

RESOLUTION NO. 2007- 350

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND OBLIGATIONS OF A SUPPLEMENTARY ALTERNATE ASSURANCES AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND THE TOLOMATO COMMUNITY DEVELOPMENT DISTRICT, IN ORDER TO PROVIDE ST. JOHNS COUNTY WITH FINANCIAL ASSURANCE FOR CONSTRUCTION OF IMPROVEMENTS REQUIRED BY THE NOCATEE DEVELOPMENT OF REGIONAL IMPACT (DRI) DEVELOPMENT ORDER, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE SUPPLEMENTARY ALTERNATE ASSURANCES AGREEMENT ON BEHALF OF THE COUNTY

WHEREAS, the Tolomato Community Development District (the "District") and St. Johns County (the "County") previously entered into that certain Interlocal Agreement providing for Waiver of Bond with Alternate Financial Assurance for Construction of Improvements, dated July 19, 2006 (the "Interlocal Agreement"), which is attached, and incorporated as an Exhibit to this Resolution; and

WHEREAS, on October 16, 2007, St. Johns County approved a Notice of Proposed Change to the Nocatee DRI Development Order by Resolution No. 2007-305 (the "NOPC"), which is attached, and incorporated as an Exhibit to this Resolution; and

WHEREAS, Special Condition 25(a)(ii) of the Nocatee DRI Development Order, as amended by the NOPC, provides that no permits for any development beyond Phase II of the Nocatee DRI Development Order shall be issued until such time as St. Johns County receives financial assurances satisfactory to the County that Community Development District bond proceeds have been deposited with a Bond trustee and are available to fund completion of the St. Johns County portion of the Racetrack Road Extension set forth in said Special Condition 25(a)(ii); and

WHEREAS, on October 19, 2007, the District issued its \$167,185,000.00 Tolomato Community Development District Special Assessment Bonds, Series 2007; and

WHEREAS, the District has submitted to the County, a Supplementary Alternate Assurances Agreement, which is attached and incorporated as an Exhibit to this Resolution, and which references the additional financial assurances noted above; and

WHEREAS, the County has reviewed the Supplementary Alternate Assurances, and determined that execution of such Agreement would be in the on-going interests of the County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida that:

Section 1. The above recitals are incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners approves the terms, conditions, provisions, and requirements of the Supplementary Alternate Assurances Agreement between St. Johns County, Florida, and the Tolomato Community Development District.

Section 3. The Board of County Commissioners authorizes the County Administrator, or designee, to execute, on behalf of the County, a Supplementary Alternate Assurances Agreement with the Tolomato Community Development District substantially in the form of that which is attached hereto and incorporated herein by reference.

Section 4. Upon acceptance by the County Administrator, the Clerk is instructed to record this Agreement in the Official Records of St. Johns County Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 13th day of November, 2007.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

Ben Rich

Name: Ben Rich

Title: Chairman, BCC

ATTEST:

CHERYL STRICKLAND, CLERK

By: Pam Halterman
Deputy clerk

RENDITION DATE 11/15/07

PREPARED BY:
M. LYNN PAPPAS, ESQ.

AFTER RECORDING, RETURN TO:
GLENN THOMPSON
PAPPAS METCALF JENKS & MILLER, P.A.
245 RIVERSIDE AVENUE, SUITE 400
JACKSONVILLE, FLORIDA 32202

SUPPLEMENTARY ALTERNATE ASSURANCES AGREEMENT

THIS SUPPLEMENTARY ALTERNATE ASSURANCES AGREEMENT (this “Supplementary Agreement”), dated as of the ____ day of _____, 2007, is entered into by and between:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 (“County”); and

Tolomato Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in St. Johns County, Florida, whose address is 14785-4 St. Augustine Road, Jacksonville, Florida 32258 (“District”)

RECITALS

WHEREAS, the County and the District have entered into that certain Interlocal Agreement Providing for Waiver of Bond with Alternate Financial Assurance for Construction of Improvements dated July 19, 2006 (the “Interlocal Agreement”). All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Interlocal Agreement; and

WHEREAS, the parties wish to enter into this Supplementary Agreement pursuant to Section 5 of the Interlocal Agreement to provide Alternate Assurances for the portion of the DRI Roadway Improvements described in DRI Order, Special Condition 25(a)(ii), (the “Racetrack Road Extension”); and

WHEREAS, the District Levy Resolution has been modified by District Resolution No. 2007-11, which increased to \$510,207,055 the levy of non ad valorem assessments upon all developable lands within the jurisdiction of the District, also being all developable lands subject to the DRI Order within St. Johns County, for the purpose of construction of District master infrastructure improvements, including the Racetrack Road Extension; and

WHEREAS, on October 19, 2007, the District issued its \$167,185,000.00 **Tolomato Community Development District** (St. Johns County, Florida) Special Assessment Bonds, Series 2007, yielding \$121,431,134.97 in construction funds (the “2007 Construction Funds”), a portion of which has been allocated to construction of the Racetrack Road Extension; and

WHEREAS, pursuant to DRI Order, Special Condition 25(a)(ii), as amended by Notice of Proposed Change dated October 16, 2007, Resolution No. 2007-305 (the “DRI Modification”), certain development rights within the DRI are restricted until such time as the County and District enter into this Supplementary Agreement; and

WHEREAS, the parties wish to enter into this Supplementary Agreement to provide Alternate Assurances as to completion of the Racetrack Road Extension so as to satisfy the financial assurance condition set forth in DRI Order, Special Condition, 25(a)(ii), as modified by the DRI Modification.

WHEREAS, the District is not requesting that this Supplementary Agreement be used to satisfy the County Bonding Requirements.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the District agree as follows:

SECTION 1. AUTHORITY. This Interlocal Agreement is entered into pursuant to the authority set forth in Chapters 125, 163, and 190, Florida Statutes, and other applicable laws.

SECTION 2. RECITALS AND EXHIBITS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Interlocal Agreement. All exhibits identified herein are hereby incorporated by reference to the same extent as if fully set forth herein.

SECTION 3. RACETRACK ROAD EXTENSION.

3.1 **COMPLETION OF RACETRACK ROAD EXTENSION.** The District hereby agrees to complete or cause to be completed the Racetrack Road Extension, by no later than October 20, 2016, subject only to reasonable delays due to Force Majeure, and to abide by and comply with the provisions of Section 3 of the Interlocal Agreement, including particularly Sections 3.2 and 3.6, with respect to the Racetrack Road Extension. The County agrees that the District's pledge to complete or cause to be completed the Racetrack Road Extension together with the remaining provisions of this Section 3 shall satisfy the financial assurance requirement of DRI Order, Special Condition 25(a)(ii), as modified by the DRI Modification, as Alternate Assurances pursuant to the Interlocal Agreement, as supplemented hereby.

3.2 **COMPLETION COST.** The District has provided to the County the District Engineer's Certification as to the Completion Cost of the Racetrack Road Extension and the remaining portions of the Phase I Roadways subject to the Interlocal Agreement, dated as of _____, equal to \$_____. The District hereby agrees that that portion of the 2007 Construction Funds equal to such amount (the "Committed Bond Proceeds") shall be utilized by the District solely for costs to complete the Racetrack Road Extension and the Phase I Roadways. Nothing herein prevents the District from utilizing more than the Committed Bond Proceeds, nor from utilizing the proceeds of any future bond issue or other revenue source for the completion of the Racetrack Road Extension or the Phase I Roadways.

3.3 **ASSURANCES.** The amount of the Committed Bond Proceeds equals the Completion Cost of the Racetrack Road Extension and the Phase I Roadways. Therefore, no additional assurances as contemplated under the Interlocal Agreement are required in connection

with this Supplementary Agreement. The District has provided the County an attorney's opinion in form attached hereto as **Exhibit "A"**.

3.4 **DUTY TO FUND AS TO ROADWAYS.** The District shall comply with the provisions of Sections 3.2 and 3.6 of the Interlocal Agreement to provide funds for the costs of completion of the Racetrack Road Extension and the Phase I Roadways if there shall occur a Roadway Event of Default as to the Racetrack Road Extension or the Phase I Roadways, or any portion thereof. In addition to the circumstances set forth in Section 3.6 of the Interlocal Agreement, a Roadway Event of Default shall be deemed to have occurred if the Racetrack Road Extension is not complete by October 20, 2016, subject to reasonable delays due to Force Majeure.

3.5 **ACCEPTANCE OF ALTERNATE ASSURANCES.** The County hereby accepts the Alternate Assurances as to the Racetrack Road Extension as provided in this Section 3 to satisfy the financial assurance requirement of the DRI Order, Special Condition 25(a)(ii), as modified by the DRI Modification.

SECTION 4. MAINTENANCE BONDS. Nothing contained herein shall be construed to waive or modify the requirements of Sections 6.04.08D of the Land Development Code as to the duty to deliver maintenance bonds for the Racetrack Road Extension or the Phase I Roadways.

SECTION 5. NO LIEN OR ENCUMBRANCE. Nothing contained herein shall constitute a lien or encumbrance upon any portion of the lands subject to the DRI Order.

SECTION 6. AUTHORITY TO CONTRACT. The execution of this Supplementary Agreement has been duly authorized by the appropriate body or official(s) of the County and the District, each party has complied with all applicable requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

SECTION 7. LIMITATIONS ON GOVERNMENTAL LIABILITY; INSURANCE. Nothing in the Interlocal Agreement, as supplemented hereby, shall be deemed a waiver of immunity limits

of liability or sovereign immunity of either the County or the District, pursuant to Chapter 768, Florida Statutes, and any amendment thereto, or other statute or law. Nothing in the Interlocal Agreement, as supplemented hereby 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.

To the extent permitted by law, the District agrees to indemnify and hold the County harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence by the District, its supervisors, officers, agents, employees or independent contractors.

To the extent permitted by law, the County agrees to indemnify and hold the District harmless from and against any and all damages, losses or claims, including, but not limited to, legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence by the County, its supervisors, officers, agents, employees or independent contractors.

SECTION 8. NEGOTIATION AT ARM'S LENGTH. This Supplementary Agreement has been negotiated fully between the parties as an arm's length transaction and with the assistance of legal counsel. Both parties participated fully in the preparation of this Supplementary Agreement. In the case of a dispute concerning the interpretation of any provision of this Supplementary Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the language in question will not be interpreted or construed against either party.

SECTION 9. NOTICES. Any notices required or allowed to be delivered shall be in writing and be delivered in accordance with the Interlocal Agreement.

SECTION 10. DEFAULT. The terms of Section 13 of the Interlocal Agreement shall apply to any default hereunder.

SECTION 11. OTHER AGREEMENTS. Nothing in this Interlocal Agreement shall be construed as superseding, altering or amending the conditions and terms of any other agreement between the parties hereto, other than the Interlocal Agreement.

SECTION 12. ASSIGNMENT OR TRANSFER. Neither party may assign or transfer its rights or obligations under this Supplementary Agreement without the prior written consent of the other party.

SECTION 13. BINDING EFFECT. The Interlocal Agreement, as supplemented hereby shall be binding upon and shall inure to the benefit of the County, the District, and their respective successors. Section 3.5 and the last sentence of Section 3.1 of this Supplementary Agreement shall inure to the benefit of Developer and SONOC Company, LLC.

SECTION 14. FILING. The County Attorney is hereby authorized and directed, after approval of this Supplementary Agreement by the respective governing bodies of the County and the District and the execution thereof by the duly qualified and authorized officers of each of the parties hereto, to cause this Supplementary Agreement to be filed with the Clerk of the Circuit Court of St. Johns County, Florida, in accordance with the requirements of Section 163.01(11) of the Cooperation Act.

SECTION 15. APPLICABLE LAW AND VENUE. The Interlocal Agreement and the provisions contained therein as supplemented hereby shall be governed by and construed in accordance with the laws of the State of Florida. In any action, in equity or law, with respect to the enforcement or interpretation of the Interlocal Agreement and this Supplementary Agreement, venue shall be in St. Johns County, Florida.

SECTION 16. SEVERABILITY. If any part of the Interlocal Agreement or this Supplementary Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable part shall be deemed severable and the remaining parts of the Interlocal Agreement and this Supplementary Agreement shall continue in

full force and effect provided that the rights and obligations of the parties are not materially prejudiced and the intentions of the parties can continue to be effected.

SECTION 17. ENTIRE AGREEMENT; AMENDMENT. This instrument and its exhibits constitute the entire agreement between the parties and supersede all previous discussions, understandings and agreements between the parties relating to the subject matter of this Supplementary Agreement, other than the Interlocal Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

SECTION 18. EFFECTIVE DATE. This Supplementary Agreement shall become effective upon the filing hereof in accordance with Section 14 hereof.

SECTION 19. ATTORNEYS FEES. In the event of litigation to enforce the remedial provisions of this Supplementary Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs associated with any such litigation at the trial level and/or appeal.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Supplementary Agreement on the date and year first above written.

ST. JOHNS COUNTY, FLORIDA

By: _____
Name: _____
County Administrator

Approved as to legal sufficiency:

By: _____
Name: _____
Title: _____
County Attorney's Office
Date: _____

STATE OF FLORIDA }
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____ as the County Administrator of St. Johns County, and who has acknowledged that he executed the same on behalf of St. Johns County and that he was authorized to do so. He is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida

**TOLOMATO COMMUNITY
DEVELOPMENT DISTRICT**

By: _____
Richard T. Ray
Chairman, Board of Supervisors

ATTEST:

Name: _____

Title: Secretary/Assistant Secretary

STATE OF FLORIDA }
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Richard T. Ray as the Chairman of the Board of Supervisors and _____ as Secretary / Assistant Secretary for the **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT**, and who have acknowledged that they executed the same on behalf of the **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT** and that each was authorized to do so. Each is personally known to me or has produced _____ as identification.

In witness whereof, I hereunto set my hand and official seal.

Notary Public, State of Florida

EXHIBIT "A"

Attorney's Opinion

Exhibit "A"

Insert date__

St. Johns County
Board of County Commissioners
Insert address

Re: Tolomato Community Development District (the "District")

Ladies and Gentlemen:

We serve as counsel to the District, a community development district established pursuant to the laws of the State of Florida. In connection with the Supplementary Alternate Assurances Agreement between the District and St. Johns County dated _____, 2007 (the "Agreement"), we have been asked to provide you an opinion as to certain matters relating to the District.

In our capacity as counsel to the District, we have examined such documents as we have deemed necessary or appropriate in rendering the opinions set forth below.

Based on the foregoing, and subject to the qualifications set forth below, we are of the opinion that (i) the Agreement is a valid and binding agreement and enforceable against the District in accordance with its terms; and (ii) the District has issued its \$167,185,000.00 Tolomato Community Development District Special Assessment Bonds, Series 2007, yielding \$121,431,134.97 in construction funds.

This opinion is solely for the benefit of the addressee and this opinion may not be relied upon in any manner, nor used, by any other persons or entities. In rendering the foregoing opinions, we have assumed the accuracy and truthfulness of all public records and of all certifications, documents and other proceedings examined by us that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or truthfulness thereof. We have also assumed the genuineness of the signatures appearing on such public records, certifications, documents and proceedings. We have also assumed the due authorization, execution, and delivery of each document by each of the other parties thereto.

St. Johns County
Board of County Commissioners
Insert Date
Page 2 of 2

Our opinion as to enforceability of any document is subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium, liquidation, readjustment of debt, or similar laws relating to or affecting creditors' rights generally and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and to the exercise of judicial discretion in appropriate cases.

The opinions or statements expressed above are based solely on the laws of Florida and of the United States of America. Accordingly, we express no opinion nor make any statement regarding the effect or application of the laws of any other state or jurisdiction.

Very truly yours,

For the Firm