MEMORANDUM OF UNDERSTANDING RELATIVE TO MAINTENANCE, REPAIR AND REPLACEMENT OF SOLIVITA STORMWATER MANAGEMENT SYSTEM AND THE FUNDING OF THE COST THEREOF

This Memorandum of Understanding ("MOU") is entered into as of this 26th day of July, 2016, by and between the following:

Poinciana Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, and located in Polk County, Florida, whose mailing address is 210 North University Drive, Suite 702, Coral Springs, Florida 33071 ("PCDD"); and

Poinciana West Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, and located in Polk County, Florida, whose mailing address is 210 North University Drive, Suite 702, Coral Springs, Florida 33071 ("PWCDD," and together with PCDD, the "Districts"); and

Solivita Community Association, Inc., a Florida not-for-profit corporation whose mailing address is 10401 Deerwood Park Boulevard, Suite 2130, Jacksonville, Florida 32256 (the "Association").

RECITALS

WHEREAS, PCDD was created pursuant to Rule 42AA-1 of the Florida Land and Water Adjudicatory Commission for the purpose of financing, acquiring, constructing and maintaining public infrastructure improvements on certain of the lands located within the Solivita residential community in Polk County, Florida (hereinafter, "Solivita"); and

WHEREAS, PWCDD was similarly created pursuant to Ordinance 2006-052, as amended by Ordinance 2007-043 and 2016-034, of the Polk County Board of County Commissioners for the purpose of financing, acquiring, constructing and maintaining public infrastructure improvements on certain of the lands located within Solivita; and

WHEREAS, the Association is the owner of certain private improvements and real property located within Solivita; and

WHEREAS, the stormwater management facilities within Solivita generally consist of roadway curbs, roadway gutters, stormwater management manholes and manhole covers, roadway inlets (including inlet grates and covers), underground inlet boxes, swales/berms on common areas owned by the Association, swales/berms on property owned by the Districts, stormwater management pipes (including pipes from roadways to the Districts' ponds, pipes from manholes to the Districts' ponds, pipes connecting the Districts' ponds, and pipes connecting manholes), and stormwater management ponds (including associated outfalls and mitered end sections) (collectively, the "Stormwater Management System"); and

WHEREAS, the operation and maintenance of the Stormwater Management System is included within the scope of the Districts' Capital Improvement Plans, thereby allowing the Districts to operate and maintain components of the Stormwater Management System; and

WHEREAS, that certain *Amended and Restated Master Declaration for Solivita*, recorded in the Official Records of Polk County on December 27, 2013 as Instrument No. 2013235692, similarly provides for the ability of the Association to operate and maintain components of the Stormwater Management System; and

WHEREAS, it is in the best interest of the residents of Solivita to clearly and logically delineate responsibilities between the Association and the Districts for the maintenance, repair and/or replacement of the components of the Stormwater Management System and funding of the same, and to base such delineation on the most efficient approach for the community; and

WHEREAS, the Districts and the Association have determined that the division of responsibilities for the maintenance, repair and replacement of the components of the Stormwater Management System shall be as set forth in the attached **Exhibit A**, which is incorporated herein by this reference, and accordingly desire to enter into this MOU in order to set forth the parties' rights, duties and obligations relative to same.

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. **INCORPORATION OF RECITALS.** The Recitals stated above are true and correct and are incorporated herein as a material part of this MOU.

2. **DIVISION OF RESPONSIBILITY RELATIVE TO SOLIVITA STORMWATER MANAGEMENT SYSTEM.**

   A. **ASSOCIATION.** As the Association is responsible for the maintenance, repair and replacement of the lands that it owns within Solivita, including private roadways and common areas, the Association shall be responsible for the routine repair and/or maintenance, and the extraordinary repair and/or replacement of those components of the Stormwater Management System identified on the attached **Exhibit A** as "Association" (hereinafter, the "Association Components"). The Association shall annually budget and collect assessments for the routine repair and/or maintenance, and the extraordinary repair and/or replacement of the Association Components. The funds budgeted for the extraordinary repair and/or replacement of the Association Components shall only be expended for the extraordinary repair and/or replacement of such improvements.

   B. **PCDD.** As PCDD is responsible for the maintenance, repair and replacement of the lands that it owns within Solivita, including certain of the stormwater

management ponds, PCDD shall be responsible for the routine repair and/or maintenance, and the extraordinary repair and/or replacement of those components of the Stormwater Management System identified on the attached **Exhibit A** as "CDD" that are located within its boundary (hereinafter, the "PCDD Components"). PCDD shall annually budget and collect assessments for the routine repair and/or maintenance, and the extraordinary repair and/or replacement of the PCDD Components. The funds budgeted for the extraordinary repair and/or replacement of the PCDD Components shall only be expended for the extraordinary repair and/or replacement of such improvements.

C. **PWCDD.** As PWCDD is responsible for the maintenance, repair and replacement of the lands that it owns within Solivita, including certain of the stormwater management ponds, PCDD shall be responsible for the routine repair and/or maintenance, and the extraordinary repair and/or replacement of those components of the Stormwater Management System identified on the attached **Exhibit A** as "CDD" that are located within its boundary (hereinafter, the "PWCDD Components," and together with the PCDD Components, the "District Components"). PWCDD shall annually budget and collect assessments for the routine repair and/or maintenance, and the extraordinary repair and/or replacement of the PWCDD Components. The funds budgeted for the extraordinary repair and/or replacement of the PWCDD Components shall only be expended for the extraordinary repair and/or replacement of such improvements.

3. **PROVISION OF STREET SWEEPING ACTIVITIES.** In addition to the obligations set forth herein and in the attached **Exhibit A**, the Association shall also administer a street sweeping program within Solivita in order to minimize the amount of debris that is accumulated within the Stormwater Management System. The Association shall annually budget and collect assessments for the provision of the street sweeping program.

4. **DISTRICTS' RIGHT TO REPAIR ASSOCIATION COMPONENTS.** Notwithstanding the foregoing, and in order to ensure the preservation of the Stormwater Management System, in the event that the Association shall fail to properly maintain, repair and/or replace any or all of the Association Components, the Districts' shall have the right, but not the obligation, to conduct such maintenance, repair and/or replacement and to charge the Association for the costs of same.

5. **NOTICE OF NON-COMPLIANCE OR TERMINATION.** The parties shall provide a minimum of eighteen (18) months' written notice of its anticipated non-compliance with any of the terms of this MOU, or of its intent to terminate the MOU, to each of the parties hereto.

6. **PUBLIC RECORDS.** The Association understands and agrees that all documents of any kind provided to the Districts or to the Districts' staff in connection with the activities contemplated under this MOU are public records pursuant to Chapter 119, *Florida Statutes*, and are treated as such in accordance with Florida law.

7. **ENFORCEMENT.** In the event that a party is required to enforce this MOU by court proceedings or otherwise, the parties agree that the substantially prevailing party shall be entitled to recover from the defaulting party all fees and costs incurred, including reasonable attorneys' fees, paralegal fees and expert witness fees, and costs for trial, alternative dispute resolution, or appellate proceedings.

8. **AUTHORIZATION.** By execution below, the undersigned represent that they have been duly authorized by the appropriate body or official of their respective entity to execute this MOU, and that each party has complied with all the requirements of law and has full power and authority to comply with the terms and provisions of this instrument.

9. **AMENDMENTS; ASSIGNMENT.** Amendments to and waivers of the provisions contained in this MOU may be made only by an instrument in writing which is executed by all of the parties hereto. None of the parties may assign their rights, duties or obligations under this MOU without the prior written approval of the other parties hereto. Any purported assignment without said written authorization shall be void.

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

11. **EXECUTION IN COUNTERPARTS.** This MOU 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.

12. **FINAL AGREEMENT.** This instrument shall constitute the final and complete expression between PCDD, PWCDD and the Association relating to the subject matter of this MOU.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this MOU effective as of the date set forth above.

ATTEST:

Secretary

POINCIANA COMMUNITY DEVELOPMENT DISTRICT

Chairman, Board of Supervisors

ATTEST:

Secretary

POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT

Chairman, Board of Supervisors

WITNESS:

Witness Signature

SOLIVITA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation

By: _____

Name: _____

Title: _____

Exhibit A: Designation of Responsibilities Relative to Solivita Stormwater Management System

IN WITNESS WHEREOF, the undersigned have executed this MOU effective as of the date set forth above.

ATTEST:

POINCIANA COMMUNITY DEVELOPMENT DISTRICT

Secretary

Chairman, Board of Supervisors

ATTEST:

POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT

Secretary

Chairman, Board of Supervisors

WITNESS:

SOLIVITA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation

Witness Signature

By: Gary F. Consorto

Name: GARY F. CONSORTO

Title: GENERAL MANAGER

Exhibit A: Designation of Responsibilities Relative to Solivita Stormwater Management System

Exhibit A

Designation of Responsibilities Relative to Solivita Stormwater Management System

Facility	Maintenance	Repair	Replacement/ Reconstruction
Roadway Curbs	Association	Association	Association
Roadway Gutters	Association	Association	Association
Manhole Covers for Sanitary Sewer Purposes	Association/TOHO	Association/TOHO	Association/TOHO
Manhole and Manhole Covers for Stormwater Management Purposes	CDD*	CDD*	CDD*
Roadway Inlets, Including Grates and Inlet Covers	Association	Association	Association
Underground Inlet Boxes	CDD	CDD	CDD
Swales/Berms on Association Common Areas	Association	Association	Association
Swales/Berms on Property Owned by CDD	CDD	CDD	CDD
Stormwater Management Pipes Including Pipes from Roadways to CDD Ponds, Pipes from Manholes to Ponds, Pipes Connecting CDD Owned Ponds, and Pipes Connecting Manholes	CDD	CDD	CDD
Ponds Owned by CDD, Including Associated Pond Outfalls and Pond Mitered End Sections	CDD	CDD	CDD

*The Association will repair any damage to stormwater management manhole covers caused by vehicles/use/repair of roadway.

Key:

Association	=	Solivita Community Association, Inc.
CDD	=	Poinciana CDD or Poinciana West CDD (depending on location of component)
TOHO	=	Tohopekaliga Water Authority