

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 12<sup>th</sup> day of July, 2012, by and between:

**Portofino Isles Community Development District**, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, whose mailing address is c/o Governmental Management Services – South Florida, LLC, 5701 N. Pine Island Road, Suite 370, Fort Lauderdale, Florida 33321 (the "District"); and

**Portofino Isles CDD Holdings, Inc.**, a Florida corporation, whose address is 5020 W. Linebaugh Avenue, Tampa, Florida 33624 (the "SPE" and, together with the District, the "Parties").

RECITALS

WHEREAS, the District was established by Ordinance No. 02-80 adopted by the City Council of the City of Port St. Lucie, Florida, on August 12, 2002, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (the "Act"), and is validly existing under the Constitution and laws of the State of Florida; and

WHEREAS, the Act authorizes the District to issue bonds for the purpose, among others, of planning, financing, constructing, operating and/or maintaining certain infrastructure, including, but not limited to, stormwater management facilities, water facilities, wastewater facilities, parks and open space improvements, and other basic infrastructure improvements within or without the boundaries of the District; and

WHEREAS, the District adopted an improvement plan for the planning, design, acquisition, construction, and installation of various infrastructure improvements and facilities within and without the boundaries of the District, as described in the *Engineer's Report* (dated August 2005) prepared by Culpepper & Terpening, Inc. (the "Improvements"); and

WHEREAS, the District financed the Improvements from the sale of \$6,375,000.00 Portofino Isles Community Development District Special Assessment Bonds, Series 2005 (the "Bonds"), which said Bonds were issued under a Trust Indenture dated on or about October 1, 2005 (the "Trust Indenture"), between the District and Wachovia Bank, National Association, as the original trustee, which position has been replaced by U.S. Bank National Association (the "Trustee"), and

WHEREAS, any capitalized term used herein and not otherwise defined shall have the same meaning ascribed to such term in the Trust Indenture; and

WHEREAS, the Bonds were issued pursuant to the Act and the Trust Indenture; and

WHEREAS, in order to raise funds required to service the debt evidenced by the Bonds, the District levies pursuant to Chapters 170 and 190, *Florida Statutes*, non-ad valorem special assessments (the "Capital Assessments") against the benefitted lands within the District as more

specifically described in the *Special Assessment Methodology* (dated September 20, 2005) prepared by Governmental Management Services-South Florida, LLC; and

WHEREAS, to the extent that any landowner within the District fails to pay all or a portion of the Capital Assessments allocated to its land (and such Capital Assessments are not collected and enforced pursuant to the Uniform Method of Collection provided for in Chapter 197, *Florida Statutes*) (the “**Uniform Method**”), the District is required by the Trust Indenture and the Act to take certain remedial actions; and

WHEREAS, one or more Events of Default have occurred and are continuing under the Trust Indenture due to non-payment of Capital Assessments, thereby resulting in the authorization to pursue certain remedial measures set forth in the Trust Indenture, including the rights of the beneficial owners of the Bonds to direct remedial proceedings and to request the District to undertake or refrain from undertaking remedial actions, to which the District may have a right to as the assessing entity; and

WHEREAS, notwithstanding such rights, the beneficial owner of a majority of the Outstanding Bonds (together with its successors and assigns, the “**Majority Owner**”) has directed that neither the Trustee nor the District take any further remedial action relating to the Events of Default until directed otherwise by the Majority Owner; and

WHEREAS, the Trustee, on behalf of all the beneficial owners of the Bonds, acknowledges that the SPE shall become the owner of the property described on Exhibit “A” attached hereto (herein, the “**Property**”) as a result of the purchase of a final judgment of foreclosure filed by Wells Fargo Bank, National Association in the foreclosure action (the “**Wells Foreclosure Judgment**”) filed in the Circuit Court of the Nineteenth Judicial circuit in and for St. Lucie County, Florida (Case No. 2009-CA-009966); and

WHEREAS, the Majority Owner has provided its consent to the Trustee to transfer \$50,000 from the Revenue Fund created under the Trust Indenture to pay the purchase price of the Wells Foreclosure Judgment; and

WHEREAS, there has been a budget developed for fiscal year 2012 regarding the payment of O&M Assessments (as such term is defined below) regarding the Property and other anticipated items of expense regarding the Property (herein, the “**2012 Budget**”); and

WHEREAS, in accordance with this Agreement, the District will defer collection of the Capital Assessments encumbering the Property until such time as direction to the contrary is given by the Majority Owners, and suspend moving forward with the action that the District previously filed in St. Lucie County Circuit Court (Case No. 10-CA-7214-MF) to foreclose a portion of the Property (the “**CDD Foreclosure Action**”); and

WHEREAS, subject to the Majority Owner approving expenditures out of the trust estate created under the Trust Indenture, the District will continue to collect operation and maintenance assessments (the “**O&M Assessments**”) burdening the Property as described herein; and

WHEREAS, the Parties desire to enter into this Agreement concerning the Property and warrant that they have the right, power and authority to enter into and be bound by this Agreement.

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

1. **INCORPORATION OF RECITALS AND EXHIBITS.** The recitals stated above are true and correct and they are hereby incorporated by reference as a material part of this Agreement. Each exhibit attached to this Agreement is hereby incorporated by reference as a material part of this Agreement.

2. **CAPITAL ASSESSMENTS HELD IN ABEYANCE.** The Parties acknowledge and agree that the Capital Assessments burdening the Property shall not be certified for collection using the Uniform Method or otherwise billed to the SPE (once a certificate of title of the Property is issued in the name of the SPE), but shall be held in abeyance and continue to constitute a lien in accordance with Florida law on the Property co-equal with the lien of State, County and municipal taxes and superior to all other liens. The Capital Assessments shall be held in abeyance until such time as the District receives notice from the Majority Owner to the contrary. The District also agrees to suspend moving forward with the CDD Foreclosure Action until further direction from the Majority Owner, provided that the Trustee, on behalf of all beneficial owners of the Bonds, acknowledges that the CDD Foreclosure Action cannot be indefinitely suspended and may be involuntarily dismissed by the court for failure to prosecute. Notwithstanding the occurrence and continuance of one or more Events of Default under the Trust Indenture and the duties imposed on the Trustee under the Trust Indenture as a result, both the District and the Majority Owner direct the Trustee to not take any action regarding such Events of Default unless directed otherwise in writing by the Majority Owner. Further, the Majority Owner also directs the District not to pursue its rights under the Trust Indenture and the Act to institute remedial actions against the SPE unless directed to do so in writing by the Majority Owner.

3. **COLLECTION OF O&M ASSESSMENTS.** The Parties acknowledge and agree that O&M Assessments burdening the Property shall not be certified for collection using the Uniform Method. The O&M assessments shall be directly billed to the SPE (once a certificate of title of the Property is issued in the name of the SPE) and invoiced to the SPE on a quarterly basis as District expenses accrue. The SPE shall pay the O&M Assessments within thirty (30) days of receiving the quarterly invoice from the District. No funds held by the Trustee, including funds held in the trust estate created under the Trust Indenture (the "Trust Estate") shall be a source for paying the O&M Assessments unless such use has been authorized by the Majority Owner and the Trustee in its sole discretion and determining that such use will not leave the Trustee without funds to pay its fees and expenses.

4. **OBLIGATIONS OF SPE.** All costs and expenses relating to the Property are to be borne by the SPE, and the SPE (and not the Trustee or the District) shall be entitled to receive any profits and bear any loss incurred in connection with any subsequent disposition of the Property. In consideration of the Bondholder's agreement to forebear the collection of the

Capital Assessments and to direct the Trustee to forebear pursuing its duties because of the existence of one or more Events of Default under the Trust Indenture, the SPE acknowledges and agrees that (i) it will pay all delinquent Capital Assessments once the forbearance set forth in Section 2 above is terminated; (ii) it will not raise any affirmative defenses in the event the foreclosure action continues or a new foreclosure action is filed after the forbearance period; and (iii) it assumes the true-up and completion agreements with respect to the Property. The District and the Trustee shall have no liability or incur any expenses with respect to the ownership, management and disposition of the Property. The parties hereby agree that Lerner Real Estate Advisors, Inc. and Lerner Real Estate Advisors Realty, Inc., each a Florida corporation, will initially manage and market the Property, respectively, pursuant to the terms and provisions of a management and brokerage agreement to be entered into with the District and the SPE in a form acceptable to the Parties and the Majority Owner.

**5. 2012 BUDGET.** The 2012 Budget (which may be amended from time to time with the consent of the Majority Owner) is attached hereto as Exhibit "B." The Majority Owner shall be required to give its consent to such 2012 Budget and approve of the funding sources from the Trust Estate before the Trustee is authorized to release any funds from the Trust Estate.

**6. TERM.** This Agreement shall be terminated upon the mutual written agreement of the Parties hereto or upon the sale or other transfer by the SPE of all of the Property.

**7. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE.** A default by either Party to this Agreement shall entitle the other Party to all remedies available at law or in equity, which may include, but shall not be limited to, the right of actual damages, specific performance and/or injunctive relief. Each Party shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair a Party's right to protect its rights from interference by any third party not a Party to this Agreement.

**8. ENFORCEMENT OF AGREEMENT.** In the event either Party is required to enforce this Agreement by court proceedings or otherwise, the prevailing Party shall be entitled to recover from the Party not prevailing all fees and costs incurred, including, but not limited to, reasonable attorneys' fees and costs for any trial, alternative dispute resolution, or appellate proceedings.

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

**10. AUTHORIZATION.** The execution of this Agreement has been duly authorized by the appropriate body or official of each Party, each Party has complied with all the requirements of law, and each party has the full power and authority to comply with the terms and provisions of this Agreement.

**11. NOTICES.** All notices, requests, consents and other communications under or in connection with this Agreement (each, a "Notice") shall be in writing and shall be delivered, mailed by First Class U.S. Mail, postage prepaid, or commercial next business day delivery service to the following addresses:

If to the District: Portofino Isles Community Development District  
c/o Governmental Management Services  
5701 N. Pine Island Road, Suite 370  
Fort Lauderdale, Florida 33321  
Attention: Rich Hans, District Manager

With a copy to: Billing, Cochran, Lyles, Mauro & Ramsey, P.A.  
SunTrust Center, 6th Floor  
515 East Las Olas Boulevard  
Fort Lauderdale, FL 33301  
Attention: Gerald Knight

If to the SPE: Portofino Isles CDD Holdings, Inc.  
5020 W. Linebaugh Avenue  
Tampa, Florida 33624  
Attention: Harry Lerner

If to the Trustee: U.S. Bank National Association  
225 E. Robinson Street, Suite 250  
Orlando, FL 32801  
Attention: Kathy Broeker

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the majority of the banks operating in New York City shall not be regarded as business days. Legal counsel for each Party may deliver Notice on behalf of the Party represented by such legal counsel. Any Party or other person to whom Notices are required to be sent or copied may notify the Parties and other addressees of any change in name or address to which Notices shall be sent or copied by providing written notice of the same to the Parties and addressees set forth herein, and any such change shall be effective five (5) days after such notice is delivered in accordance with this section.

**12. THIRD PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the Parties, the beneficial owners of the Bonds (including the Majority Owner) (the "Owners"), the Trustee, and their respective successors and assigns, and no right or cause of action shall accrue upon, or by reason of, this Agreement to or for the benefit of any other person or entity. Nothing in this Agreement, whether express or implied, is intended to, or may be construed to, confer upon any person or entity other than the Parties, the Owners, the Trustee, and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure solely to the benefit of, and shall be binding upon the Parties, the Owners, and their respective successors and assigns. The foregoing to the contrary notwithstanding, the Owners shall have no obligations or liability under this Agreement.

13. **ASSIGNMENT.** Neither Party may assign this Agreement or the right to receive any money due or to become due under or pursuant to this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

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

15. **EFFECTIVE DATE.** This Agreement shall be effective only upon execution by both Parties hereto.

16. **PUBLIC RECORDS.** The Parties understand and agree that all documents of any kind provided to the District in connection with this Agreement may be public records and treated as such in accordance with Florida law.

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

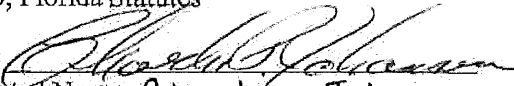
18. **HEADINGS FOR CONVENIENCE ONLY.** The descriptive headings in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

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

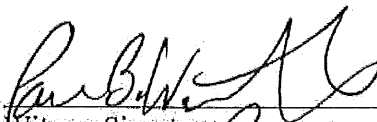
DISTRICT

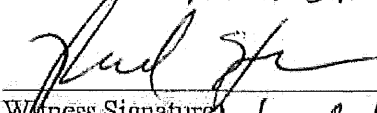
Portofino Isles Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes

By:   
Printed Name: Charles Johansen  
Title: Chairman

Date signed: July 10, 2012

Witnesses:

  
Witness Signature  
Printed Name: Paul Walker

  
Witness Signature  
Printed Name: Richard Hearn

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

**DISTRICT**

**Witnesses:**

**Portofino Isles Community Development District**, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes

\_\_\_\_\_  
Witness Signature  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date signed: \_\_\_\_\_, 2012

\_\_\_\_\_  
Witness Signature  
Printed Name: \_\_\_\_\_

**SPE**

**Portofino Isles CDD Holdings, Inc.**, a Florida corporation

*Julie A. Best*  
\_\_\_\_\_  
Witness Signature  
Printed Name: *Julie A. Best*

By: *[Signature]*  
Printed Name: *Anthony Levaee*  
Title: *President*


Date signed: *7-12-12*, 2012

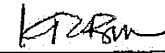
*[Signature]*  
\_\_\_\_\_  
Witness Signature  
Printed Name: *11/11/11 9 MURRAY*

ACKNOWLEDGEMENT OF TRUSTEE

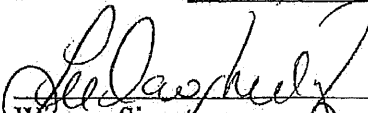
At the written direction of the beneficial owners of a majority of the Bonds outstanding (the "Majority Owner"), the Trustee joins in the execution of this Agreement solely to acknowledge (i) that the foreclosure action currently pending will not be voluntarily dismissed by the District unless directed by the Majority Owner; (ii) such foreclosure action will not be actively pursued but can not, in accordance with applicable law, indefinitely be suspended; (iii) that the collection and enforcement of the Capital Assessments by the District will be held in abeyance pursuant to Section 2 of this Agreement; (iv) pursuant to Section 4 of this Agreement, the Trustee has been instructed by the Majority Owner not to pursue any remedial action with regards to existing Events of Default under the Trust Indenture unless instructed otherwise by the Majority Owner; (v) at the direction of the Majority Owner to pay \$50,000 from the Revenue Fund for the SPE to purchase the Wells Fargo Judgment; and (vi) at the direction of the Majority Owner to pay the other items comprising the Budget from the sources so identified in the Trust Estate and that such Budget may be amended from time to time with the consent of the Majority Owner.

**U.S. BANK NATIONAL  
ASSOCIATION**, a national banking  
association, **SOLELY AS TRUSTEE  
UNDER THE TRUST INDENTURE**

  
\_\_\_\_\_  
Witness Signature  
Printed Name: Ann Ruara

By:   
\_\_\_\_\_  
Printed Name: Kathy Brocker  
Title: VP

Date signed: 7.18., 2012

  
\_\_\_\_\_  
Witness Signature  
Printed Name: Lee Dagher



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

Lots 1 through 6, 17 through 114, 129 through 136, 151 through 194, 203 through 210 and 219 through 300 of Portofino Court, according to the plat thereof recorded in Plat Book 53, page 8 of the Public Records of St. Lucie County, Florida.

**EXHIBIT "B"**

**BUDGET**

**[See Attached]**

ORL 298190605v10/7-9-12/020978.034800

Portofino Court Community Development District  
 Portfolio Iss: CDD Holdings, Inc. Carry Cost  
 July 3rd, 2012

	2012	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Total 2012
Foreclosure Acquisition		56,000	-	-	-	-	-	50,000
Legal		50,000	-	-	-	-	-	50,000
Operations and Maintenance (1)		49,180	-	-	-	-	-	49,180
Property Taxes		-	-	-	16,630	-	-	16,630
Property Maintenance		10,000	-	-	-	-	-	10,000
G/L Insurance		1,500	-	-	6,000	-	-	7,500
LREA Management Fee		5,000	5,000	5,000	5,000	5,000	5,000	30,000
Total		165,680	5,000	5,000	11,000	21,630	5,000	213,310
Total w/ Property Taxes (2)		1,442,399	5,000	5,000	11,000	21,630	5,000	1,490,029

	2013	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Total 2013
Foreclosure Acquisition		-	-	-	-	-	-	-	-	-	-	-	-	-
Legal		5,000	-	-	-	-	5,000	-	-	-	-	-	-	10,000
Operations and Maintenance (3)		10,763	-	-	10,763	-	-	10,763	-	-	-	-	-	43,051
Property Taxes		-	-	-	-	-	-	-	-	-	16,796	-	-	16,796
Property Maintenance		2,500	-	-	-	-	2,500	-	-	-	-	-	-	5,000
G/L Insurance		5,000	-	-	5,000	-	-	5,000	-	-	6,000	-	-	6,000
LREA Management Fee		5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Total		23,263	5,000	5,000	15,763	5,000	12,500	15,763	5,000	5,000	21,796	5,000	5,000	140,547

	2014	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Total 2014
Foreclosure Acquisition		-	-	-	-	-	-	-	-	-	-	-	-	-
Legal		5,000	-	-	-	-	5,000	-	-	-	-	-	-	10,000
Operations and Maintenance (3)		10,763	-	-	10,763	-	-	10,763	-	-	10,763	-	-	43,052
Property Taxes		-	-	-	-	-	-	-	-	-	-	17,132	-	17,132
Property Maintenance		2,500	-	-	-	-	2,500	-	-	-	-	-	-	5,000
G/L Insurance		5,000	-	-	5,000	-	-	5,000	-	-	6,000	-	-	6,000
LREA Management Fee		5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Total		23,263	5,000	5,000	15,763	5,000	12,500	15,763	5,000	5,000	21,763	5,000	5,000	141,184

Per Unit Carryover	Annual	Per Unit
2012 (54-months)	213,310	567
2013	140,847	573
2014	141,184	574
Total	495,341	2,014

Per Unit Carryover	Annual	Per Unit
2009 (54-months)	1,490,029	6,057
2010	140,847	573
2011	141,184	574
Total	1,772,060	7,203

Trust Estate Balances (6/30/12)	
Portofino CDD 2005 Reserve Fund	131,907
Portofino CDD 2005 Construction Fund	49,834
Portofino CDD 2005 Default Expenditure	476,303
Portofino CDD 2005 Deferred Cost Fund	0
Total Trust Estate Balance	658,044

(1) Assumes payment of delinquent 2007 & 2008 direct bill O&M.  
 (2) Per 6.29.12 call, SPE will not pay delinquent property taxes. The "Total w/ Property Taxes" is for discussion purposes only.  
 (3) 2009, 2010 and 2011 O&M has been billed on-roll. 2013 & 2014 assumes \$175/lot (2012 CDD preliminary budget) paid quarterly  
 \*\*Development may require a contribution of \$152,428 to the City for participation in construction of Rosser Blvd\*\*