipt or Payment at the end of any interval (as determined by using the constant interest method or actuarial method) and equals the Value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the obligation Yield,

using the same compounding interval and financial conventions used to compute the obligation Yield.

“*Gross Proceeds*” means any Proceeds and Replacement Proceeds of the obligations.

“*Installment Computation Date*” means the last day of the fifth Bond Year and the last year of each succeeding fifth Bond Year, except as otherwise permitted by the Regulations.

“*Investment*” means any Purpose Investment or Nonpurpose Investment, including any other tax-exempt obligation.

“*Investment Proceeds*” means any amounts actually or constructively received from investing proceeds of the obligations.

“*Investment-Type Property*” means any property, other than property described in Code Section 148(b)(2)(A), (B), (C), or (E) that is held principally as a passive vehicle for the production of income. Except as otherwise provided, a prepayment for property or services is Investment-Type Property if a principal purpose for prepaying is to receive an Investment return from the time the prepayment is made until the time payment otherwise would be made. Generally, a prepayment is not Investment-Type Property if: (a) prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing; (b) the prepayment is made within 90 days of the reasonably expected date of delivery to the issuer of all of the property or services for which the prepayment is made; or (c) the prepayment meets the requirements of Regulations Section 1.148-1(e)(2)(iii)(A) or (B), relating to certain natural gas prepayments and electricity prepayments.

“*Issue Price*” of obligations means, except as otherwise provided, issue price as defined in Code Sections 1273 and 1274. Generally, the Issue Price of obligations that are privately placed is the price paid by the first purchaser in an arm’s-length transaction. The Issue Price of the obligations issued or executed and delivered in connection with this Arbitrage and Tax Certificate is identified under the heading “Price and Yield” of this Arbitrage and Tax Certificate.

“*Net Sale Proceeds*” means Sale Proceeds, minus the portion of those Sale Proceeds invested in a reasonably required reserve or replacement fund under Code Section 148(d) and as part of the minor portion described in Code Section 148(e).

“*Nonpurpose Investment*” means any security, obligation, annuity contract, or Investment-Type Property as defined in Code Section 148(b), including “specified private activity bonds” as defined in Code Section 57(a)(5)(C), but excluding all other obligations the interest on which is excludible from federal gross income, that is not acquired to carry out the governmental purpose of an issue.

“*Payment*” means any payment within the meaning of Regulations Section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

“*Pre-Issuance Accrued Interest*” means amounts representing interest that accrued on an obligation for a period not greater than one year before the date of issuance of such obligation but only if those amounts are paid within one year after such date of issuance.

“*Proceeds*” means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue of obligations. Proceeds do not include, however, amounts actually or constructively received with respect to a Purpose Investment that are properly allocable to the immaterially higher yield under Regulations Section 1.148-2(d) or Code Section 143(g), or to Qualified Administrative Costs recoverable under Regulations Section 1.148-5(e).

“*Purpose Investment*” means an Investment that is acquired to carry out the governmental purpose of an issue of obligations.

“*Qualified Administrative Costs*” means reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. General overhead costs and similar indirect costs of the issuer such as employee salaries and office expenses and costs associated with computing the rebate amount are not Qualified Administrative Costs. In general, administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same Investment or a reasonably comparable Investment if acquired with a source of funds other than Gross Proceeds of tax-exempt obligations.

“*Qualified Guarantee*” means a guarantee that meets the requirements of Regulations Section 1.148-4(f).

“*Qualified Hedging Transaction*” means a contract that meets the requirements of Regulations Section 1.148-4(h)(2).

“*Rebate Amount*” means the excess of the Future Value of all Receipts on Nonpurpose Investments over the Future Value of all the Payments on Nonpurpose Investments. Future Value is computed as of the Computation Date. Rebate Amount additionally includes any penalties and interest on underpayments reduced for recoveries of overpayments.

“*Rebate Fund*” with respect to any particular obligations means any fund or account in which the District accounts for amounts to be used to pay any rebate amount with respect to such obligations. The Rebate Fund may be established and maintained in book-entry form.

“*Rebate Requirement*” means at any time the excess of the Future Value of all Receipts over the Future Value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield must be used to determine the Future Value of Receipts and Payments in accordance with Regulations Section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under Code Section 148(f)(4) or Regulations Section 1.148-7.

“*Receipt*” means any receipt within the meaning of Regulations Section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

“*Regulation*” or “*Regulations*” means the temporary, proposed, or final Income Tax Regulations, and any amendments thereto, promulgated by the Department of the Treasury,

including but not limited to Sections 1.141-0 through 1.141-16, 1.148-0 through 1.148-11, 1.149(b)-1, 1.149(d)-1, 1.149(g)-1, 1.150-1, and 1.150-2.

“*Replacement Proceeds*” means amounts that have a sufficiently direct nexus to an issue or to the governmental purpose of an issue to conclude that the amounts would have been used for that governmental purpose if the Proceeds of the issue were not used or to be used for that governmental purpose, as more fully defined in Regulations Section 1.148-1(c).

“*Sale Proceeds*” means any amounts actually or constructively received from the sale of an issue, including amounts used to pay Underwriters’ discount or compensation, and accrued interest other than Pre-Issuance Accrued Interest. The Sale Proceeds with respect to the obligations issued or executed and delivered in connection with this Arbitrage and Tax Certificate are described under the heading “Source and Disbursement of Funds” of this Arbitrage and Tax Certificate.

“*SLGS*” means United States Treasury Certificates of Indebtedness, Notes, and Bonds—State and Local Government Series.

“*State*” means the State of Florida.

“*Transferred Proceeds*” means Proceeds of a prior issue that become transferred proceeds (within the meaning of Regulations Section 1.148-9(b)) of a refunding issue and cease to be Proceeds of a prior issue when Proceeds of the refunding issue discharge any of the outstanding principal amount of the prior issue. The amount of Proceeds of the prior issue that become Transferred Proceeds of the refunding issue is an amount equal to the unspent Proceeds of the prior issue on the date of that discharge multiplied by a fraction: (a) the numerator of which is the principal amount of the prior issue discharged with Proceeds of the refunding issue on the date of that discharge; and (b) the denominator of which is the total outstanding principal amount of the prior issue on the date immediately before the date of that discharge.

“*Universal Cap*” with respect to any particular obligations means the Value of all such outstanding obligations pursuant to Regulations Section 1.148-6(b)(2).

“*Value*” means Value as determined under Regulations Section 1.148-4(e) for an obligation and Value determined under Regulations Section 1.148-5(d) for an Investment.

“*Yield*” means (a) with respect to obligations such as the obligations issued or executed and delivered as described in this tax document, the yield on such obligations computed in accordance with Regulations Section 1.148-4, and (b) with respect to an Investment, the yield on such Investment computed in accordance with Regulations Section 1.148-5.

* * *

EXHIBIT B
TO ARBITRAGE AND TAX CERTIFICATE
ARBITRAGE REBATE COVENANTS

The District agrees to comply with the following arbitrage rebate covenants (these “Covenants”) to ensure that the obligations referred to in the Arbitrage and Tax Certificate to which these Covenants are attached as an exhibit (the “Obligations”) satisfy the requirements of the Code and Regulations regarding arbitrage rebate.

ARTICLE I
Definitions

Section 101. Terms not otherwise defined in Section 102 have the meanings given to them in the Arbitrage and Tax Certificate to which these Arbitrage Rebate Covenants are attached as an exhibit.

Section 102. The following terms have the following meanings:

Bond Counsel’s Opinion means an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the District.

Bond Year mean the one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year begins on the date of issue of the Series 2020 Bonds and ends on the date selected by the District, except that such Bond Year may not exceed one calendar year. The last Bond Year ends on the date of retirement of the last Series 2020 Bond.

Bond Yield means the discount rate that produces a present value equal to the present value of the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations Section 1.148-4 and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Series 2020 Bonds as determined under Section 1.148-4(b) of the Regulations. The present value of all such payments is to be computed as of the date of issue of the Series 2020 Bonds and using semi-annual compounding on the basis of a 360-day year.

Code means the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

Computation Date means the last day of any Bond Year selected by the District ending on or before the latest date on which the first rebate payment is required to be made under Regulations Section 1.148-3(f), except that the first Computation Date must be within 60 days after the end of the third Bond Year. After the first required payment date, the District must consistently treat either the last day of each Bond Year or the last day of each fifth Bond Year as the Computation Date.

Computation Period means the period between Computation Dates. The first Computation Period begins on the date of issue of the Series 2020 Bonds and ends on the first Computation Date. Subsequent Computation Periods begin on the date immediately following the Computation Date and end on the next Computation Date.

Gross Proceeds means:

(a) any amounts actually or constructively received by the District from the sale of the Series 2020 Bonds but excluding amounts used to pay accrued interest on the Series 2020 Bonds within one year of the date of issuance of the Series 2020 Bonds;

(b) transferred proceeds of the Series 2020 Bonds under Regulations Section 1.148-9;

(c) any amounts actually or constructively received from investing amounts described in (a), (b), or this (c); and

(d) replacement proceeds of the Series 2020 Bonds within the meaning of Regulations Section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Series 2020 Bonds, pledged amounts where reasonable assurance exists that such amounts will be available to pay principal or interest on the Series 2020 Bonds in the event that the District encounters financial difficulties, and other replacement proceeds within the meaning of Regulations Section 1.148-1(c)(4).

Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Indenture.

Investment Property means any security, obligation (other than a tax-exempt bond within the meaning of Code Section 148(b)(3)(A)), annuity contract, or investment-type property within the meaning of Regulations Section 1.148-1(b).

Issue Price is \$6,895,000 (constituting the par amount of the Series 2020 Bonds), which is the price at which the Series 2020 Bonds were sold to the public, as determined under Treasury Regulations Section 1.148-1(b) and (f)(2)(i)(the General Rule).

Nonpurpose Investment means any Investment Property acquired with Gross Proceeds, and that is not acquired to carry out the governmental purposes of the Series 2020 Bonds.

Payment means any payment within the meaning of Regulations Section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement means, as of the last day of any Computation Period, the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement, the Bond Yield is used to determine the future value of Receipts and Payments in accordance with Regulations Section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under Code Section 148(f)(4) or Regulations Section 1.148-7.

Receipt means any receipt within the meaning of Regulations Section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations means the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including any amendments thereto or successor regulations.

Yield means the discount rate that, when used in computing the present value as of the date the Nonpurpose Investment is first allocated to the Series 2020 Bonds of all unconditionally payable receipts from the Nonpurpose Investment, produces an amount equal to the present value of all unconditionally payable payments for the Nonpurpose Investment, using the same compounding interval and financial convention used to compute the Bond Yield. The purchase price of a Nonpurpose Investment is the amount of Gross Proceeds directly used to purchase the investment (including brokerage commissions and other qualified administrative costs within the meaning of Regulations Section 1.148-5(e)(2)) or, if not so directly purchased, its value (as determined under Regulations Section 1.148-5(d)) on the date it becomes a Nonpurpose Investment.

ARTICLE II

Rebate Payments

Section 201. Prior to each Computation Date, the District shall calculate the Rebate Requirement and shall pay to the Trustee for deposit in the Rebate Fund established under the Indenture the amount by which the Rebate Requirement exceeds the amount on deposit in the Rebate Fund. The District shall direct the Trustee to pay to the United States of America out of amounts held in the Rebate Fund:

(a) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount that, when added to the future value of all previous rebate payments with respect to the Series 2020 Bonds (determined as of the last day of such Bond Year), is equal to at least 90% of the Rebate Requirement (determined as of the last day of such Bond Year); and

(b) not later than 60 days after the retirement of the Series 2020 Bonds, an amount that, when added to the future value of all previous rebate payments with respect to the Series 2020 Bonds (determined as of the date of retirement of the Series 2020 Bonds), is equal to 100% of the Rebate Requirement (determined as of the date of retirement of the Series 2020 Bonds).

If the Trustee does not hold sufficient amounts in the Rebate Fund to make such payments, the District shall transfer to the Trustee the amount of any such deficiency. Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

ARTICLE III Investments

Section 301. No Nonpurpose Investment may be acquired for an amount in excess of its fair market value. No Nonpurpose Investment may be sold or otherwise disposed of for an amount less than its fair market value.

Section 302. For purposes of Section 301, whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value must be determined as follows:

(a) The fair market value of a Nonpurpose Investment generally is the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's-length transaction. Fair market value is to be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(b) Except as provided in Sections 303 and 304, a Nonpurpose Investment that is not of a type traded on an established securities market within the meaning of Section 1273 of the Code, is rebuttably presumed to be acquired or disposed of for a price that is *not* equal to its fair market value.

(c) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition is to be treated as establishing the fair market value of the obligation.

Section 303. The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(a) the yield on reasonably comparable direct obligations of the United States of America; and

(b) the highest yield published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

Section 304. A guaranteed investment contract will be considered acquired and disposed of for an amount equal to its fair market value if:

(a) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the District or any other person (whether or not in connection with the Series 2020 Bonds), and that the bid is not being submitted solely as a courtesy to the District or any other person for purposes of satisfying the requirements in the Regulations that the District receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Series 2020 Bonds.

(b) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(c) At least three reasonably competitive providers (*i.e.*, having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Series 2020 Bonds (*e.g.*, the Underwriter, within 15 days of the issue date of the Series 2020 Bonds, or a financial advisor with respect to the investment), and at least one of such three bids must be from a reasonably competitive provider. If the District uses an agent to conduct the bidding, the agent may not bid.

(d) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(e) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(f) The terms for the guaranteed investment contract are commercially reasonable (*i.e.*, have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(g) The provider of the investment contract certifies the administrative costs (as defined in Regulations Section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(h) The District retains until six years after the Series 2020 Bonds are retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the District and a copy of the provider's certification described in (g) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results, and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

ARTICLE IV **Further Assurances**

Section 401. The District agrees to take all necessary and desirable steps to comply with the requirements hereunder in order to ensure that interest on the Series 2020 Bonds is excluded from gross income for federal income tax purposes under the Code. Compliance with any such requirement will not be required in the event that the District receives a Bond Counsel's Opinion that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Series 2020 Bonds, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event that the District receives such a Bond Counsel's Opinion, the District agrees to amend these Covenants to conform to the requirements set forth in such opinion.

Section 402. If for any reason any requirement hereunder is not complied with, the District will take all necessary and desirable steps to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence, and will pay any required interest or penalty under Regulations Section 1.148-3(h).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**EXHIBIT C
TO ARBITRAGE AND TAX CERTIFICATE**

**BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT
TAX-EXEMPT BOND WRITTEN POLICIES AND PROCEDURES**

Banyan Cay Community Development District (the “District”) hereby adopts the following procedures (the “Procedures”) as its written procedures for post-issuance compliance and remedial action applicable to tax-advantaged bonds, notes, leases, certificates of participation or similar (collectively, “Obligations”) heretofore and hereafter issued or executed and delivered by it or on its behalf, including but not limited to the Special Assessment Bonds, Series 2020 (Phase One Assessment Area). These Procedures are intended to supplement any previous post-issuance compliance and remedial action procedures that may have been adopted by the District and any procedures evidenced in writing by any tax document for any Obligations heretofore or hereafter issued, entered into or executed and delivered by it or on its behalf, the related information returns filed in connection with any Obligations and the instructions to such information returns.

- In connection with the issuance or execution and delivery of Obligations, the Chairperson or Vice Chairperson of the Board of Supervisors of the District, or such person’s designee (the “Responsible Person”) is to sign a tax certificate prepared by bond counsel that sets forth (a) the District’s reasonable expectations as to the use of the proceeds of the Obligations and (b) instructions for post-issuance compliance with the federal tax laws relating to the Obligations.
- The Responsible Person is to identify persons responsible for monitoring ongoing compliance with the tax requirements and provide adequate training to such persons, including training with respect to the requirements of the Code applicable to the expenditure of proceeds of the Obligations and the private use of Obligation-financed projects. The Responsible Person is to annually review the District’s compliance with these procedures and the terms of the applicable tax certificates in order to determine whether any violations have occurred so that such violations may be timely remediated through the “remedial action” provisions of the United States Treasury Regulations or through the Voluntary Closing Agreement Program administered by the Internal Revenue Service.
- The Responsible Person is to work with the District’s bond counsel or underwriter, if applicable, to obtain a written certification as to the offering price of the Obligations so as to establish the issue price of the Obligations for arbitrage purposes.
- The Responsible Person is to work with bond counsel to ensure that the Internal Revenue Service Form 8038-G is filed in a timely manner in connection with the issuance or execution and delivery of the Obligations.
- The Responsible Person is to periodically check the financial records and expenditures of the District to ensure that (a) clear and consistent accounting procedures are being used to

track the investment and expenditure of Obligation proceeds, (b) Obligation proceeds are timely expended in accordance with the applicable temporary period rules of the arbitrage regulations, and (c) Obligation proceeds are expended in accordance with the expectations contained in the tax certificate. The Responsible Person will ensure that a final allocation of Obligation proceeds (including investment earnings) to qualifying expenditures is made with respect to its Obligation proceeds.

- The Responsible Person will review arrangements for the use of Obligation-financed facilities with non-governmental persons or organizations or the federal government (collectively referred to as “private persons”) in order to ensure that applicable private activity bond limitations are not exceeded. Such review is to include the review of contracts or arrangements with private persons with respect to Obligation-financed facilities that could result in private business use of the facilities, including the sale of facilities, leases, management or service contracts, research contracts or other contracts involving “special legal entitlements” to Obligation-financed facilities. If it appears that applicable private activity bond limitations are exceeded, the District will immediately contact district counsel and bond counsel.
- The Responsible Person will ensure that the District complies with the arbitrage rebate covenants contained in the tax certificate. The Responsible Person will hire a rebate analyst or otherwise ensure that the rebate calculations are conducted in a timely manner in order to determine compliance with arbitrage yield restrictions and rebate requirements with respect to the Obligations.
- The District will ensure that for each issue of Obligations, the transcript and all records and documents described in these procedures will be maintained while any of the Obligations are outstanding and during the seven-year period following the final maturity or redemption of that Obligation issue, or if the Obligations are refunded or refinanced (or re-refunded or re-refinanced), while any of the refunding Obligations are outstanding and during the seven-year period following the final maturity or redemption of the refunding Obligations.
- The District will follow the procedures described above to comply with all tax-exempt bond requirements. If any violations of the above or other applicable provisions of the federal tax laws relating to its Obligations are discovered, the District will immediately contact district counsel or bond counsel to determine the appropriate course of action to remedy such violation, including contacting the Internal Revenue Service, if necessary.

* * *

**ATTACHMENT I TO
WRITTEN PROCEDURES**

REMEDIAL ACTION PROCEDURES

Capitalized terms used herein but not defined have the meaning assigned thereto in Section 5 below and in the Post-Issuance Compliance and Remedial Action Procedures to which these Remedial Action Procedures are attached. This attachment describes written procedures that may be required to be taken by, or on behalf of, an issuer of Obligations.

1. **Background.** The maintenance of the tax status of the Obligations (*e.g.*, as tax-exempt obligations under federal tax law) depends on the compliance with the requirements set forth in the Internal Revenue Code of 1986, as amended (the “Code”). *The purpose of this attachment is to set forth written procedures to be used in the event that any deliberate actions are taken that are not in compliance with the tax requirements of the Code (each, a “Deliberate Action”) with respect to the Obligations, the proceeds thereof or the property financed or refinanced by the Obligations (the “Financed Property”).*

2. **Consultation with Bond Counsel.** If Deliberate Action is taken with respect to the Obligations and the Financed Property subsequent to the issuance or execution and delivery of the Obligations, then the District must consult with Greenberg Traurig, P.A. or other nationally recognized bond counsel (“Bond Counsel”) regarding permissible Remedial Actions that may be taken to remediate the effect of any such Deliberate Action upon the federal tax status of the Obligations. Note that remedial actions or corrective actions other than those described in this attachment may be available with respect to the Obligations and the Financed Property, including remedial actions or corrective actions that may be permitted by the Commissioner through the voluntary closing agreement programs (VCAP) provided by the Internal Revenue Service from time to time.

3. **Conditions to Availability of Remedial Actions.** None of the Remedial Actions described in this attachment are available to remediate the effect of any Deliberate Action with respect to the Obligations and the Financed Property unless the following conditions have been satisfied and unless Bond Counsel advises otherwise:

(a) The issuer of the Obligations reasonably expected on the date the Obligations were originally issued or executed and delivered that the Obligations would meet neither the Private Business Tests nor the Private Loan Financing Test of Code Section 141 and the Treasury Regulations thereunder for the entire term of the Obligations (such expectations may be based on the representations and expectations of the applicable conduit borrower, if there is one);

(b) The weighted average maturity of the Obligations did not, as of such date, exceed 120 percent of the Average Economic Life of the Financed Property;

(c) Unless otherwise excepted under the Treasury Regulations, the District delivers a certificate, instrument or other written records satisfactory to Bond Counsel demonstrating that the terms of the arrangement pursuant to which the Deliberate Action

is taken is bona fide and arm's-length, and that the non-exempt Person using either the Financed Property or the proceeds of the Obligations as a result of the relevant Deliberate Action will pay fair market value for the use thereof;

(d) Any disposition must be made at fair market value and any Disposition Proceeds actually or constructively received by the District as a result of the Deliberate Action must be treated as gross proceeds of the Obligations and may not be invested in obligations bearing a yield in excess of the yield on the Obligations subsequent to the date of the Deliberate Action; and

(e) Proceeds of the Obligations affected by the Remedial Action must have been allocated to expenditures for the Financed Property or other allowable governmental purposes before the date on which the Deliberate Action occurs (except to the extent that redemption or defeasance, if permitted, is undertaken, as further described in Section 4(A) below).

4. **Types of Remedial Action.** Subject to the conditions described above, and only if the District obtains an opinion of Bond Counsel prior to taking *any of the actions below* to the effect that such actions will not affect the federal tax status of the Obligations, the following types of Remedial Actions may be available to remediate a Deliberate Action subsequent to the issuance of the Obligations:

(a) *Redemption or Defeasance of Obligations.*

(i) If the Deliberate Action causing either the Private Business Use Test or the Private Loan Financing Test to be satisfied consists of a fair market value disposition of any portion of the Financed Property exclusively for cash, then the District may allocate the Disposition Proceeds to the redemption of Nonqualified Obligations pro rata across all of the then-outstanding maturities of the Obligations at the earliest call date of such maturities of the Obligations after the taking of the Deliberate Action. If any of the maturities of the Obligations outstanding at the time of the taking of the Deliberate Action are not callable within 90 days of the date of the Deliberate Action, the District may (subject generally to the limitations described in (iii) below) allocate the Disposition Proceeds to the establishment of a Defeasance Escrow for any such maturities of the Obligations within 90 days of the taking of such Deliberate Action.

(ii) If the Deliberate Action consists of a fair market value disposition of any portion of the Financed Property for other than exclusively cash, then the District may use any funds (other than proceeds of the Obligations or proceeds of any obligation the interest on which is excludable from the gross income of the registered owners thereof for federal income tax purposes) for the redemption of all Nonqualified Obligations within 90 days of the date that such Deliberate Action was taken. In the event that insufficient maturities of the Obligations are callable by the date that is within 90 days after the date of the Deliberate Action, then such funds may be used for the establishment of a Defeasance Escrow within

90 days of the date of the Deliberate Action for all maturities of the Nonqualified Obligations not callable within 90 days of the date of the Deliberate Action.

(iii) If a Defeasance Escrow is established for any maturities of Nonqualified Obligations that are not callable within 90 days of the date of the Deliberate Action, written notice must be provided to the Commissioner of Internal Revenue Service at the times and places as may be specified by applicable regulations, rulings, or other guidance issued by the Department of the Treasury or the Internal Revenue Service. Note that the ability to create a Defeasance Escrow applies only if the Obligations to be defeased and redeemed all mature or are callable within ten and one-half (10.5) years of the date the Obligations are originally issued or executed and delivered. If the Obligations are not callable within ten and one-half years, and none of the other remedial actions described below are applicable, the remainder of this attachment is for general information only, and Bond Counsel must be contacted to discuss other available options.

(b) *Alternative Use of Disposition Proceeds.* Use of any Disposition Proceeds in accordance with the following requirements may be treated as a Remedial Action with respect to the Obligations:

(i) the Deliberate Action consists of a disposition of all or any portion of the Financed Property for not less than the fair market value thereof for cash;

(ii) the District reasonably expects to expend the Disposition Proceeds resulting from the Deliberate Action within two years of the date of the Deliberate Action;

(iii) the Disposition Proceeds are treated as Proceeds of the Obligations for purposes of Code Section 141 and the Regulations thereunder, and the use of the Disposition Proceeds in the manner in which such Disposition Proceeds are in fact so used would not cause the Disposition Proceeds to satisfy the Private Activity Bond Tests;

(iv) no action is taken after the date of the Deliberate Action to cause the Private Activity Bond Tests to be satisfied with respect to the Obligations, the Financed Property or the Disposition Proceeds (other than any such use that may be permitted in accordance with the Treasury Regulations);

(v) Disposition Proceeds used in a manner that satisfies the Private Activity Bond Tests or that are not expended within two years of the date of the Deliberate Action must be used to redeem or defease Nonqualified Obligations in accordance with the requirements set forth in Section 4(a) hereof; and

(vi) In the event that Disposition Proceeds are to be used by any organization described in Code Section 501(c)(3), the Nonqualified Obligations must be treated as reissued for certain purposes of the Code (for instance, a new TEFRA approval may need to be received). The District should consult with

Bond Counsel as to any additional requirements that may be applicable in this case.

(c) *Alternative Use of Financed Property.* The District may be considered to have taken sufficient Remedial Actions to cause the Obligations to continue their applicable treatment under federal tax law if, subsequent to taking any Deliberate Action with respect to all or any portion of the Financed Property:

(i) the portion of the Financed Property subject to the Deliberate Action is used for a purpose that would be permitted for qualified tax-exempt obligations;

(ii) the disposition of the portion of the Financed Property subject to the Deliberate Action is not financed by a person acquiring the Financed Property with proceeds of any obligation the interest on which is exempt from the gross income of the registered owners thereof under Code Section 103 for purposes of federal income taxation or an obligation described in Sections 54A-54F, 54AA, or 6431 of the Code; and

(iii) any Disposition Proceeds other than those arising from an agreement to provide services (including Disposition Proceeds arising from an installment sale) resulting from the Deliberate Action are used to pay the debt service on the Obligations on the next available payment date or, within 90 days of receipt thereof, are deposited into an escrow that is restricted as to the investment thereof to the yield on the Obligations to pay debt service on the Obligations on the next available payment date.

Absent an opinion of Bond Counsel, no Remedial Actions are available to remediate the satisfaction of the Private Security or Payment Test regarding the same with respect to the Obligations. Nothing herein is intended to prohibit Remedial Actions not described herein that may become available subsequent to the date the Obligations are originally issued or executed and delivered to remediate the effect of a Deliberate Action taken with respect to the Obligations, the proceeds thereof or the Financed Property.

5. **Additional Defined Terms.** For purposes of this attachment, the following terms have the following meanings:

“*Commissioner*” means the Commissioner of Internal Revenue, including any successor person or body.

“*Defeasance Escrow*” means an irrevocable escrow established to redeem obligations on their earliest call date in an amount that, together with investment earnings thereon, is sufficient to pay the entire principal of, and interest and call premium on, obligations from the date the escrow is established to the earliest call date. A Defeasance Escrow may not be invested in any investment under which the obligor is a user of the proceeds of the obligations. A Defeasance Escrow may be invested at an unrestricted yield provided that any earnings earned on investments bearing a yield in excess of the yield on the bonds funding such escrow must be rebated to the federal government in accordance with the arbitrage rebate rules.

“*Deliberate Action*” means any action, occurrence or omission by the District that is within the control of the District that causes either (1) the Private Business Use Test to be satisfied with respect to the Obligations or the Financed Property (without regard to the Private Security or Payment Test), or (2) the Private Loan Financing Test to be satisfied with respect to the Obligations or the proceeds thereof. An action, occurrence, or omission is not a Deliberate Action if (1) the action, occurrence, or omission would be treated as an involuntary or compulsory conversion under Code Section 1033, or (2) the action, occurrence, or omission is in response to a regulatory directive made by the government of the United States.

“*Disposition Proceeds*” means any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition of property (other than Investments) financed with the proceeds of the Obligations.

“*Nonqualified Obligations*” means that portion of the Obligations outstanding at the time of a Deliberate Action in an amount that, if the outstanding Obligations were issued or executed and delivered on the date on which the Deliberate Action occurs, the outstanding Obligations would not satisfy the Private Business Use Test or the Private Loan Financing Test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the Deliberate Action.

“*Private Activity Bond Tests*” means, collectively, the Private Business Use Test, the Private Security or Payment Test, and the Private Loan Financing Test.

“*Private Business Tests*” means the Private Business Use Test and the Private Security or Payment Test.

“*Private Business Use Test*” has the meaning set forth in Code Section 141(b)(1).

“*Private Loan Financing Test*” has the meaning set forth in Code Section 141(c).

“*Private Security or Payment Test*” has the meaning set forth in Code Section 141(b)(2).

“*Remedial Action*” means any of the applicable actions described in Section 4 hereof, or such other actions as may be prescribed from time to time by the Department of the Treasury or the Internal Revenue Service, that generally have the effect of rectifying noncompliance by the District with certain provisions of Code Section 141 and the Regulations thereunder and are undertaken by the District to maintain the federal tax status of the Obligations.

6. **Change in Law.** Statutory or regulatory changes, including but not limited to clarifying Treasury Regulations, may affect the matters set forth in this attachment.

EXHIBIT D
TO ARBITRAGE AND TAX CERTIFICATE
CERTIFICATE OF THE UNDERWRITER

December 17, 2020

The undersigned, on behalf of **FMSbonds, Inc.**, as underwriter (the “Underwriter”) of the Special Assessment Bonds, Series 2020 (Phase One Assessment Area) (the “Series 2020 Bonds”) issued by the Banyan Cay Community Development District (the “District”), on the date hereof in the aggregate principal amount of \$6,895,000, hereby certifies as set forth below. Capitalized terms not otherwise defined herein have the meanings set forth in the Arbitrage and Tax Certificate to which this Certificate of the Underwriter is attached as an exhibit.

1. Pursuant to the Bond Purchase Contract (the “Bond Purchase Contract”), executed on December 2, 2020 (the “Sale Date”), between the Underwriter and the District, the Underwriter purchased the Series 2020 Bonds at an aggregate price of \$6,895,000 (representing the aggregate principal amount of the Series 2020 Bonds). Out of this amount, the Underwriter is retaining an underwriter’s discount of \$137,900.

2. As of the date of this Certificate, the first price at which at least 10% of each maturity of the Series 2020 Bonds was sold to the Public is the respective prices listed in *Appendix A*.

3. The funding of the Series 2020 Reserve Account in the amount of the Series 2020 Reserve Requirement is reasonably required to sell the Series 2020 Bonds.

4. Based on the Underwriter’s pricing schedules (attached as *Appendix B*), which the Underwriter prepared using industry standard financial software:

(i) The weighted average maturity of the Series 2020 Bonds is 19.2065 years.

(ii) The Yield on the Series 2020 Bonds is not less than 3.9763%.

For purposes of this Certificate, the term:

Maturity means Series 2020 Bonds with the same credit and payment terms. Series 2020 Bonds with different maturity dates, or Series 2020 Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

Public means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter.

Underwriter means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2020 Bonds to the Public and (B) any person that agrees pursuant to a

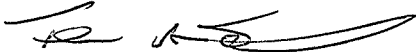
written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2020 Bonds to the Public (including a member of the selling group or a party to a retail distribution agreement participating in the initial sale of the Series 2020 Bonds to the Public).

Related Party, for purposes of this Certificate, generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

The undersigned is certifying only as to facts in existence on the date hereof. The undersigned is not engaged in the practice of law and, accordingly, nothing herein represents the undersigned's interpretation of any laws or the application of any laws to those facts and nothing should be understood as a representation as to the legal sufficiency of the factual matters set forth herein.

IN WITNESS WHEREOF, the undersigned, on behalf of the Underwriter, has set his hand to this Certificate of the Underwriter as of the date first written above.

FMSbonds, Inc., as Underwriter

By: 
Name: Theodore A. Swinarski
Title: Senior Vice President—Trading

**APPENDIX A
TO
EXHIBIT D
TO ARBITRAGE AND TAX CERTIFICATE**

**\$6,895,000
BANYAN CAY COMMUNITY DEVELOPMENT DISTRICT
SPECIAL ASSESSMENT BONDS, SERIES 2020
(PHASE ONE ASSESSMENT AREA)**

Series 2020 Bonds

<u>Amount</u>	<u>Maturity Date</u>	<u>Rate</u>	<u>Price</u>	<u>Yield</u>
\$ 535,000	11/01/2025	2.75%	100.000	2.75%
6,360,000	11/01/2051	4.00	100.000	4.00

The Underwriter has offered the Series 2020 Bonds to the public on or before the Sale Date at the initial offering prices shown and has sold at least 10% of each maturity of the Series 2020 Bonds to the public at the offering prices set forth above as of the Sale Date.

**APPENDIX B
TO
EXHIBIT D
TO ARBITRAGE AND TAX CERTIFICATE
FINAL NUMBERS**

EXHIBIT E
TO ARBITRAGE AND TAX CERTIFICATE
CERTIFICATE OF THE DEVELOPER

December 17, 2020

The undersigned, on behalf of Banyan Cay Dev. LLC, Banyan Cay Villas, LLC and Banyan Cay Resort & Golf LLC, each a Delaware limited liability company (collectively, the “Developer”) as Developer of certain real property located within the Banyan Cay Community Development District (the “District”), hereby certifies as set forth below in connection with the issuance by the District of its Special Assessment Bonds, Series 2020 (Phase One Assessment Area) (the “Series 2020 Bonds”). Capitalized terms not otherwise defined herein have the meaning set forth in the Arbitrage and Tax Certificate to which this Certificate of the Developer is attached as *Exhibit E*.

1. The District lands encompass approximately 95.24+/- gross acres and are located within the City in Palm Beach County, Florida. The District lands, which were previously used as two golf courses, are being developed as a mixed-use commercial and residential planned development to be known as “Banyan Cay Resort & Golf” (the “Development”).

2. The Engineer Report, dated June 2019, estimated the costs to complete the capital improvement plan to be \$7,463,830 with the Phase One Assessment Area Project being approximately 90% complete, and the Developer having spent approximately \$12,800,000 on the development, a portion of which was spent on the capital improvement plan, the Developer now reasonably expects the costs for the Phase One Assessment Area Project to be higher than originally contemplated and such costs will equal or exceed the amount of Net Proceeds of the Series 2020 Bonds deposited into the Series 2020 Acquisition and Construction Account, along with any earnings thereon and any amounts that may transferred thereto.

3. Two assessment areas have been created to facilitate the District’s financing program and to coincide with development of the Development. The Series 2020 Bonds are secured by the Series 2020 Special Assessments which are levied against the land within the Phase One Assessment Area. The Phase One Assessment Area consists of approximately 92.03+/- gross acres and is planned to contain 74 residential units consisting of 52 estate home units (the “Estate Home Portion”) and 22 resort villa units (the “Villa Portion”) and, together with the Estate Home Portion, the “Residential Portion”), a 150-room hotel with a 200-car parking garage (the “Hotel”), and an 18,243 square foot clubhouse facility (the “Clubhouse”) and, together with the Hotel, the “Resort Portion”). The Phase Two Assessment Area is planned to contain a 179-unit high-rise condominium building (the “Condominium Portion”). The Development is connected to and a part of the Banyan Cay Golf Course, which was designed by Jack Nicklaus and completed in November 2017. The Banyan Cay Golf Course is located outside the boundaries of the District.

3. Land development in the Residential Portion is expected to be completed in the third quarter of 2021 and marketing of the residential units is expected to commence in the fourth

quarter of 2020. The Developer reasonably expects that residential units will sell and close to end users at a rate of at least 24 units per year until buildout.

3. Banyan Cay Dev. LLC, a Delaware limited liability company, is the land developer and homebuilder of all or a portion of the Estate Home Portion and will be the land developer and builder in the Condominium Portion of the Development. Banyan Cay Villas, LLC, a Delaware limited liability company, is the land developer and homebuilder of the Villa Portion of the Development. Banyan Cay Resort & Golf LLC, a Delaware limited liability company, is the developer and owner of the Resort Portion. Banyan Cay Dev. LLC, Banyan Cay Villas, LLC and Banyan Cay Resort & Golf LLC are herein referred to collectively as the “Developer,” however, each entity is only responsible for the development of its respective portion of the Development. In connection with the operation of the Resort Portion, Banyan Cay Resort & Golf LLC has entered into a franchise agreement with Hyatt Franchising, L.L.C. under the brand “Destination Hotels.”

4. The Developer acquired the lands within the District and an additional 94 lots outside of the District on August 15, 2015 for approximately \$26,000,000. The acquisition was financed with \$14,000,000 in cash from the Developer and a purchase money mortgage on the property financed the remainder of the purchase price. The Developer subsequently sold the 94 undeveloped lots to SS Banyan Cay Developer, LLC, a Florida limited liability company affiliated with the Sobel Co. for \$10,000,000. The purchase money mortgage has since been refinanced. On September 30, 2020, the Developer closed on two construction loans in the amount of \$61,000,000 (the “First Construction Loan”) and \$19,000,000 (the “Second Construction Loan”). The First Construction Loan provides funds to finance the construction of the Hotel, which is currently under construction, and to refinance a construction loan used for the construction of the Hotel and the Club. The Second Construction Loan provides up to \$11,000,000 to finance the construction of the Villa Portion and up to \$8,000,000 to finance the completion of the Hotel. Approximately \$30,000,000 is available to be drawn upon under the First Construction Loan and approximately \$19,000,000 is available to be drawn upon under the Second Construction Loan.

5. The Developer will act with all due diligence and reasonable speed in the construction of the remainder of the Development and the sale of residential units.

6. Any property that the District acquires from the Developer will be acquired at a price that does not exceed the lesser of the actual costs of the public infrastructure or the fair market value.

7. The Board is reasonably anticipated to transition to a majority of the board elected by “qualified electors” within the meaning of section 190.006 of Chapter 190, Florida Statutes (the “Act”) by November 2028 (“Expected Transition Date”). If the requisite 250 threshold of qualified electors is not reached, members of the Board of Supervisors will continue to be elected by landowners within the District. The Developer reasonably expects that the majority of members of the Board will, upon full absorption of the Development, expected to occur by November 2028, be unrelated to the Developer.

8. The undersigned certifies that the District was not organized and will not cause the District to be operated to perpetuate private control by the Developer or other nongovernmental persons, and that it will not cause the District to act or fail to act in a manner that delays the transition of the Board to a board that is elected by “qualified electors” in accordance with the Act.

9. During the period of completion of the Development, and until such time as a majority of the members of the Board is elected by qualified electors pursuant to the Act, the Developer expects that all members of the Board of Supervisors elected thereby will comply with all provisions of the Act, and that all members of the Board of Supervisors so elected by the Developer will act only in furtherance of the public purposes described in the Act.

10. The entire Phase One Assessment Area Project consists of and will continue to consist of facilities that will be owned by the District or other governmental entities. No portion of the Phase One Assessment Area Project is reasonably expected to consist of improvements to property that will be owned by the Developer or any other nongovernmental person following completion.


11. The Developer does not presently expect to have to make a true-up payment under the True-Up Agreement, dated the date hereof.

We understand that Greenberg Traurig, P.A., as bond counsel, will rely on the representations and certifications provided herein in giving its opinion that interest on the Series 2020 Bonds is exempt from income tax for federal income tax purposes (subject to the limitations set forth in such opinion).

IN WITNESS WHEREOF, the undersigned, on behalf of the Developer, has set his or her hand to this Certificate of the Developer as of the date first written above.


BANYAN CAY DEV. LLC, a Delaware limited liability company

By: DJG Dev. LLC, a Florida limited liability company, its manager

By: 
Name: Domenic J. Gatto, Jr.
Title: Sole Member and Manager

BANYAN CAY VILLAS, LLC, a Delaware limited liability company

By: DJG Dev. LLC, a Florida limited liability company, its manager

By: 
Name: Domenic J. Gatto, Jr.
Title: Sole Member and Manager

BANYAN CAY RESORT & GOLF LLC, a Delaware limited liability company

By: DJG Dev. LLC, a Florida limited liability company, its manager


By: 
Name: Domenic J. Gatto, Jr.
Title: Sole Member and Manager

EXHIBIT F
TO ARBITRAGE AND TAX CERTIFICATE
PRIVATE BUSINESS COVENANTS

(a) The Private Business Test under Code Section 141(b) is met if: (i) more than ten percent of the Proceeds of the Bonds are to be used for any private business use (the “Private Use Test”); *and* (ii) the payment of principal of or interest on more than ten percent of the Proceeds of the Series 2020 Bonds is (under the terms of such issue or any underlying arrangement) directly or indirectly (1) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (2) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use (the “Private Payment Test”). The ten percent limit described above is reduced to five percent if the private business use is unrelated or disproportionate to the governmental use. All private business use and private payments with respect to the Financed Property must be aggregated in determining whether the Private Business Test has been met.

(b) The Issuer acknowledges that in determining whether all or any portion of the Financed Property is used, directly or indirectly, in the trade or business of a nongovernmental person, use of any portion of the Financed Property by a nongovernmental person pursuant to a lease, management contract, service contract, output contract, special legal entitlement or other preferential use arrangement must be examined. The federal government and its agencies, and entities that are exempt from federal income tax pursuant to Code Section 501(c)(3) that are not also instrumentalities of a state or local governmental unit, are considered nongovernmental persons for purposes of the Private Business Test.

(c) For purposes of applying the Private Business Test, use of any portion of the Financed Property by a nongovernmental person on the same basis as use that is available to the general public does not in and of itself result in private business use. Therefore, revenues resulting from such use are generally not taken into account in applying the Private Payment Test unless there is other private use associated with the Financed Property. For this purpose, use by the general public includes the use of portions of the Financed Property by nongovernmental persons if such use is pursuant to rates that are generally applicable and uniformly applied (even if different rates apply to different classes of users, if the difference in rates is customary and reasonable), provided that the amount of such use by a single user pursuant to a single arrangement does not exceed 200 days.

(d) The Issuer covenants that any roads and roadway systems financed with the Bonds will be operated as public roads and any member of the public will have free and unrestricted access to such roads. If any roads within the Issuer are or are expected to be private roads, such roads will not be financed with Proceeds of the Series 2020 Bonds.

(e) For purposes of applying the Private Business Test, use of a portion of the Financed Property that is not available for general public use by a nongovernmental person pursuant to a temporary use exception provided in the Regulations generally does not in and of itself result in private business use. Therefore, revenues resulting from such use are not taken

into account in applying the Private Payment Test unless there is other private use associated with the Financed Property. The temporary use exceptions include: (i) use that is 100 days or less, including all renewal options, if the use is pursuant to generally applicable and uniformly applied rates that are not reasonably available to natural persons not engaged in a trade or business, the property has not been financed for a principal purpose of providing that property for use by that nongovernmental person, and the arrangement does not result in ownership of the financed property; or (ii) use that is 50 days or less, including all renewal options, if the use is pursuant to an arrangement that is negotiated at arm's-length and compensation under the arrangement is at Fair Market Value, the property has not been financed for a principal purpose of providing that property for use by that nongovernmental person, and the arrangement does not result in ownership of the financed property.

(f) Certain incidental uses of the Financed Property by nongovernmental persons are disregarded in determining private business use to the extent that those uses do not exceed 2.5 percent of the Proceeds of the Series 2020 Bonds allocable to the Financed Property. A use of a facility is incidental if: (i) the use does not involve the transfer to the nongovernmental person of possession and control of space that is separated from other areas of the facility by walls, partitions, or other physical barriers (except for vending machines, pay telephones, kiosks and similar uses) (a "nonpossessory use"); (ii) the nonpossessory use is not functionally related to any other use of the facility by the same person (other than a different nonpossessory use); and (iii) all nonpossessory uses of the facility do not, in the aggregate, involve the use of more than 2.5 percent of the facility. Common incidental uses include pay telephones, vending machines, advertising displays, and use for television cameras.

(g) The Issuer acknowledges that arrangements with third parties including, but not limited to, arrangements involving solar panel, cell tower or wind turbine installations upon the Financed Property, or similar direct or indirect uses by third parties of the Financed Property may cause the Series 2020 Bonds to meet the Private Business Test or the Private Payment Test. The Issuer should contact Bond Counsel to discuss the impact of any such proposed arrangements upon the tax status of the Series 2020 Bonds and other obligations issued or executed and delivered by or on behalf of the Issuer from time to time.

(h) The Issuer agrees that it will not take any action that would cause the Series 2020 Bonds to meet the Private Business Test. Accordingly, the Issuer covenants that it will not permit any payment of the principal or interest on more than ten percent of the Series 2020 Bonds (under the terms of such Series 2020 Bonds or any underlying arrangement) to be directly or indirectly secured by any interest in property used or to be used for a private business use or by payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property used or to be used for any private business use while the Series 2020 Bonds are outstanding.

(i) In determining whether the Series 2020 Bonds meet the Private Payment Test, the Issuer must compare the present value of all private payments allocated to the Series 2020 Bonds to the present value of the debt service to be paid over the term of the Series 2020 Bonds (or such other applicable measurement period as provided in the Regulations for refundings), using a discount rate equal to the Bond Yield (as the Bond Yield may be adjusted as provided in the Regulations for refundings, if applicable). Payments taken into account in determining whether

the Series 2020 Bonds meet the Private Payment Test include only payments with respect to private business use of the Financed Property allocable to the Series 2020 Bonds. For purposes of applying the Private Payment Test:

(i) the payment of a generally applicable tax determined in accordance with the Regulations is not taken into account;

(ii) any payment that is properly allocable to the payment of ordinary or necessary expenses (as defined under Code Section 162) directly attributable to the operation and maintenance of the portion of the Financed Property used by that person (other than general overhead and administrative expenses, and not including depreciation or interest expense) is not taken into account; and

(iii) a private payment that is used directly or indirectly to acquire the property used by a non-governmental entity (for which the Issuer makes a written indication within 60 days of the Expenditure that the private payment is to be used for the property and for which, within 18 months after the later of the date the Expenditure is made or the property is placed in service, the Issuer allocates the payment directly to the Expenditure for the property) is not taken into account.

(j) The Issuer understands that the Private Business Test is an actual, “in fact” test and covenants to monitor, calculate and aggregate both actual private payments with respect to the Financed Property and the appropriate amount of operation and maintenance expenditures attributable thereto on an annual basis. The Issuer also covenants to maintain all such records of such calculations while the Series 2020 Bonds remain outstanding.

(k) The Issuer or another governmental entity is the owner of all portions of the Financed Property for federal income tax purposes, and the Issuer expects that it or another governmental entity will continue to be the owner of all portions of the Financed Property for federal income tax purposes during the period that any Series 2020 Bonds are outstanding.

(l) The Issuer agrees that except as otherwise advised by Bond Counsel, during the period that any Bond is outstanding, the Issuer will not enter into any management or service contract with any entity other than a governmental entity (including any management agreement with a homeowner’s association) for the operation of any portion of the Financed Property unless the management or service contract complies with the guidelines provided in Revenue Procedure 2017-13 (or subsequent guidance) or such other authority as may control at the time. The Issuer similarly agrees that any management or service contract entered into with another governmental entity for use or operation of any portion of the Financed Property will require that, except as otherwise advised by Bond Counsel, such governmental entity will not enter into any management or service contract with another entity unless the management or service contract complies with the guidelines provided in Revenue Procedure 2017-13 (or subsequent guidance) or such other authority as may control at the time.

(m) The Issuer represents that the Financed Property will be owned and operated in a manner that complies with the requirements set forth in this Section, and reasonably expects that the Financed Property will continue to be so owned and operated throughout the term of the

Series 2020 Bonds. The Issuer will not change the ownership or use of all or any portion of the Financed Property in a manner that fails to comply with the requirements of this Section unless it receives an opinion of Bond Counsel that such change of ownership or use will not adversely affect the excludability from gross income of interest on the Series 2020 Bonds for federal income tax purposes.

(n) The Issuer agrees to maintain copies of all leases, management contracts, service contracts or similar agreements that provide preferential use arrangements with respect to the Financed Property for the term of the Series 2020 Bonds (including any bonds issued to refund the Series 2020 Bonds) and for a period of at least seven years thereafter.

(o) No portion of the Financed Property or the Series 2020 Bonds will be used by the Issuer with respect to any output facility within the meaning of Code Section 141(b)(4) unless, in the opinion of Bond Counsel, such use will not result in the inclusion in gross income of interest on the Series 2020 Bonds for federal income tax purposes. An “output facility” for purposes of this paragraph generally means electric and gas generation, transmission, distribution and related facilities, and water collection, storage and distribution facilities.

(p) None of the Proceeds of the Series 2020 Bonds will be used (directly or indirectly) to finance or refinance the acquisition of any “nongovernmental output property” as defined in Code Section 141(d).

(q) In accordance with Code Section 141(b)(5), the Issuer does not expect that the lesser of the Proceeds of the Series 2020 Bonds to be allocable to any private business use, or the Proceeds of the Series 2020 Bonds to be allocable to private security or payments, will exceed \$15 million.

SCHEDULE 1

PHASE ONE ASSESSMENT AREA PROJECT

All terms not otherwise defined in this *Schedule 1* are as defined in the Engineer’s Report or in the Arbitrage and Tax Certificate to which this *Schedule 1* is attached.

Pursuant to the Engineer’s Report, the District Engineer estimated the total costs of the capital improvement plan to be that set forth below:

<u>Capital Improvement Plan*</u>	<u>Estimated Costs</u>
Roadway Construction	\$1,046,000
Water Distribution	1,485,000
Wastewater Collection	1,068,000
Drainage and Stormwater Management	1,402,000
Earthwork (Lake Excavation and Site Preparation)	1,257,130
Impact Fees for County Roads and Parks	180,000
Connection Fees for Water and Sewer	843,800
Installation Fees for Potable Water Only	<u>181,900</u>
Total	\$7,463,830

While the infrastructure to be financed as part of the capital improvement plan has not changed, the expected costs of such improvements have increased. In particular to the Series 2020 Bonds, based on the Phase One Assessment Area Project being 90% complete, and the costs the Developer has spent to date on the capital improvement plan, the Developer reasonably expects that the costs of the Phase One Assessment Area Project will exceed the amount originally anticipated and will equal or be more than the amounts deposited in the Series 2020 Acquisition and Construction Account for the Phase One Assessment Area Project.

53477471v8/185232.010100