

**AMENDED AND RESTATED COST SHARE AGREEMENT BETWEEN THE
SANDMINE ROAD COMMUNITY DEVELOPMENT DISTRICT AND THE WINDSOR
ISLAND RESORT HOMEOWNERS ASSOCIATION, INC., FOR IRRIGATION
SERVICES¹**

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is made and entered into this 21st day of October, 2021 by and between:

SANDMINE ROAD COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, with a mailing address of 219 East Livingston Street, Orlando, Florida 32801 (hereinafter, the "District"), and

WINDSOR ISLAND RESORT HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, with a mailing address of 4901 Vineland Road, Suite 500, Orlando, Florida 32811 (hereinafter "Association" and, together with District, the "Parties").

RECITALS:

WHEREAS, the District was established by an ordinance adopted by the Board of County Commissioners in and for Polk County, Florida, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure, including roadways, neighborhood infrastructure (water, sewer, landscaping and irrigation,), and stormwater management; and

WHEREAS, Association is a Florida not-for-profit corporation owning, operating and maintaining various improvements and facilities in the District; and

WHEREAS, the District has constructed an irrigation system which has mainline connections with meters and includes certain irrigation water submeter(s) (the "Submeter"); and

WHEREAS, the water utility account (the "Account") is in the name of the Association and the Association pays the associated invoices; and

WHEREAS, the Submeter irrigates landscaping improvements that are located on Association property (the "Association Property") as well as District property ("District Property"), the general locations of which are depicted in the attached **Exhibit A**; and

WHEREAS, for ease of administration, potential cost savings to property owners and residents, and the benefits received by the property owners and residences within the District, the

¹ This Amended and Restated Cost Share Agreement amends and restates that certain COST SHARE AGREEMENT BETWEEN THE SANDMINE ROAD COMMUNITY DEVELOPMENT DISTRICT AND THE WINDSOR ISLAND RESORT HOMEOWNERS ASSOCIATION, INC., FOR IRRIGATION SERVICES, dated January 21, 2021.

District and Association desire to enter into this Agreement to provide for the allocation of costs associated with the irrigation so that each party pays its respective share.

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

1. **Recitals.** The recitals stated above are true and correct and by this reference are incorporated into and form a material part of this Agreement.

2. **Cost Allocation.** Each party shall be responsible for its proportionate share of the utility costs on the Account. During the term of this Agreement, the District shall pay its proportionate share of the irrigation water usage costs incurred to the Association based on the percentage of usage attributed to POC1 to be calculated as described in **Exhibit B** attached hereto. Such share shall be seventy-six percent (76%) for the District and twenty-four percent (24%) for the Association.

3. **Billing and Payment.** The Account is set up in the name of the Association and utility bills associated with the Account will be sent to the Association. Once the Association receives a monthly bill on the Account, the Association shall calculate the amount due from District for usage attributable to POC1 as set forth in Section 2 above and shall send an invoice to the District at the address listed in this Agreement. District will then have thirty (30) days to submit payment to the Association at the address listed in this Agreement. Failure of District to make timely payment of its proportionate share shall constitute a default under Section 4 of this Agreement.

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

5. **Enforcement of Agreement.** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings.

6. **Agreement.** This instrument shall constitute the final and complete expression of this Agreement between the Parties relating to the subject matter of this Agreement.

7. **Amendments.** Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing that is executed by both of the Parties hereto.

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

9. **Notices.** All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

A. If to District: Sandmine Road
Community Development District
219 East Livingston Street
Orlando, Florida 32801
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300 (32301)
Post Office Box 6526
Tallahassee, Florida 32314
Attn: Tucker Mackie

B. If to Association: Windsor Island Resort
Homeowners Association, Inc.
4901 Vineland Road, Suite 500
Orlando, Florida 32811
Attn: _____

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the Parties may deliver Notice on behalf of the Parties. Any party or other person to whom Notices are to be sent or copied may notify the other Parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties and addressees set forth herein.

10. **Third Party Beneficiaries.** This Agreement is solely for the benefit of the formal Parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties hereto and their respective representatives, successors and assigns.

11. **Assignment.** Neither party may assign this Agreement or any monies to become due hereunder without the prior written approval of the other party.

12. **Controlling 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. The Parties agree that venue shall be in Polk County, Florida.

13. **Effective Date and Term.** The Agreement shall be effective after execution by both Parties hereto and shall remain in effect unless terminated by either of the Parties hereto in accordance with the provisions of Section 14 of this Agreement.

14. **Termination.** The Association shall have the right, but not the obligation, to terminate this agreement for default by District if District shall become more than ninety (90) days delinquent on its payment obligations as set forth above. In addition, either party may terminate this Agreement without cause upon sixty (60) days' notice to the other. However, as a condition precedent to the District being released from its obligations hereunder, the District must cause the District Property to be placed on a separate meter connected to an account in its own name and must pay for all expenses associated with such re-metering. The District shall remain obligated by the terms and conditions of this Agreement until such time as the new meter and account is established and all payments due under this Agreement are made.

15. **Public Records.** Association understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, shall be treated as such in accordance with the District's Records Retention Policy and Florida law. Pursuant to Section 119.07(1)(a), Florida Statutes, Association shall permit such records to be inspected and copied by any person desiring to do so. Failure of Association to comply with public records laws to the extent required by statute will result in immediate termination of the Agreement.

16. **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.

17. **Headings for Convenience Only.** The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

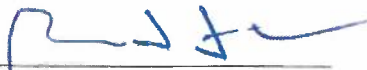
18. **Limitations on Governmental Liability.** Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida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

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the Parties execute this agreement the day and year first written above.

Attest:

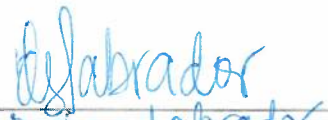
**SANDMINE ROAD COMMUNITY
DEVELOPMENT DISTRICT**

By: 
George Flint

By: 
Its: Eric Baker
President

Attest:

**WINDSOR ISLAND RESORT
HOMEOWNERS ASSOCIATION, INC.**


Daphne Labrador
Community assoc. manager


By: 
Its: Eric Baker
President

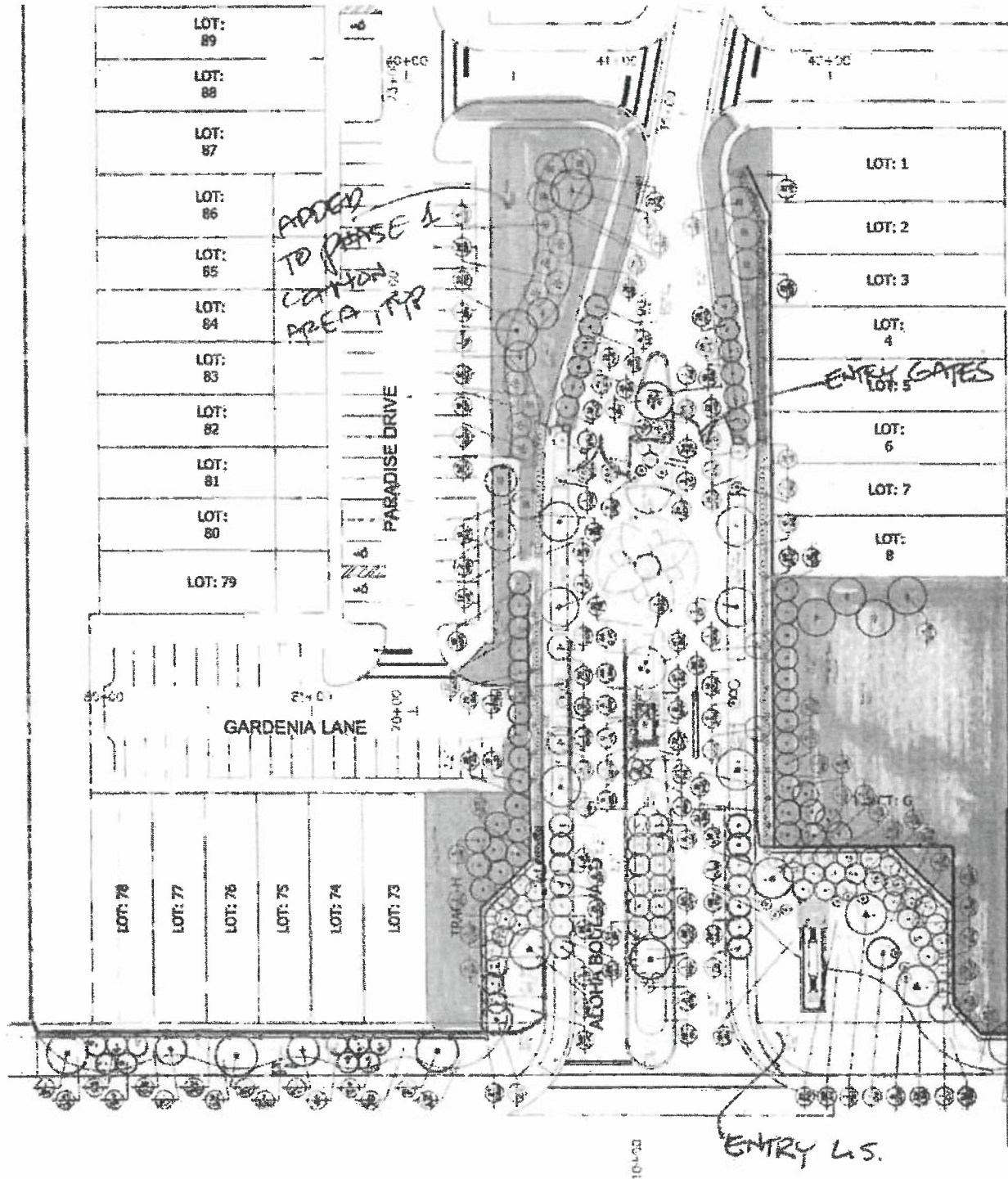
Exhibit A: Description of District Property and Association Property

Exhibit B: Letter from Richard R. Conant, Foster Conant & Associates, May 28, 2021

EXHIBIT A

District-Maintained Property 1.28

Association-Maintained Property 1.35



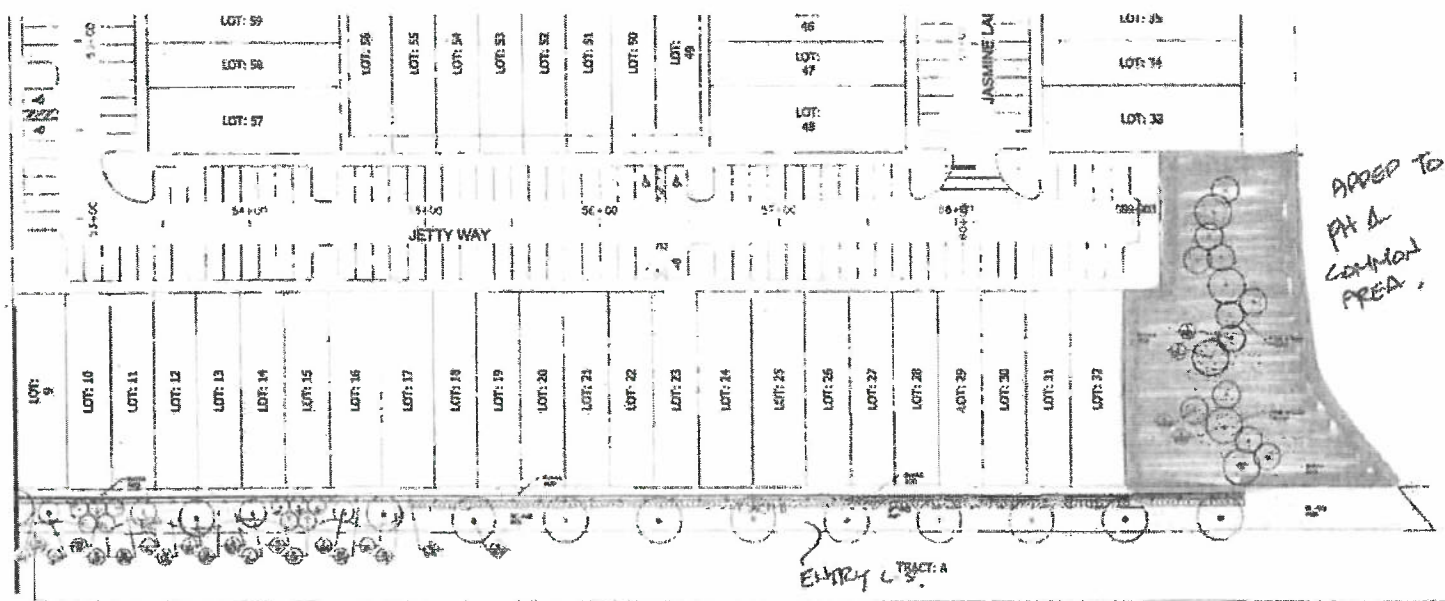
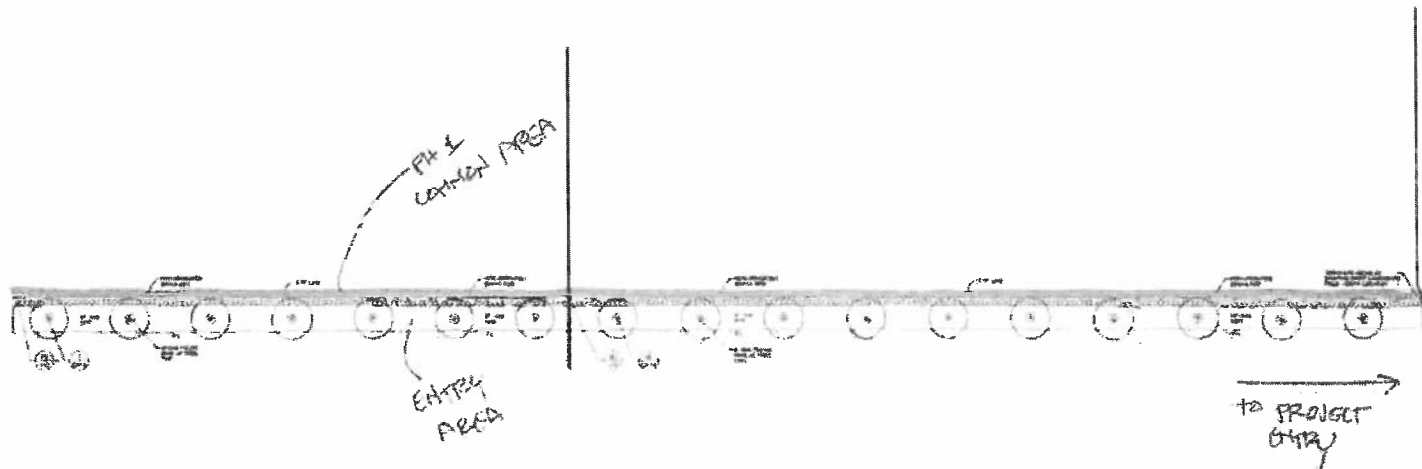


EXHIBIT B



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