



AGENDA REPORT
January 9, 2018

SUBJECT:

Acting as the Governing Board of the Barefoot Bay Water and Sewer District it is requested the Board accept the proposal of TD Bank, N.A. to provide the Barefoot Bay Water and Sewer District with a term loan to refund all of its outstanding Utility Revenue Bonds, Series 2000 in order to achieve Debt Service Savings.

FISCAL IMPACT:

According to the County's Financial Advisor, the refunding is expected to generate \$1.3 million of net present value debt service savings or over 13% of the refunded bonds par amount. This equates to approximately \$130,000 annually through 2029. This level of savings is well in excess of the minimum target set in the Board's Budget & Financial Policy for refundings which is savings in excess of 3.0% of the refunded bonds par amount.

DEPT/OFFICE:

Utility Services

REQUESTED ACTION:

It is requested that the BOCC, acting as the Governing Body of the Barefoot Bay Water and Sewer District, adopt a Resolution accepting the proposal of TD Bank, N.A. to provide the District with a term loan to refund all of its Barefoot Bay Water and Sewer District Utility Revenue Bonds, Series 2000 through the issuance of the Barefoot Bay Water and Sewer District Utility Refunding Revenue Note, Series 2018. The Resolution authorizes the execution and delivery of a Loan Agreement among the District, the County and TD Bank, N.A. Authorize all necessary budget change requests.

SUMMARY EXPLANATION and BACKGROUND:

The current low interest rate environment has provided an opportunity to refund all of the Barefoot Bay Water and Sewer District Utility Revenue Bonds, Series 2000 to achieve a significant net present value debt service saving and will reduce the annual debt service payments for the District. The Series 2000 Bonds were issued to finance the acquisition of the Barefoot Bay Water and Sewer District Utility System (the "District System"). The Series 2000 Bonds are outstanding in the principal amount of \$9,820,000 with interest rates ranging from 5.00% to 5.25% and have a final maturity of October 1, 2029. The new Note will be secured by the Net Revenues of the District System. To the extent the Net Revenues of the District System are insufficient to make timely payments of debt service on the Note, the County has covenanted in the Loan Agreement to pay such insufficiencies from the net revenues of the County's Water and Sewer Utility System. The District's pledged revenues over expenditures coverage for the latest audited financials (FY2016) for the District's debt was 121%.

At its November 7, 2017 meeting, the BOCC authorized staff and the financing team to undertake an RFP process to identify the lending institution that could provide the lowest cost option for refunding the Series 2000 Bonds. The District received five (5) responses to the RFP with TD Bank, N.A. providing the lowest indicative interest rate 2.58%. There would be no extension of maturity and no new money proceeds generated by the refunding.

Contact: Jim Helmer, Director jim.helmer@brevardfl.gov, 321-633-2091

ATTACHMENTS:

Description

- VI F 1 Backup, Resolution, Proposal, Agreement

REVIEWERS:

Department	Reviewer
Utility Services	Helmer, Jim
Utility Services	

Unity Services
Utility Services
ACM Development
County Manager

Lyons, Rose
Helmer, Jim
Denninghoff, John
Abbate, Frank



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

January 10, 2018

M E M O R A N D U M

TO: Jim Helmer, Utility Services Director

RE: Item VI.F.1., Resolution to Accept Proposal of TD Bank, N.A. to Provide the Barefoot Bay Water and Sewer District with Term Loan to Refund All of its Outstanding Utility Revenue Bonds, Series 2000 in Order to Achieve Debt Service Savings

The Board of County Commissioners, acting as the Governing Board of the Barefoot Bay Water and Sewer District, in regular session on January 9, 2018, adopted Resolution No. 18-001, accepting the proposal of TD Bank, N.A. to provide the District with a term loan to refund all of its Barefoot Bay Water and Sewer District Utility Revenue Bonds, Series 2000 through the issuance of the Barefoot Bay Water and Sewer District Utility Refunding Revenue Note, Series 2018; authorized the execution and delivery of a loan agreement among the District, the County, and TD Bank, N.A.; and authorized all necessary Budget Change Requests. Enclosed is certified copy of the Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for Denna Scott
for Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: County Attorney
County Manager
Finance
Budget

RESOLUTION NO. 18-001

A RESOLUTION OF THE BAREFOOT BAY WATER AND SEWER DISTRICT ACCEPTING A PROPOSAL OF TD BANK, N.A. TO PROVIDE THE DISTRICT WITH A TERM LOAN IN ORDER TO REFUND THE DISTRICT'S OUTSTANDING UTILITY REVENUE BONDS, SERIES 2000 IN ORDER TO ACHIEVE DEBT SERVICE SAVINGS; APPROVING THE FORM OF A LOAN AGREEMENT; AUTHORIZING THE ISSUANCE OF A PROMISSORY NOTE PURSUANT TO SUCH LOAN AGREEMENT IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 IN ORDER TO EVIDENCE SUCH LOAN; DELEGATING CERTAIN AUTHORITY TO THE CHAIR OF THE GOVERNING BODY OF THE DISTRICT FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE LOAN AGREEMENT, PROMISSORY NOTE AND VARIOUS OTHER DOCUMENTS WITH RESPECT THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY GOVERNING BODY OF THE BAREFOOT BAY WATER AND SEWER DISTRICT, THAT:

SECTION 1. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The Barefoot Bay Water and Sewer District (the "District") previously issued its Utility Revenue Bonds, Series 2000 (the "Refunded Bonds") in order to acquire a water and sewer utility system in order to improve and maintain the health, safety and welfare of the District and its inhabitants.

(B) The District has been advised by its financial advisor, Public Financial Management, Inc. (the "Financial Advisor"), that it can achieve net present value debt service savings by refunding the Refunded Bonds.

(C) The Financial Advisor solicited proposals from various financial institutions to provide a term loan to refund the Refunded Bonds.

(D) TD Bank, N.A. (including any successors and assigns, the "Noteholder") submitted its proposal to provide the District with a term loan to refund the Refunded Bonds, which proposal was the most favorable proposal received by the District and is attached hereto as Exhibit A.

(E) The most efficient and cost-effective method of refunding the Refunded Bonds to achieve debt service savings is through the issuance of the Barefoot Bay Water and Sewer District Utility Refunding Revenue Note, Series 2018 (the "Series 2018 Note") to the Noteholder pursuant to a Loan Agreement to be executed by the District, Brevard County, Florida (the "County") and the Noteholder (the "Loan Agreement"), which Loan Agreement shall be in substantially the form attached hereto as Exhibit B.

(F) The Series 2018 Note shall be secured by and payable from the Pledged Funds (as defined in the Loan Agreement) and, to the extent the Pledged Funds are insufficient, the Series 2018 Note shall be payable from the County System Net Revenues (as defined in the Loan Agreement), all in the manner and to the extent provided herein and in the Loan Agreement and the ad valorem taxing power of the County will never be necessary or authorized to pay the principal of and interest on the Series 2018 Note or to make any other payments provided for in the Loan Agreement, and the Series 2018 Note shall not constitute a lien upon any property whatsoever of or in the District or the County.

(G) The District has never been in payment default with respect to the Refunded Bonds or any other District debt obligations and it is not anticipated that it will ever be necessary for the County to provide any County System Net Revenues to make up any payment deficiencies with respect to the Series 2018 Note.

(H) Due to the potential volatility of the market for tax-exempt obligations such as the Series 2018 Note and the complexity of the transactions relating to such Series 2018 Note, it is in the best interest of the District to issue the Series 2018 Note by a negotiated sale to the Noteholder, allowing the District to sell and issue the Series 2018 Note at the most advantageous time, rather than at a specified advertised date, thereby permitting the District to obtain the best possible price, terms and interest rate for the Series 2018 Note.

SECTION 2. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Florida Constitution, Part II, Chapter 153, Florida Statutes, Chapter 189, Florida Statutes, Ordinance No. 99-17 of the County, and other applicable provisions of law.

SECTION 3. DEFINITIONS. When used in this Resolution, capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement unless the context clearly indicates a different meaning.

The words "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms shall refer to this Resolution.

Words importing the singular number include the plural number, and vice versa.

SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the purchase and acceptance of the Series 2018 Note by the Noteholder, the provisions of this Resolution shall be a part of the contract of the District with the Noteholder, and shall be deemed to be and shall constitute a contract between the District and the Noteholder. The provisions, covenants and agreements in this Resolution set forth to be performed by or on behalf of the District shall be for the benefit, protection and security of the Noteholder.

SECTION 5. AUTHORIZATION OF REFUNDING OF REFUNDED BONDS. The current refunding of the Refunded Bonds in order to achieve net present value debt service savings is hereby authorized.

SECTION 6. ACCEPTANCE OF PROPOSAL. The District hereby accepts the proposal of the Noteholder to provide the District with a term loan to refund the Refunded Bonds, a copy of which proposal is attached hereto as Exhibit A. The Chair of the governing body of the District (the "Chair") is hereby authorized to execute and deliver any documents required to formally accept such proposal and the terms thereof. All actions taken by officers of the District and the County and the Financial Advisor with respect to such proposal prior to the date hereof are hereby authorized and ratified. To the extent of any conflict between the provisions of this Resolution or the Loan Agreement and the proposal, the provisions of this Resolution and the Loan Agreement shall prevail.

SECTION 7. APPROVAL OF FORM OF LOAN AGREEMENT AND SERIES 2018 NOTE. The District hereby approves a term loan from the Noteholder in the principal amount of not to exceed \$10,000,000. The terms and provisions of the Loan Agreement in substantially the form attached hereto as Exhibit B are hereby approved, with such changes, insertions and additions as the Chair may approve. The District hereby authorizes the Chair to execute and deliver, and the Clerk of the governing body of the District (the "Clerk") to attest, the Loan Agreement substantially in the form attached hereto as Exhibit B, with such changes, insertions and additions as the Chair may approve, his execution thereof being conclusive evidence of such approval. In order to evidence the loan under the Loan Agreement, it is necessary to provide for the execution of the Series 2018 Note. The Chair and the Clerk are authorized to execute and deliver the Series 2018 Note substantially in the form attached to the Loan Agreement as Exhibit A with such changes, insertion and additions as they may approve, their execution thereof being evidence of such approval.

SECTION 8. LIMITED OBLIGATION. The obligation of the District to repay the Series 2018 Note is a limited and special obligation secured by and payable from the Pledged Funds in the manner and to the extent set forth in the Loan Agreement and shall not be deemed a pledge of the faith and credit or taxing power of the District or the County and such obligation shall not create a lien on any property whatsoever of or in the District or the County. To the extent the Pledged Funds are insufficient to timely pay

debt service on the Series 2018 Note, the County has agreed in the Loan Agreement to pay for any such insufficiencies from the County System Net Revenues in the manner and to the extent provided in the Loan Agreement.

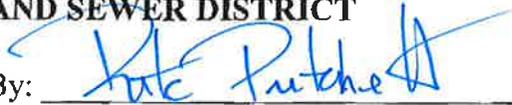
SECTION 9. GENERAL AUTHORIZATION. The Chair, the Clerk, and their designees are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby; and the County Attorney, as counsel for the District, and other employees or agents of the District and the County are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 10. REPEAL OF INCONSISTENT DOCUMENTS. All ordinances, resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 11. EFFECTIVE DATE. This Resolution shall be effective immediately upon its adoption.

This Resolution passed and adopted this 9th day of January, 2018.

**BAREFOOT BAY WATER
AND SEWER DISTRICT**

By: 

Rita Pritchett, Chair

As approved by Board 1/9/18

ATTEST:



Scott Ellis, Clerk

EXHIBIT A

TD Bank, N.A. Proposal

EXHIBIT B

Form of Loan Agreement



TD Bank, N.A.
1560 North Orange Avenue, 3rd Floor
Winter Park, FL 32789
Tel: 407-622-3563
Fax: 407-622-8470
Sterling.Harrell@td.com

November 29, 2017

Mr. Steve Burdett
Finance Director
Brevard County
2725 Judge Fran Jamieson Way
Viera, FL 32940

Mr. Jay Glover
Director
PFM Financial Advisors, LLC
300 South Orange Avenue, Suite 1170
Orlando, FL 32801

RE: Request for Proposals for Non-Bank Qualified Tax-Exempt Bank Loan

Dear Mr. Burdett and Mr. Glover,

In response to the Request for Proposal for Brevard County, Florida – Request for Proposal for the District's Utility Refunding Revenue Bond, Series 2017, TD Bank, N.A. (the "Bank") is pleased to submit the following proposal to Brevard County, Florida (the "County").

The structure of the proposed Credit Accommodation is outlined in the attached term sheet (Exhibit A) which provides a statement of suggested terms, but under no circumstance shall such statement be construed as a complete summarization of terms necessary for consummation of the proposed Credit Accommodation. PLEASE NOTE THIS PROPOSAL IS SUBJECT TO FORMAL CREDIT REVIEW AND UNDERWRITING IN ACCORDANCE WITH THE BANK'S INTERNAL POLICY AND NOTHING HEREIN SHALL CONSTITUTE A BINDING COMMITMENT TO LEND. Further, we expressly advise you that TD Bank, N.A. has not approved the Credit Accommodation. The Bank shall not be liable to the County or any other person for any losses, damages or consequential damages which may result from the County's reliance upon this proposal letter, the proposed Credit Accommodation, the proposed term sheet or any transaction contemplated hereby.

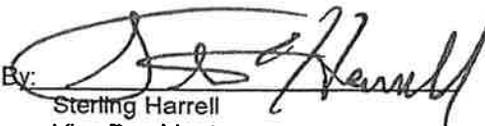
The Bank's Loan Proposal is subject to acceptance by the County prior to 2:00 pm eastern standard time on November 29, 2017 and is contingent upon a Loan Closing with mutually acceptable documents between the County and Bank prior to 2:00 pm eastern standard time on January 17, 2018.

This letter, including the terms contained within the proposed Credit Accommodation, is delivered to you on the condition that its existence and its contents will not be disclosed without our prior written approval, except (i) as may be required to be disclosed in any legal proceeding or as may otherwise be required by law and on a confidential and "need to know" basis, to your directors, officers, employees, advisors and agents.

We appreciate this opportunity and are delighted to provide this Proposal. We look forward to working with you to successfully complete this transaction. My contact information is noted above.

Very truly yours,

TD BANK, N.A.

By: 
Sterling Harrell
Vice President

TD Bank, N.A.

TERMS AND CONDITIONS OF CREDIT ACCOMMODATION DATED
November 29, 2017 ("Loan")

THIS IS A STATEMENT OF TERMS AND CONDITIONS AND NOT A COMMITMENT TO LEND. ALL CREDIT ACCOMMODATIONS ARE SUBJECT TO FORMAL CREDIT UNDERWRITING AND APPROVAL.

1. Loan

- a) Borrower: Barefoot Bay Water and Sewer District (the "Borrower")
- b) Facility: Series 2017: Non-Bank Qualified Tax-Exempt Bank Loan (the "2017 Bond")
- c) Purpose: The 2017 Bond is being issued by the District to (i) refund the District's outstanding Utility Revenue Bond, Series 2000 and (ii) pay the costs of issuance of the 2017 Bond.
- d) Amount: Not to exceed \$10,000,000.00 USD
- e) Security: The principal of and interest on the 2017 Bond shall be payable solely from a pledge of and senior lien upon Net Revenues and Connection Fees of the Barefoot Bay Utility System (the "Pledged Revenues"). Following the refunding of the 2000 Bonds, the 2017 Bond will be the only bonds secured by such revenues.

The County will covenant and agree that in the event the Pledged Revenues are insufficient to pay scheduled debt service on the 2017 Bond as provided in the Resolution, it shall immediately take all actions as shall be necessary to pay such debt service on the 2017 Bonds from the Net Revenues of the County's main utility system (the "County System"). The County will further covenant and agree to fix, establish and maintain such rates and collect such fees, rates and other charges for the product, services and facilities of the County System, and revise the same as shall be necessary, as will provide sufficient Net Revenues of the County System, subsequent to payment or making the necessary deposits on account of the senior debt obligations of the County (the "Senior Obligations") and any other obligations of the County which shall have a pledge of or lien on such Net Revenues, to make up any debt service insufficiencies as soon as practicable. The agreement to use Net Revenues of the County System to make up such debt service insufficiencies shall be subordinate and junior in all respects to the lien on and pledge of such Net Revenues for the payment of the Senior Obligations and any other obligations of the County which shall have a pledge of or lien on such Net Revenues. The County may issue Senior Obligations and additional obligations, other than the Senior Obligations, which shall have a lien on and pledge of the Net Revenues of the County System superior to any rights the holder of the 2017 Bond may have in such Net Revenues. Currently the only Senior Obligations are the County's Water and Wastewater Utility Revenue Bonds, Series 2014 outstanding in the par amount of \$24,070,000.

- f) **Settlement Date:** On or before January 17, 2018
- g) **Maturity:** October 1, 2029
- (h) **Repayment Terms:** Interest on the 2017 Bond will be paid semi-annually (October 1 and April 1), commencing on April 1, 2018, based upon a 30/360 day basis.

Principal on the 2017 Bond will be paid annually (October 1), commencing on October 1, 2018, with final maturity of October 1, 2029 in accordance with the Amortization Schedule attached in Appendix A.
- j) **Interest Rate:** Indicative Tax Exempt Non-Bank Qualified (NBQ) Fixed Rate: 2.24%

Rate Hold Option: TD Bank will hold the rate of interest through the expected close date of January 17, 2018, if Borrower confirms for the Bank, within 5 business days of proposal submission date that the Bank will be recommended as the financial provider for the requested facility. Otherwise the final Loan Rate will be based using the below formula of which was used to quote the Indicative Tax Exempt (NBQ) Rate for this Proposal.

The final interest rate shall be based upon the following formula (69.25% of the prevailing ten (10) year USD 1100 ICE Swap Rate) plus a spread of 63 basis points.

ICE: <https://www.theice.com/iba/historical-data>

- k) **Prepayment Provision:** **Option A:** At the time of any full or partial prepayment, (i) A "Yield Maintenance Fee" in an amount computed as follows shall apply:

This Note may be prepaid on any Business Day in whole or in part upon thirty (30) days prior written notice to the Bank. In the event of any prepayment of this Note, whether by voluntary prepayment, acceleration or otherwise, the Borrower shall, at the option of the Bank, pay a "fixed rate prepayment charge" equal to the greater of (i) 1.00% of the principal balance being prepaid multiplied by the "Remaining Term," as hereinafter defined, in years or (ii) a "Yield Maintenance Fee" in an amount computed as follows:

The current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the "Remaining Term", shall be subtracted from the "Stated Interest Rate". If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the amount being prepaid times the number of days in the "Remaining Term" and divided by 360. The resulting amount is the "fixed prepayment charge" due to the Bank upon prepayment of the principal of this Loan plus any accrued interest due as

LOAN AGREEMENT

among

BAREFOOT BAY WATER AND SEWER DISTRICT

and

BREVARD COUNTY, FLORIDA

and

TD BANK, N.A.

Dated as of January 17, 2018

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This **LOAN AGREEMENT** (the "Agreement") is made and entered into as of January 17, 2018, by and among the **BAREFOOT BAY WATER AND SEWER DISTRICT** (the "District"), a special district duly created and validly existing under the laws of the State of Florida, **BREVARD COUNTY, FLORIDA** (the "County"), a political subdivision of the State of Florida, and **TD BANK, N.A.** (including any successors and assigns, the "Noteholder"), a banking corporation duly organized and existing under the laws of the United States of America.

WITNESSETH:

WHEREAS, the District is authorized by provisions of the Florida Constitution, Part II, Chapter 153, Florida Statutes, Chapter 189, Florida Statutes, Ordinance No. 99-17 of the County, and other applicable provisions of law to, among other things, acquire, construct, equip, own, operate and maintain public utility facilities and capital improvements thereto to promote the health, welfare and economic prosperity of the residents of the District and to borrow money to finance and refinance the acquisition, construction, equipping and maintenance of such public utility facilities and capital improvements; and

WHEREAS, the District previously issued its Utility Revenue Bonds, Series 2000 (the "Refunded Bonds") to acquire and improve the Utility System (as defined herein) within the District; and

WHEREAS, in order to achieve net present value debt service savings through the current refunding of all of the outstanding Refunded Bonds, the financial advisor for the District, Public Financial Management, Inc. (the "Financial Advisor"), solicited bids on behalf of the District from various financial institutions to provide a term loan to the District to refund the Refunded Bonds; and

WHEREAS, the proposal submitted by the Noteholder was the most favorable proposal received by the District; and

WHEREAS, the Noteholder is willing to make a term loan to the District, and the District is willing to incur such term loan, pursuant to the terms and provisions of this Agreement in an aggregate principal amount of \$_____ to refund, on a current basis, the Refunded Bonds and pay costs of issuance of the hereinafter defined Series 2018 Note; and

WHEREAS, the Series 2018 Note shall not constitute a general obligation or indebtedness of the District or the County as a "bond" within the meaning of any provision of the Constitution of the State, but shall be and is hereby declared to be a special, limited obligation of the District, the principal of and interest on which is secured by and payable from the Pledged Funds (as defined herein) and, to the extent the Pledged Funds are insufficient, the Series 2018 Note is payable from the County System Net

Revenues (as defined herein), all in the manner and to the extent provided herein, and it will never be necessary or authorized to levy taxes on any real property of or in the District or the County to pay the principal of or interest on the Series 2018 Note or other payments provided for herein. Furthermore, neither the Series 2018 Note nor the interest thereon shall be or constitute a lien upon the Utility System (defined herein) or the County System (as defined herein) or upon any other property of or in the District or the County, other than the Pledged Funds in the manner and to the extent provided herein; and

WHEREAS, to the extent the Pledged Funds are insufficient to timely pay debt service on the Series 2018 Note, the County has agreed to pay for any such insufficiencies from the County System Net Revenues (as defined herein) in the manner and to the extent provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the parties do hereby agree as follows:

SECTION 1.01. DEFINITIONS. The following terms shall have the following meanings herein, unless the text otherwise expressly requires:

"Act" shall mean the Florida Constitution, Chapter 125, Florida Statutes, Part II, Chapter 153, Florida Statutes, Chapter 189, Florida Statutes, Ordinance No. 99-17 of the County, and other applicable provisions of law.

"Additional Parity Obligations" shall mean any additional debt obligations hereafter issued by the District in compliance with the terms, conditions and limitations set forth in Section 2.10 hereof and which shall have an equal lien upon the Pledged Funds and rank equally in all respects with the Series 2018 Note.

"Agreement" shall mean this Loan Agreement, dated as of January 17, 2018, among the District, the County and the Noteholder and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Authorized Investments" shall mean any obligations, deposit certificates, or other evidences of indebtedness legal for investment pursuant to law, to the extent not inconsistent with the terms of any investment policy of the District and applicable law.

"Bond Counsel" shall mean Nabors, Giblin & Nickerson, P.A., Tampa, Florida or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which the Noteholder is authorized or required to be closed.

"Chair" shall mean the Chair of the Governing Body, or such other person as may be duly authorized to act on his or her behalf.

"Clerk" shall mean the Clerk of the Circuit Court of Brevard County, Florida, acting in his or her capacity as the Ex-Officio Clerk to the District, or such other person or persons as may be duly authorized to act on his or her behalf.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the applicable rules and regulations promulgated thereunder.

"Connection Fees" shall mean the fees and charges, if any, imposed by the District to acquire, construct, equip or expand the capacity of the water and/or wastewater facilities of the Utility System for the purpose of paying or reimbursing the equitable share of the capital cost relating to such acquisition, construction, expansion or equipping of capacity of the water and/or wastewater facilities of the Utility System or expansion thereof in order to serve new users of the water and/or wastewater facilities of the Utility System and new development within the service area of the Utility System, to the extent the same are lawfully levied, collected and pledged. Such Connection Fees may include interest carrying costs associated with the water and/or wastewater facilities of the Utility System.

"Cost of Operation and Maintenance" shall mean the District's expenses for operation, maintenance, management, development, repairs and replacements with respect to the Utility System and shall include, without limiting the generality of the foregoing, administration expenses; payments for the purchase of materials essential to or used in the operation of the Utility System including bulk purchases of water or wastewater services; fees for the management of the Utility System or any portion thereof; any insurance and surety bond fees; accounting, legal and engineering expenses; ordinary and current rentals of equipment or other property; refunds of moneys lawfully due to others; payments to others for disposal of wastewater or other wastes; payments to pension, retirement, health and hospitalization funds; any costs of litigation or a legal judgment against the District; costs of permitting or other governmental regulatory matters; payments in lieu of taxes and facility impact fees; and any other expenses required to be paid for or with respect to proper operation or maintenance of the Utility System, including appropriate reserves therefor, all to the extent properly attributable to the Utility System in accordance with generally accepted accounting principles applicable to public utility systems similar to the Utility System, but does not include any costs or expenses in respect of original acquisition, construction or improvement other than expenditures necessary to prevent an interruption or continuance of an interruption of service or of Gross Revenues or minor capital expenditures necessary for the proper and

economical operation or maintenance of the Utility System, or any provision for interest, depreciation, amortization or similar charges.

"County" shall mean Brevard County, Florida, a political subdivision of the State of Florida.

"County Bonds" shall mean the "Bonds" as such term is defined in the County System Bond Resolution.

"County Resolution" shall mean Resolution No. ___ adopted by the Board of County Commissioners on January 9, 2018, authorizing, among other things, the execution and delivery of this Agreement.

"County System" shall mean the "System" as such term is defined in the County System Bond Resolution.

"County System Bond Resolution" shall mean Resolution No. 14-145 adopted by the Board of County Commissioners of the County on September 9, 2014, as the same may be amended or supplemented from time to time.

"County System Net Revenues" shall mean the "Net Revenues" as such term is defined in the County System Bond Resolution.

"Default Rate" shall mean the lesser of (A) the Prime Rate plus 6.00% per annum, or (B) the maximum rate allowable under applicable law.

"Determination of Taxability" shall mean a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on the Series 2018 Note is or was includable in the gross income of the Noteholder for Federal income tax purposes as a result of action or inaction of or on behalf of the District; provided, no Determination of Taxability shall be deemed to occur unless the District has been given written notice of such occurrence and, to the extent permitted by law, an opportunity to participate in and seek, at the District's own expense, a final administrative determination by the Internal Revenue Service or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the occurrence of such Determination of Taxability.

"District" shall mean the Barefoot Bay Water and Sewer District, created by the County pursuant to Chapter 153, Florida Statutes and Ordinance No. 99-17 enacted by the County on March 23, 1999.

"Financial Advisor" shall mean Public Financial Management, Inc., Orlando, Florida.

"Fiscal Year" shall mean the period from October 1 to the succeeding September 30, or such other period as may be prescribed by law.

"Governing Body" shall mean the Board of County Commissioners of the County acting in its capacity as the governing body of the District.

"Gross Revenues" or **"Revenues"** shall mean all income and moneys received by the District from the rates, fees, rentals, charges and other income to be made and collected by the District for the use of the products, services and facilities to be provided by the Utility System, or otherwise received by the District or accruing to the District in the ownership, management and operation of the Utility System, calculated in accordance with generally accepted accounting principles applicable to public utility systems similar to the Utility System, including, without limiting the generality of the foregoing, (1) proceeds from use and occupancy insurance on the Utility System, (2) fees collected by the District for the physical hook-up of customers of the Utility System, and (3) all income and earnings derived from the investment of moneys on deposit in the funds and accounts established hereunder. "Gross Revenues" shall not include (A) government grants, to the extent prohibited or restricted as to its use by the terms of the government grant, (B) proceeds of Obligations or other District debt, and (C) any revenues or moneys derived by the District from property or facilities it owns, operates or manages other than the Utility System.

"Interest Payment Date" shall mean April 1 and October 1 of each year, commencing April 1, 2018.

"Interest Rate" shall mean a fixed interest rate equal to 2.58% per annum. The Interest Rate is subject to adjustment pursuant to Section 3.03 hereof.

"Maturity Date" shall mean October 1, 2029.

"Maximum Annual Debt Service" shall mean the largest aggregate amount of the annual debt service coming due on the Series 2018 Note and any outstanding Obligations in any Note Year, excluding all Note Years which shall have ended prior to the Note Year in which such calculation is made.

"Net Revenues" shall mean Gross Revenues less Cost of Operation and Maintenance.

"Noteholder" shall mean TD Bank, N.A., as initial purchaser of the Series 2018 Note, and any successor or assign.

"Note Year" shall mean the period from October 2 through and including the immediately succeeding October 1.

"Obligations" shall mean the Series 2018 Note and any Additional Parity Obligations that have been issued and are outstanding.

"Pledged Funds" shall mean (1) the Net Revenues, (2) the Connection Fees, and (3) until applied in accordance with the provisions of this Agreement, all moneys, including investments thereof, in the funds and accounts established hereunder.

"Prime Rate" shall mean the rate published from time to time in *The Wall Street Journal* as the "U.S. Prime Rate" or, in the event *The Wall Street Journal* ceases to be published, goes on strike, is otherwise not published or ceases publication of "Prime Rates," the base, reference or other rate then designated by the Noteholder, in its sole discretion, for general commercial loan reference. The Prime Rate is not necessarily the lowest or best rate of interest offered by the Noteholder to any borrower or class of borrowers.

"Principal Payment Date" shall mean October 1 of each year, commencing October 1, 2018.

"Resolution" shall mean Resolution No. ___ adopted by the Governing Body on January 9, 2018, authorizing, among other things, the issuance of the Series 2018 Note and the execution and delivery of this Agreement.

"Refunded Bonds" shall mean all of the outstanding Barefoot Bay Water and Sewer District Utility Revenue Bonds, Series 2000.

"Revenue Fund" shall mean the fund so designated and created in Section 2.08(A)(i) hereof.

"Series 2018 Note" shall mean the Barefoot Bay Water and Sewer District Utility Refunding Revenue Note, Series 2018, authorized to be issued hereunder pursuant to the Resolution, which Note shall be in substantially the form attached hereto as Exhibit A with such changes and modifications thereto as may be approved by the Chair, such approval to be presumed by the Chair's execution thereof.

"Sinking Fund" shall mean the fund created and established pursuant to Section 2.08(A)(ii) hereof.

"State" shall mean the State of Florida.

"Surplus Fund" shall mean the fund created and established pursuant to Section 2.08(A)(iii) hereof.

"Taxable Rate" shall mean the interest rate per annum that shall provide the Noteholder with the same after-tax yield that the Noteholder would have otherwise received had a Determination of Taxability not occurred, taking into account the

increased taxable income of the Noteholder as a result of such Determination of Taxability. The Noteholder shall provide the District with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the District.

"Tax Certificate" shall mean the Certificate as to Arbitrage and certain Other Tax Matters to be executed by the District in connection with the issuance of the Series 2018 Note, as such Certificate may be amended from time to time.

"Utility System" shall mean any and all water production, transmission, treatment and distribution facilities and any and all wastewater collection, transmission, treatment and disposal facilities currently owned by the District and any and all improvements, extensions and additions thereto constructed or acquired either from the proceeds of Obligations or from any other sources, together with all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therewith, including all contractual rights, rights to capacity and obligations or undertakings associated therewith.

SECTION 1.02. INTERPRETATION. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

SECTION 1.03. TITLES AND HEADINGS. The titles and headings of the articles and sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

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ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS; SECURITY FOR THE SERIES 2018 NOTE; FUNDS AND ACCOUNTS

SECTION 2.01. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DISTRICT. The District represents, warrants and covenants that:

(A) The District is a duly organized and validly existing special district under the Florida Constitution and other laws of the State. Pursuant to the Resolution, the District has duly authorized the execution and delivery of this Agreement, the performance by the District of all of its obligations hereunder, and the issuance of the Series 2018 Note in the aggregate principal amount of \$_____.

(B) The District has complied with all of the provisions of the Constitution and laws of the State, including the Act, and has full power and authority to enter into and consummate all transactions contemplated by this Agreement or under the Series 2018 Note, and to perform all of its obligations hereunder and under the Series 2018 Note, and the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, or, to the best knowledge of the District, any agreement, instrument or commitment to which the District is a party or by which the District is bound.

(C) The District is duly authorized and entitled to issue the Series 2018 Note and enter the Agreement and, when executed and delivered, the Series 2018 Note and the Agreement will each constitute a legal, valid and binding obligation of the District enforceable in accordance with its respective terms, subject as to enforceability to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(D) There are no actions, suits or proceedings pending or, to the best knowledge of the District, threatened against or affecting the District, at law or in equity, or before or by any governmental authority, that, if adversely determined, would materially impair the ability of the District to perform the District's obligations under this Agreement or under the Series 2018 Note or which would have a material adverse effect on the condition of the District (financial or otherwise).

(E) The District will furnish to the Noteholder within 210 days after the close of each Fiscal Year a copy of the annual financial statements of the County, which shall include the District and its financial operations as a separate fund, audited by a certified public accountant. The District shall also provide the Noteholder with a copy of the

annual budget of the County each year, which shall include budget information with respect to the District, and any material amendments thereto within 60 days of the final adoption of such budget or amendment. With reasonable promptness the District shall provide such other data and information as may be reasonably requested by the Noteholder from time to time.

SECTION 2.02. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COUNTY. The County represents, warrants and covenants that:

(A) The County is a duly organized and validly existing political subdivision of the State of Florida. Pursuant to the County Resolution, the County has duly authorized the execution and delivery of this Agreement, and the performance by the County of all of its obligations hereunder.

(B) The County has complied with all of the provisions of the Constitution and laws of the State, including the Act, and has full power and authority to enter into and consummate all transactions contemplated by this Agreement and to perform all of its obligations hereunder, and the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, or, to the best knowledge of the District, any agreement, instrument or commitment to which the County is a party or by which the County is bound.

(C) The County is duly authorized and entitled to enter the Agreement and, when executed and delivered, the Agreement will constitute a legal, valid and binding obligation of the County enforceable in accordance with its terms, subject as to enforceability to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(D) There are no actions, suits or proceedings pending or, to the best knowledge of the County, threatened against or affecting the County, at law or in equity, or before or by any governmental authority, that, if adversely determined, would materially impair the ability of the County to perform the County's obligations under this Agreement or which would have a material adverse effect on the condition of the County (financial or otherwise).

SECTION 2.03. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE NOTEHOLDER. The Noteholder hereby represents, warrants and agrees that it is a national banking corporation duly organized and existing under the laws of the United States of America, authorized to execute and deliver this Agreement and to perform its obligations hereunder, and such execution and delivery will not constitute a violation of its charter, articles of incorporation or bylaws. Pursuant to the terms and provisions of this Agreement, the Noteholder agrees to provide a term loan to

the District as evidenced hereby and by the Series 2018 Note for the purpose of refunding the Refunded Bonds and paying costs relating to the issuance of the Series 2018 Note.

SECTION 2.04. TAX COVENANT. (A) In order to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Series 2018 Note, the District shall comply with each requirement of the Code applicable to the Series 2018 Note. In furtherance of the covenant contained in the preceding sentence, the District agrees to continually comply with the provisions of the Tax Certificate, which is incorporated fully by reference herein, as a source of guidance for achieving compliance with the Code.

(B) The District shall make any and all rebate payments required to be made to the United States Department of the Treasury in connection with the Series 2018 Note pursuant to Section 148(f) of the Code.

(C) So long as necessary in order to maintain the exclusion from gross income of interest on the Series 2018 Note for federal income tax purposes, the covenants contained in this Section shall survive the payment of the Series 2018 Note and the interest thereon, including any payment or defeasance thereof.

(D) The District shall not take or permit any action or fail to take any action which would cause the Series 2018 Note to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

SECTION 2.05. SERIES 2018 NOTE SHALL NOT BE INDEBTEDNESS OF THE DISTRICT, COUNTY OR STATE. The Series 2018 Note, when delivered by the District pursuant to the terms of this Agreement, shall not be or constitute an indebtedness of the District, the County, the State of Florida or any political subdivision or agency thereof, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable solely as herein provided. The Noteholder shall never have the right to compel the exercise of the ad valorem taxing power of the County, or taxation in any form on any property therein to pay the Series 2018 Note or the interest thereon. The Series 2018 Note is a special and limited obligation secured by and payable as to principal and interest from the Pledged Funds to the extent and in the manner provided herein, and, to the extent such Pledged Funds are insufficient therefor, the County System Net Revenues in the manner and to the extent provided herein.

SECTION 2.06. SECURITY FOR THE SERIES 2018 NOTE. The payment of the principal of and interest on the Series 2018 Note shall be secured forthwith equally and ratably by a pledge of and lien upon the Pledged Funds. The District does hereby irrevocably pledge the Pledged Funds to the payment of the principal of and interest on the Series 2018 Note in accordance with the provisions hereof. The Pledged Funds shall immediately be subject to the lien of this pledge without any

physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the District.

SECTION 2.07. PAYMENT OF DEBT SERVICE FROM COUNTY SYSTEM NET REVENUES. (A) The County covenants and agrees that in the event the Pledged Funds are insufficient to pay scheduled debt service on the Series 2018 Note as provided herein, it shall immediately take all action as shall be necessary to pay such debt service on the Series 2018 Note from the County System Net Revenues. The County further agrees to fix, establish and maintain such rates and collect such fees, rates and other charges for the product, services and facilities of the County System, and revise the same as shall be necessary, as will provide sufficient County System Net Revenues, subsequent to payment or making the necessary deposits on account of the County Bonds and any other obligations of the County which shall have a pledge of or lien on such County System Net Revenues, to make up any debt service insufficiencies as soon as practicable. The agreement to use County System Net Revenues to make up such debt service insufficiencies shall be subordinate and junior in all respects to the lien on and pledge of such County System Net Revenues for the payment of the County Bonds and any other obligations of the County which shall have a pledge of or lien on such County System Net Revenues. Notwithstanding the foregoing, the County may issue additional County Bonds and additional obligations, other than County Bonds, which shall have a lien on and pledge of the County System Net Revenues superior to any rights the holder of the Series 2018 Note may have in such County System Net Revenues.

(B) To the extent the County is required to provide any of the County System Net Revenues as described in Section 2.07(A) above, such provision of County System Net Revenues shall be considered an inter-fund loan by the County to the District from the Utility Reserve Fund (as defined in the County System Bond Resolution). The repayment terms of any such loan shall be determined by the County and the District at the time of the loan in accordance with the County's investment policy. For purposes of the County System Bond Resolution, the loan of such County System Net Revenues from the Utility Reserve Fund to the District shall be considered an investment of funds on deposit in the Utility Reserve Fund.

(C) So long as the Series 2018 Note is outstanding hereunder, the County agrees not to amend the County System Bond Resolution or its investment policy in any manner that may adversely affect its ability to meet its obligations under this Section 2.07.

SECTION 2.08. FUNDS AND ACCOUNTS. (A) The following funds and accounts are hereby created hereunder: (i) the "Barefoot Bay Water and Sewer District Utility Bonds Revenue Fund" and within the Revenue Fund, the District shall maintain a "Gross Revenues Account" and a "Connections Fee Account;" (ii) the "Barefoot Bay Water and Sewer District Utility Bonds Sinking Fund;" and (iii) the "Barefoot Bay

Water and Sewer District Utility Bonds Surplus Fund;" (B) Promptly upon receipt, the District shall deposit all Gross Revenues into the Gross Revenues Account of the Revenue Fund and all Connection Fees into the Connections Fee Account of the Revenue Fund.

(C) Moneys in the Revenue Fund shall first be applied each month to the payment of all Costs of Operation and Maintenance that are due and payable during such month. No later than the last day of each calendar month, the District shall the deposit to the Sinking Fund from the remaining moneys in the Revenue Fund an amount equal to 1/12th of the principal (including any sinking fund installments) due on the next Principal Payment Date and 1/6th of the interest due on the next Interest Payment Date on the Series 2018 Note and any other outstanding Obligations. The District shall only apply Connection Fees to pay debt service on Obligations to the extent allowable under applicable law.

(D) Any moneys remaining in the Revenue Fund after funding the requirements set forth in Section 2.08(C) shall be deposited to the Surplus Fund and may be used for any lawful purpose related to the Utility System, including but not limited to, paying subordinated indebtedness. Notwithstanding the immediately preceding sentence, moneys on deposit in the Surplus Fund shall be used to satisfy the requirements set forth in Section 2.08(C) to the extent of any deficiencies therein before being used for any such lawful purpose.

SECTION 2.09. RATE COVENANT. The District shall fix, establish and maintain such rates, fees, charges and collect such fees, rates or other charges for the product, services and facilities of the Utility System, and revise the same from time to time, whenever necessary, as will always provide in each Fiscal Year, Net Revenues adequate at all times to pay in each Fiscal Year at least 100% of the annual debt service on the Series 2018 Note and any other then outstanding Obligations becoming due in such Fiscal Year. Such rates, fees or other charges shall not be so reduced so as to be insufficient to provide adequate Net Revenues for the purposes provided therefor by this Agreement.

SECTION 2.10. ADDITIONAL PARITY OBLIGATIONS. No Additional Parity Obligations, payable on a parity with the Series 2018 Note shall be issued except upon the conditions and in the manner herein provided. The District may issue one or more series of Additional Parity Obligations for any one or more of the following purposes: (i) financing the costs of improvements to the Utility System, or (ii) refunding any debt of the District.

No such Additional Parity Obligations shall be issued unless the following conditions are complied with:

(A) The District shall certify to the Noteholder that it is current in all deposits into the various funds and accounts established hereby and all payments theretofore required to have been deposited or made by it under the provisions of this Agreement and have complied with the covenants and agreements of this Agreement unless such default would be cured by the issuance of such Additional Parity Obligations.

(B) The Chair shall provide a statement or certification to the District and the Noteholder that the amount of the Net Revenues during the immediate preceding Fiscal Year or any 12 consecutive months selected by the District of the 18 months immediately preceding the issuance of said Additional Parity Obligations (the "Test Period"), adjusted as hereinafter provided, were equal to at least 125% of the Maximum Annual Debt Service of the Series 2018 Note, any other outstanding Obligations and the Additional Parity Obligations then proposed to be issued

(C) For the purpose of determining the Maximum Annual Debt Service under this Section 2.10, the interest rate on variable rate Additional Parity Obligations then proposed to be issued shall be deemed to be the Bond Buyer Revenue Bond Index most recently published prior to the sale of such Additional Parity Obligations.

(D) For the purpose of determining the Maximum Annual Debt Service under this Section 2.10, the interest rate on outstanding variable rate Obligations shall be deemed to be (i) if such variable rate Obligations have been outstanding for at least 12 months prior to the date of sale of such Additional Parity Obligations, the highest of (a) the actual rate of interest borne by such variable rate Obligations on the date of sale, and (b) the average interest rate borne by such variable rate Obligations during the 12-month period preceding the date of sale, or (ii) if such variable rate Obligations have not been outstanding for at least 12 months prior to the date of sale of such Additional Parity Obligations, the higher of (a) the actual rate of interest borne by the variable rate Obligations on the date of sale, and (b) the Bond Buyer Revenue Bond Index most recently published prior to the sale of such Additional Parity Obligations.

(E) If the District, prior to the issuance of the proposed Additional Parity Obligations, shall have increased the rates, fees or other charges for the product, services or facilities of the Utility System, the Net Revenues for the Test Period may be adjusted to show the Net Revenues which would have been derived from the Utility System in such Test Period as if such increased rates, fees or other charges for the product, services or facilities of the Utility System had been in effect during all of such Test Period.

(F) In the event any Additional Parity Obligations are issued for the purpose of refunding any Obligations then outstanding, the conditions of Section 2.10(B) shall not apply, provided that the issuance of such Additional Parity Obligations shall result in a reduction of the aggregate debt service of all Obligations to be outstanding upon the issuance of such Additional Parity Obligations.

ARTICLE III

DESCRIPTION OF SERIES 2018 NOTE; PAYMENT TERMS; OPTIONAL PREPAYMENT

SECTION 3.01. DESCRIPTION OF THE SERIES 2018 NOTE. (A) The District hereby authorizes the issuance and delivery of the Series 2018 Note to the Noteholder which Note shall be in a principal amount equal to _____ AND 00/100 DOLLARS (\$ _____) and shall be designated as the "Barefoot Bay Water and Sewer District Utility Refunding Revenue Note, Series 2018." The text of the Series 2018 Note shall be substantially in the form attached hereto as Exhibit A, with such omissions, insertions and variations as may be necessary and desirable to reflect the particular terms of the Series 2018 Note. The provisions of the form of the Series 2018 Note are hereby incorporated in this Agreement.

(B) The Series 2018 Note shall be dated the date of its delivery. The Series 2018 Note shall be executed in the name of the District by the manual signature of the Chair and attested by the manual signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2018 Note shall cease to be such officer of the District before the Series 2018 Note so signed and sealed shall have been actually delivered, such Series 2018 Note may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such Series 2018 Note had not ceased to hold such office.

(C) The Series 2018 Note shall bear interest from its date of issuance at the Interest Rate (calculated on a 30/360-day count basis) as the same may be adjusted pursuant to Section 3.03 hereof. Interest on the Series 2018 Note shall be payable semi-annually on April 1 and October 1 of each year, commencing April 1, 2018 so long as any amount under the Series 2018 Note remains outstanding. Principal of the Series 2018 Note shall be payable annually on October 1 of each year, commencing October 1, 2018, through and including the Maturity Date. The aggregate annual principal and interest payments shall be set forth in the Series 2018 Note. The Chair is authorized to establish the final debt service schedule with the assistance of the Financial Advisor and the approval of the initial Noteholder.

(D) The Series 2018 Note shall be payable as to principal and interest by bank wire transfer, or in such other manner as is agreed to between the District and the Noteholder in whose name the Series 2018 Note shall be registered on the registration books maintained by the District as of the close of business on the fifteenth day (whether or not a business day) of the calendar month next preceding an Interest Payment Date or Principal Payment Date; provided, that the Noteholder shall only be required to present and surrender the Series 2018 Note to the District for the final payment of the principal of the Series 2018 Note or shall otherwise provide evidence that such Series 2018 Note has been fully paid and cancelled. Principal of and interest on the Series 2018 Note shall be

payable in any coin or currency of the United States of America, which at the time of payment, is legal tender for the payment of public and private debts. The District shall maintain books and records with respect to the identity of the Noteholders, including a complete and accurate record of all assignments of this Agreement and the Series 2018 Note as provided in Section 3.04. No presentment of the Series 2018 Note shall be required for such assignment; provided, however, the Noteholder shall notify the District of any such assignment.

(E) Except as otherwise provided herein, the Noteholder shall pay for all of its costs relating to servicing the Series 2018 Note. The District shall pay the fees of the Noteholder's legal counsel in the amount of \$6,500.00.

SECTION 3.02. OPTIONAL PREPAYMENT. (A) The Series 2018 Note may be prepaid in whole or in part on any Business Day at a price equal to 100% of the principal amount of the Series 2018 Note to be prepaid plus accrued interest thereon to the date of prepayment, plus the payment of the fixed rate prepayment charge as determined by the Noteholder and described in this Section 3.02. The fixed rate prepayment charge shall be payable at the option of the Noteholder, and shall equal the greater of (i) 1.00% of the principal balance of the Series 2018 Note being prepaid multiplied by the "Remaining Term," as hereinafter defined, in years, or (ii) a "Yield Maintenance Fee" in an amount computed as follows:

The fixed rate prepayment charge shall be based on the current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the Remaining Term ("Cost of Funds") subtracted from the stated interest rate on the Series 2018 Note ("Stated Interest Rate"). If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the amount being prepaid times the number of days in the "Remaining Term" and divided by 360. The resulting amount is the "fixed prepayment charge" due to the Noteholder upon prepayment of the principal of the Series 2018 Note plus any accrued interest due as of the prepayment date and is expressed in the following calculation:

Yield Maintenance Fee = Principal Amount Being Prepaid x (Stated Interest Rate - Current Cost of Funds) times days in the Remaining Term/360 days, plus any accrued interest due during the "Remaining Term."

"Remaining Term" as used herein shall mean the remaining term of the Series 2018 Note.

Any prepayment in part shall be applied to the remaining principal payments in inverse order, treating scheduled amortization installments as maturities, unless otherwise agreed to in writing between the District and the Noteholder.

(B) Any prepayment of the Series 2018 Note shall be made on such Business Day as shall be specified by the District in a notice delivered to the Noteholder not less than thirty (30) days prior thereto specifying the principal amount of the Series 2018 Note to be prepaid and the date that shall be the date of such prepayment. Notice having been given as aforesaid, the amount of the principal of the Series 2018 Note to be prepaid shall become due and payable on the date of prepayment stated in such notice, together with interest accrued and unpaid to the date of prepayment on the principal amount then being paid and the applicable fixed rate prepayment charge, if any. If on the date of prepayment moneys for the payment of the principal amount to be prepaid on the Series 2018 Note, together with interest to the date of prepayment on such principal amount and the applicable fixed rate prepayment charge, if any, shall have been paid to the Noteholder as above provided, then from and after the date of prepayment, interest on such prepaid principal amount of the Series 2018 Note shall cease to accrue. If said money shall not have been so paid on the date of prepayment, such principal amount of the Series 2018 Note shall continue to bear interest until payment thereof at the then applicable Interest Rate.

SECTION 3.03. ADJUSTMENT TO INTEREST RATES. (A) In the event of a Determination of Taxability, the Interest Rate on the Series 2018 Note shall be immediately increased to the Taxable Rate; provided, however, such Taxable Rate shall never exceed the maximum rate allowable by law. Immediately upon a Determination of Taxability and in no event later than thirty (30) days after such Determination of Taxability, the District agrees to pay to the Noteholder, the Additional Amount. "Additional Amount" means (i) the difference between (a) interest on the Series 2018 Note for the period commencing on the earliest date on which the interest on the Series 2018 Note (or portion thereof) is deemed to have lost its tax-exempt status (which may be as early as the date of issuance of the Series 2018 Note) and ending on the effective date of the adjustment of the Interest Rate to the Taxable Rate (the "Prior Taxable Period") at a rate per annum equal to the Taxable Rate and (b) the aggregate amount of interest paid on the Series 2018 Note during the Prior Taxable Period at the Interest Rate applicable to the Series 2018 Note prior to the adjustment to the Taxable Rate, plus (ii) any penalties, fines, fees, costs and interest paid or payable by the Noteholder to the Internal Revenue Service by reason of such Determination of Taxability.

(B) Upon the occurrence and continuance of an Event of Default pursuant to Section 5.01 hereof, the Noteholder may adjust the Interest Rate to the Default Rate which shall be effective until such Event of Default has been cured. The Noteholder may also be subject a late payment charge as described in Section 5.02 hereof.

SECTION 3.04. TRANSFER AND ASSIGNMENT. The Noteholder's right, title and interest in and to the Series 2018 Note and any amounts payable by the District thereunder may be assigned and reassigned in whole only by the Noteholder, without the necessity of obtaining the consent of the District; provided, that any such assignment,

transfer or conveyance shall be made only to (A) an affiliate of the Noteholder or (B) a bank, insurance company or their affiliate, provided that any such entity is purchasing the Series 2018 Note for its own account with no present intention to resell or distribute the Series 2018 Note, subject to each investor's right at any time to dispose of the Series 2018 Note as it determines to be in its best interests. Unless to an affiliate controlling, controlled by or under common control with the Noteholder, no assignment, transfer or conveyance permitted by this Section 3.04 shall be effective until the District shall have received a written notice of assignment that discloses the name and address of each such assignee. If the Noteholder notifies the District of its intent to assign and sell its right, title and interest in and to the Series 2018 Note as herein provided, the District agrees that it shall execute and deliver to the assignee Noteholder, a Series 2018 Note in the principal amount so assigned, registered in the name of the assignee Noteholder, executed and delivered by the District in the same manner as provided herein.

Nothing contained in this Section 3.04 shall be interpreted to prohibit the Noteholder from selling participations in the Series 2018 Note.

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ARTICLE IV

CONDITIONS FOR ISSUANCE OF THE SERIES 2018 NOTE

SECTION 4.01. CONDITIONS FOR ISSUANCE. In connection with the issuance of the Series 2018 Note, the Noteholder shall not be obligated to purchase the Series 2018 Note pursuant to this Agreement unless at or prior to the issuance thereof the District delivers to the Noteholder the following items in form and substance acceptable to the Noteholder:

- (A) A fully executed Tax Certificate;
- (B) A copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service;
- (C) An opinion of Bond Counsel addressed to the Noteholder (or addressed to the District with a reliance letter addressed to the Noteholder) in form and substance to the effect that (A) the District is a duly created and validly existing dependent special district of the County, (B) this Agreement and the Series 2018 Note have been duly authorized, executed and delivered by the District and each is an enforceable obligation against the District in accordance with its terms (enforceability of it may be subject to standard bankruptcy exceptions and the like), (C) interest on the Series 2018 Note shall be excludable from gross income for federal income tax purposes, will not be treated as a preference item for purposes of computing the alternative minimum tax imposed by Section 55 of the Code and is not taken into account in determining the adjusted current earnings for the purpose of computing the alternative minimum tax on certain corporations (as defined for federal tax purposes); and (D) the Series 2018 Note is not subject to the registration requirement of the Securities Act of 1933, as amended, and this Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;
- (D) An opinion of Counsel to the District in form and substance satisfactory to the Noteholder; and
- (E) Such additional certificates, instruments and other documents as the Noteholder, Bond Counsel, or the Counsel for the District may deem necessary or appropriate.

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ARTICLE V

EVENTS OF DEFAULT; REMEDIES

SECTION 5.01. EVENTS OF DEFAULT. An "Event of Default" shall be deemed to have occurred under this Agreement if:

(A) The District shall fail to make timely payment of any amounts due hereunder, including without limitation, principal or interest when due with respect to the Series 2018 Note or any outstanding Obligation.

(B) The County shall fail to make timely payment of principal or interest when due with respect to any County Bonds.

(C) The County shall be in default under the County System Bond Resolution (other than with respect to the payment of County Bonds described in Section 5.01(B) hereof).

(D) Any representation or warranty of the District or the County contained in Article II of this Agreement shall prove to be untrue in any material respect when made.

(E) Any covenant of the District or the County contained in this Agreement shall be breached or violated for a period of thirty (30) days after such breach or violation, unless the Noteholder shall agree in writing, in its sole discretion, to an extension of such time prior to its expiration;

(F) There shall occur the dissolution or liquidation of the District, or the filing by the District of a voluntary petition in bankruptcy, or the commission by the District of any act of bankruptcy, or adjudication of the District as a bankrupt, or assignment by the District for the benefit of its creditors, or appointment of a receiver for the District, or the entry by the District into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceeding for its reorganization instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter amended.

(G) A final, non-appealable judgement shall have been issued against the District or the County by a court of competent jurisdiction whereby the District or the County is obligated to pay or satisfy an amount of \$10,000,000 or more out of its own funds.

(H) If all of the Public Ratings (as defined below) on any County Bonds that are outstanding under the County System Bond Resolution fall below "BBB+" (or equivalent rating). For purposes of this Section 5.01(H), "Public Ratings" shall mean the credit

ratings published by Moody's Investors Service, S&P Global Ratings, a business of Standard & Poor's Financial Services Inc., and Fitch Ratings with respect to County Bonds that are outstanding under the County System Bond Resolution. Notwithstanding the foregoing, the County shall not be required to maintain any Public Ratings on the County Bonds and it shall not be considered an Event of Default if the County does not maintain any such Public Ratings.

SECTION 5.02. REMEDIES. If any event of default shall have occurred and be continuing, the Noteholder or any trustee or receiver acting for the Noteholder may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights under the Laws of the State of Florida, or granted and contained in this Agreement, and may enforce and compel the performance of all duties required by this Agreement or by any applicable statutes to be performed by the District or the County or by any officer thereof, including, but not limited to, specific performance. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Upon the occurrence of an Event of Default in Section 5.01(A) or (B) and the continuance thereof for fifteen (15) or more days, the Noteholder may declare all payments of principal and interest on the Series 2018 Note to be immediately due and payable. If the District fails to make any payments to the Noteholder due hereunder within 15 days of the date such payment is due and payable, the Noteholder may impose a late payment charge of six percent (6.00%) of the amount that is overdue. The Issuer shall not provide any acceleration rights to any holder of Obligations which are more beneficial than the acceleration rights that are granted hereunder to the Noteholder.

[Remainder of page intentionally left blank]

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. AMENDMENTS, CHANGES OR MODIFICATIONS TO THE AGREEMENT. This Agreement shall not be amended, changed or modified without the prior written consent of the Noteholder, the District and the County.

SECTION 6.02. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

SECTION 6.03. SEVERABILITY. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such provisions or sections shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

SECTION 6.04. TERM OF AGREEMENT. This Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Series 2018 Note is outstanding.

SECTION 6.05. NOTICE OF CHANGES IN FACT. Promptly after the District becomes aware of the same, the District will notify the Noteholder of (a) any change in any material fact or circumstance represented or warranted by the District in this Agreement or in connection with the issuance of the Series 2018 Note, and (b) any default or event which, with notice or lapse of time or both, could become a default under the Agreement, specifying in each case the nature thereof and what action the District has taken, is taking and/or proposed to take with respect thereto.

SECTION 6.06. NOTICES. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent registered or certified mail, postage prepaid, to the District, Barefoot Bay Water and Sewer District, 2725 Judge Fran Jamieson Way, Viera, Florida 32940, Attention: _____, to the County, Brevard County, Florida, 2725 Judge Fran Jamieson Way, Viera, Florida 32940, Attention: _____ and to the Noteholder, TD Bank, N.A., 1560 North Orange Avenue, Suite 300 Winter Park, Florida 32789, Attention: Sterling Harrell, Vice President, or at such other address as shall be furnished in writing by any such party to the other, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail.

SECTION 6.07. NO THIRD-PARTY BENEFICIARIES. This Agreement is for the benefit of the District, the County and the Noteholder and their respective successors and assigns, and there shall be no third-party beneficiary with respect thereto.

SECTION 6.08. APPLICABLE LAW. The substantive laws of the State of Florida shall govern this Agreement.

SECTION 6.09. WAIVER OF JURY TRIAL. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement.

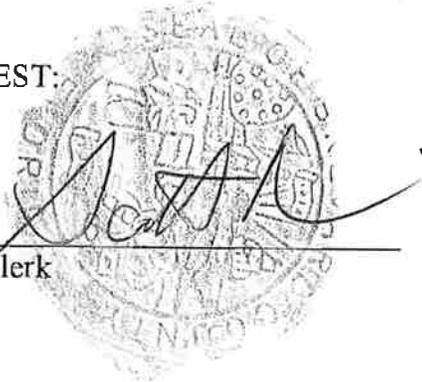
SECTION 6.10. INCORPORATION BY REFERENCE. All of the terms and obligations of the Resolution are hereby incorporated herein by reference as if said Resolution was fully set forth in this Agreement and the Series 2018 Note.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth herein.

ATTEST:

By:

Clerk



The seal of the Barefoot Bay Water and Sewer District is circular and features a central emblem with a sun, water, and a building. The text "BAREFOOT BAY WATER AND SEWER DISTRICT" is inscribed around the perimeter of the seal. A signature is written over the seal.

BAREFOOT BAY WATER AND SEWER DISTRICT

Chair

As approved by Board 1/9/18

TD BANK, N.A.

By:

Title:

EXHIBIT A

\$ _____

**UNITED STATES OF AMERICA
STATE OF FLORIDA
BREVARD COUNTY, FLORIDA
BAREFOOT BAY WATER AND SEWER DISTRICT
UTILITY REFUNDING REVENUE NOTE,
SERIES 2018**

Interest Rate	Date of Issuance	Final Maturity Date
2.24%	January 17, 2018	October 1, 2029

KNOW ALL MEN BY THESE PRESENTS, that the **Barefoot Bay Water and Sewer District** (the "District"), for value received, hereby promises to pay, solely from the Pledged Funds described in the within mentioned Agreement, to the order of **TD Bank, N.A.**, or its successors or assigns (the "Noteholder"), the principal sum of _____ AND 00/100 DOLLARS (\$ _____) pursuant to that certain Loan Agreement by and among the Noteholder, the District and Brevard County, Florida (the "County"), dated as of January 17, 2018 (the "Agreement"), and to pay interest on such outstanding principal amount hereof from the Date of Issuance set forth above, or from the most recent date to which interest has been paid, at the Interest Rate per annum (calculated on a 30/360 day count basis) identified above (subject to adjustment as provided in the Agreement) on April 1 and October 1 of each year, commencing on April 1, 2018, so long as any amount under this Note remains outstanding. Principal of this Note shall be payable on October 1 of each year, commencing on October 1, 2018, through and including the Maturity Date identified above. The repayment schedule for this Note is set forth in definitive form on Appendix I attached hereto. The principal and interest on this Note is payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts. Except as otherwise provided in the Agreement, no presentment shall be required for payment on this Note.

This Note is issued under the authority of and in full compliance with the Constitution and laws of the State of Florida, including, particularly, Part II, Chapter 125, Florida Statutes, Chapter 153, Florida Statutes, Chapter 189, Florida Statutes, Ordinance No. 99-17 of the County, and other applicable provisions of law, and Resolution No. 2018-____ duly adopted by the District on January 9, 2018 (the "Resolution"), and is subject to all terms and conditions of the Resolution and the Agreement. Any capitalized

term used in this Note and not otherwise defined shall have the meaning ascribed to such term in the Agreement.

This Note is being issued to refund certain outstanding bonds of the District. This Note is secured by and payable from the Pledged Funds in the manner and to the extent provided and described in the Agreement. This Note is also payable from County System Net Revenues in the event the Pledged Funds are insufficient to pay scheduled debt service on this Note, in the manner and to the extent provided in the Agreement.

This Note shall bear interest at the Interest Rate identified above on a 30/360-day count basis. Such Interest Rate is subject to adjustment as provided in Section 3.03 of the Agreement. The Noteholder shall provide to the District upon request such documentation to evidence the amount of interest due with respect to the Series 2018 Note upon any such adjustment.

Notwithstanding any provision in this Note to the contrary, in no event shall the interest contracted for, charged or received in connection with this Note (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of interest allowed under the State of Florida as presently in effect.

All payments made by the District hereon shall apply first to fees, costs, late charges and accrued interest, and then to the principal amount then due on this Note.

This Note may be prepaid in whole or in part on any Business Day at a price equal to 100% of the principal amount of this Note to be prepaid plus accrued interest thereon to the date of prepayment, plus the payment of the fixed rate prepayment charge as determined by the Noteholder and described in Section 3.02 of the Agreement.

Any prepayment of this Note shall be made on such date as shall be specified by the District in a notice delivered to the Noteholder not less than thirty (30) days prior thereto specifying the principal amount of this Note to be prepaid and the date that shall be the date of such prepayment, all in accordance with the provisions of the Agreement. All of the prepayment provisions contained in Section 3.02 of the Agreement shall apply with respect to this Note.

Late payment charges may be imposed by the Noteholder in accordance with Section 5.02 of the Agreement under certain circumstances described therein.

This Note, when delivered by the District pursuant to the terms of the Agreement and the Resolution, shall not be or constitute an indebtedness of the District or the County or of the State of Florida, within the meaning of any constitutional, statutory or charter limitations of indebtedness, but shall be payable from the Pledged Funds, in the manner

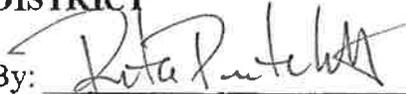
and to the extent provided in the Agreement and the Resolution and, to the extent such Pledged Funds are insufficient therefor, the County System Net Revenues in the manner and to the extent provided in the Agreement. The Noteholder shall never have the right to compel the exercise of the ad valorem taxing power of the County or the State, or taxation in any form of any property therein to pay this Note or the interest thereon.

So long as any of this Note shall remain outstanding, the District shall maintain and keep books for the registration and transfer of this Note.

The Noteholder's right, title and interest in and to this Note and any amounts payable by the District hereunder may be assigned and reassigned in whole only by the Noteholder, without the necessity of obtaining the consent of the District; provided, that any such assignment, transfer or conveyance shall be made only to (A) an affiliate of the Noteholder or (B) a bank, insurance company or their affiliate, provided that any such entity is purchasing this Note for its own account with no present intention to resell or distribute this Note, subject to each investor's right at any time to dispose of this Note as it determines to be in its best interests. Unless to an affiliate controlling, controlled by or under common control with the Noteholder, no assignment, transfer or conveyance of this Note shall be effective until the District shall have received a written notice of assignment that discloses the name and address of each such assignee.

IN WITNESS WHEREOF, the District caused this Note to be signed by the manual signature of the Chair and attested by the manual signature of the Clerk, and this Note to be dated the Date of Issuance set forth above.

BAREFOOT BAY WATER AND SEWER DISTRICT

By: 
Chair

As approved by Board 1/9/18

ATTEST.


Clerk



