RESOLUTION NO. 09-05

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA; ACCEPTING THE PROPOSAL OF BANK OF AMERICA, N.A. TO PROVIDE A $14,155,000 NON-REVOLVING LINE OF CREDIT; AUTHORIZING THE FORM OF A LOAN AGREEMENT BETWEEN THE CITY AND BANK OF AMERICA, N.A.; AUTHORIZING THE PROPER OFFICIALS OF THE CITY TO DO ANY OTHER THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE EXECUTION OF THE LOAN AGREEMENT, THE NOTE REFERRED TO THEREIN, AND THE SECURITY THEREFOR; AUTHORIZING THE CITY TO ACCEPT A COMMITMENT LETTER FROM BANK OF AMERICA, N.A.; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. FINDINGS AND AUTHORIZATION OF PROJECT.

(A) The City of Marco Island, Florida (the "City"), pursuant to the provisions of the Florida Constitution, Chapter 166, Part II, Florida Statutes, Chapter 159, Florida Statutes, the municipal charter of the City and any other applicable provisions of law (all of the foregoing, collectively, the "Act") is authorized, in accordance with the Act, to borrow money, issue bonds, notes or other obligations to finance the costs of wastewater collection improvements and wastewater treatment capacity improvements within certain assessment areas within the City (collectively the "Project");

(B) Bank of America, N.A. (the "Bank") has proposed a financing in accordance with the terms of the proposal of the Bank, dated February 10, 2009 (attached hereto as Exhibit A) (the "Commitment");

(C) In accordance with the Commitment, the Bank is willing to provide the City with a not-to-exceed $14,155,000 Non-Revolving Line of Credit (the "Loan") based on the terms set forth in the Commitment and documented in the form of a Loan Agreement Related to Wastewater Improvements between the City and the Bank attached hereto as Exhibit B (the "Loan Agreement");

(D) Under the Loan Agreement, the City shall make one or more draws in an aggregate principal amount not exceeding $14,155,000, each drawing shall constitute a separate borrowing under the Loan Agreement evidenced by a single promissory note (the "Note") and

such drawing or drawings shall be for purposes of financing a component of the Project (the "Project");

(E) Due to the willingness of the Bank to purchase the Note at interest rates favorable to the City and the critical importance of timing of the sale of the Note, it is hereby determined that it is in the best interest of the public and the City to accept the offer of the Bank to purchase the Note at a negotiated sale pursuant to the terms of the Commitment and the Loan Agreement;

(F) The City hereby accepts the Commitment and the City has determined under Section 218.385, Florida Statutes, that it is in its best interest, taking all pricing facts of the transaction into consideration and given the size of the proposed borrowing, to enter into the Loan Agreement with the Bank; and

(G) The Project is a capital project appropriately undertaken by the City under the Act and the City hereby authorizes the Project and the capital expenditures necessary to complete the Project.

SECTION 2. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 3. APPROVAL OF LOAN AGREEMENT, NOTE AND COMMITMENT. The City hereby authorizes the Chairman or Vice Chairman (collectively, the "Chairman") to execute and deliver, and the City Clerk or any assistant or deputy City Clerk (the "City Clerk") to attest, on behalf of the City, the Loan Agreement substantially in the form attached hereto as Exhibit "B" and the Note in the form attached to the Loan Agreement made by the City to the order of the Bank, with such changes, insertions, and additions as they may approve, their execution thereof being evidence of such approval. The approval of execution given herein includes the approval of the City to allow the Chairman to execute and deliver, and the City Clerk to attest, any requested documents on behalf of the City with respect to the issuance of the Note.

SECTION 4. TRANSACTION COSTS. The City authorizes the payment of costs of issuing the Note (including the legal and financial advisory fees and expenses) from legally available sources, other than proceeds of the Note, in an amount not to exceed $55,000 at the time the first Note is issued.

SECTION 5. AUTHORIZATION OF OTHER DOCUMENTS TO EFFECT TRANSACTION. To the extent that other documents, certificates, opinions, or items are needed to effect any of the transactions referenced in this Resolution, the Loan Agreement or the Note and the security therefore, the Chairman is hereby authorized to execute and deliver and the City Clerk is hereby authorized to attest on behalf of the City such documents, certificates, opinions, or other items and to take such other actions as are necessary for the full, punctual,

and complete performance of the covenants, agreements, provisions, and other terms as are contained herein and in the documents included herein by reference.

Prior to the issuance of the Note, the City shall receive from the Bank a Purchaser's Certificate, the form of which is attached hereto as Exhibit C and a Disclosure Letter containing the information required by Section 218.385, Florida Statutes, the form of which is attached hereto as Exhibit D.

SECTION 6. LIMITED OBLIGATION. The obligation of the City to repay amounts drawn under the Loan Agreement and the Note is a limited and special obligation, payable 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 City.

SECTION 7. REPEAL OF INCONSISTENT DOCUMENTS. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 8. EFFECT OF PARTIAL INVALIDITY. If any one or more provisions of this Resolution, the Loan Agreement or the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not effect any other provision of this Resolution, the Loan Agreement or the Note, but this Resolution, the Loan Agreement and the Note shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The Note shall be issued, the Loan Agreement shall be executed and delivered, and this Resolution is adopted with the intent that the laws of the State of Florida shall govern their construction.

[Remainder of page intentionally left blank]

SECTION 9. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage.

Passed in open and regular session through roll all vote by the City Council of the City of Marco Island, Florida on this 2nd day of March, 2009.

ATTEST

Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

William D. Trotter, Chairman

EXHIBIT A

COMMITMENT

Bank of America

February 10, 2009

Mr. Bill Harrison
Mr. John White
City of Marco Island
Marco Island, FL

Via Email:
Bharrison@cityofmarcoisland.com
John.white@53.com

Re: Draw Note

Dear Mr. Harrison:

We appreciate the opportunity to present this financing proposal to the City of Marco Island ("the Borrower"). The following provisions outline the general terms and conditions under which Bank of America would provide financing to the City of Marco Island.

Proposed Terms & Conditions

Loan: $14,155,000 Draw Note. This amount is subject to reduction of the existing $18,500,000 2008 note to a committed amount of $13,350,000.

Draw Provisions: The Borrower may draw up to $14,155,000 during the term of the loan.

Purpose: Monies to be used to provide short term financing for the City of Marco Island as it relates to the sewer assessment projects

Pricing/Term: The note will have a three year maturity. The interest rate will be a variable rate of 63.7% of the 30 day Libor plus 235 basis points. Such rate shall change daily based on changes in the 30 day Libor rate. Interest shall be calculated on the basis of a 360 day year and the actual number of days elapsed.

The above interest rates assume that this is a non bank qualified tax exempt loan. The Bank will require a legal opinion acceptable to the Bank and its counsel as to the tax exempt status of the note.

Unfunded Fee: The Borrower shall pay a fee of 5 basis points per quarter of the average unfunded loan balance for such quarter. The Borrower shall have the option to reduce the amount of the commitment at any time upon written notification to the Bank. Once reduced the Bank shall have no liability to fund above the reduced amount.

Repayment: Interest only shall be payable monthly with all outstanding principal and accrued interest due at maturity. The monthly interest payments shall be automatically debited from the Borrower's account. The Borrower shall be responsible to provide account details including bank routing and account numbers.

Security: The Loan will be secured by a subordinate lien on the net revenues of the City's Utility System. This lien shall be subordinate the City's 2003 Utility System Revenue Bonds, the 2006 Bank loan and the 2008 Utility Revenue Bonds. Current outstanding senior lien debt may not exceed $121,232,241 at the time of the loan closing.
In addition, the City will covenant to budget and appropriate from lawfully available non ad valorem revenues any amount due on the Loan which is not paid

from another source, subject to the limitations of Section 1.03 of the City Charter to the extent applicable.

Prepayment: Borrower may prepay all or any portion of the Loan at any time without penalty.

Closing Costs: Bank counsel will review documents prepared by a bond counsel selected and paid by the City, for a fee of $4,500.00. The Borrower shall be responsible for payment of all legal fees.

Terms/Conditions: 1.) Borrower will provide a copy of its audited General Purpose Financial Statements on an annual basis, within 270 days of its fiscal year-end.

2.) Borrower shall provide a copy of its annual budget upon request by the Bank.

3.) The Bank shall also have the right to adjust the tax-exempt interest rate in order to maintain the same after tax yield if any amendments to existing law are enacted which would adversely affect the Bank's after tax yield including any "determination of taxability" as will be defined in the Loan documents.

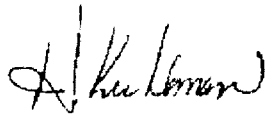
4). The Borrower shall remain in compliance with the Rate Covenant and Additional Bonds Test as established in the Resolution authorizing the 2003 bonds. The "bond service requirement" as included in the existing rate covenant shall include the debt service on all existing and proposed subordinate debt assuming that any available or funded balance of any line of credit is amortized over a period of 30 years at an assumed rate of 4.50%.

Authorization: The Borrower will provide at closing, customary representations and warranties, including but not limited to its power to borrow, the Board actions to authorize these borrowings, the enforceability of all Loan documents, its good standing under Florida law, and that there has been no material adverse change in its financial condition since the last statement presented to the Bank.

Other This term sheet and not intended to be all inclusive. The actual loan documents shall include other terms and conditions customary for the proposed transaction. These shall include but will not be limited to provisions that upon the occurrence of an event of default the Bank may accelerate the maturity of the loan, may charge a default interest rate equal to the maximum rate permitted by law, and may impose a late payment fee of 4% of any amount not paid within 15 days of the due date. In addition, the loan documents will include a waiver of jury trial and mandatory arbitration provision. If the interest on the loan becomes subject to federal income taxation, the Bank's standard "gross-up" provision will apply, and among other things, the interest rate will increase to the rate 154% of the otherwise applicable rate.

On behalf of Bank of America, I am pleased to have the opportunity to make this proposal to the City of Marco Island.

Sincerely,



Holly Kuhlman
Senior Vice President
Bank of America
Government Banking

EXHIBIT B

FORM OF LOAN AGREEMENT

LOAN AGREEMENT
RELATED TO
WASTEWATER IMPROVEMENTS

Dated as of March 3, 2009

By and Between

CITY OF MARCO ISLAND, FLORIDA
(the "City")

and

BANK OF AMERICA, N.A.
(the "Bank")

TABLE OF CONTENTS

(The Table of Contents for this Loan Agreement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Loan Agreement.)

Page

ARTICLE I -- DEFINITION OF TERMS 3
Section 1.01. Definitions 3
Section 1.02. Interpretation 6
Section 1.03. Titles and Headings 6

REPRESENTATIONS AND WARRANTIES OF THE PARTIES; CONSENT OF THE BANK 7
Section 2.01. Representations and Warranties of City 7
Section 2.02. Representations and Warranties of Bank 7
Section 2.03. Consent to Parity Lien on Designated Revenues 8

ARTICLE III -- THE NOTE 9
Section 3.01. The Line of Credit; Purpose and Use 9
Section 3.02. The Note 9
Section 3.03. Adjustments to Note Rate 10
Section 3.04. Compliance with Section 215.84, Florida Statutes 10
Section 3.05. Conditions Precedent to Initial Advance 10
Section 3.06. Registration of Transfer; Assignment of Rights of Bank 12
Section 3.07. Ownership of the Note 13
Section 3.08. Use of Proceeds of Note Permitted Under Applicable Law 13
Section 3.10. Authentication 13

ARTICLE IV -- COVENANTS OF THE CITY 14
Section 4.01. Performance of Covenants 14
Section 4.02. Payment of Note 14
Section 4.03. Tax Covenant 15
Section 4.04. Budget and Other Financial Information 16
Section 4.05. Compliance with Laws and Regulations 16
Section 4.06. Financial Ratios and Issuance of Other Debt. 16
Section 4.07. Prepayment 17
Section 4.08. Application of Proceeds of Note, Project Fund 17
Section 4.09. Unfunded Fee. 18

ARTICLE V -- EVENTS OF DEFAULT AND REMEDIES 19
Section 5.01. Events of Default 19
Section 5.02. Exercise of Remedies 20

Section 5.03. Remedies Not Exclusive 20
Section 5.04. Waivers, Etc. 20

ARTICLE VI -- MISCELLANEOUS PROVISIONS 22
Section 6.01. Covenants of City, Etc.; Successors 22
Section 6.02. Term of Agreement 22
Section 6.03. Notice of Changes in Fact 22
Section 6.04. Amendments and Supplements 22
Section 6.05. Notices 22
Section 6.06. Benefits Exclusive 23
Section 6.07. Severability 23
Section 6.08. Counterparts 23
Section 6.09. Applicable Law 23
Section 6.10. No Personal Liability 23
Section 6.11. Incorporation by Reference 24

Exhibit A Form of Note A-1
Exhibit B Form of Advance Request B-1

LOAN AGREEMENT

THIS LOAN AGREEMENT RELATED TO WASTEWATER IMPROVEMENTS (the "Agreement"), made and entered into this 3rd day of March, 2009 by and between the CITY OF MARCO ISLAND, FLORIDA (the "City"), a municipal corporation in the State of Florida and its successors and assigns, and BANK OF AMERICA, N.A., a national banking association authorized to do business in Florida, and its successors (the "Bank").

WITNESETH:

WHEREAS, capitalized terms used in these recitals and not otherwise defined shall have the meanings specified in Article I of this Agreement; and

WHEREAS, the City, pursuant to the provisions of the Florida Constitution, Chapter 166, Part II, Florida Statutes, Chapter 159, Florida Statutes, the municipal charter of the City and any other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Resolution No. 03-55 adopted by the City Council of the City on September 29, 2003, as amended and supplemented, and as particularly amended by Resolution No. 04-06 adopted by the City Council of the City on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the City on October 17, 2005 (collectively, the "Senior Lien Bond Resolution") and a resolution adopted by the City Council of the City on March 2, 2009 (the "Note Resolution"), is authorized to incur Subordinate Debt (as such term is defined in the Senior Lien Bond Resolution) to finance the costs of certain wastewater collection improvements and wastewater treatment capacity improvements within certain assessment areas inside the City (collectively, the "Project"); and

WHEREAS, on May 22, 2007, the City issued its Subordinate Wastewater Improvement Revenue Note, Series 2007 in an aggregate principal amount of not to exceed $20,000,000 (the "2007 Subordinate Wastewater Note") as Subordinate Debt to finance the costs of certain wastewater collection improvements and wastewater treatment capacity improvements within certain assessment areas inside the City; and

WHEREAS, on August 5, 2008, the City issued its Subordinate Wastewater Improvement Revenue Note, Series 2008 in an aggregate principal amount of not to exceed $18,500,000 (the "2008 Subordinate Wastewater Note") as Subordinate Debt to finance the costs of certain wastewater collection improvements and wastewater treatment capacity improvements within certain assessment areas inside the City; and

WHEREAS, on August 5, 2008, the City issued is Subordinate Water Improvement Revenue Note, Series 2008 in an aggregate principal amount of not to exceed $4,000,000 (the "2008 Subordinate Water Note") as Subordinate Debt to finance the costs of certain improvements to the City's water utility system; and

WHEREAS, pursuant to Section 4.06 of the loan agreements related to the 2007 Subordinate Wastewater Note, the 2008 Subordinate Wastewater Note and the 2008 Subordinate Water Note, the City may incur indebtedness with a parity lien on Designated Revenues (as defined herein), with the prior written consent of the Bank as the sole holder of the 2007 Subordinate Wastewater Note, the 2008 Subordinate Wastewater Note and the 2008 Subordinate Water Note; and

WHEREAS, the Bank has proposed the financing evidenced by this Agreement in accordance with the terms of the proposal of the Bank, dated February 10, 2009 which relates to the hereinafter defined Note (the "Commitment") and which will have a parity lien on Designated Revenues, based on the prior written consent of the Bank evidenced in Section 2.03 hereof; and

WHEREAS, it is estimated that the Designated Revenues will be available in amounts sufficient to provide for payment of the principal of and interest on the Note, the 2007 Subordinate Wastewater Note, the 2008 Subordinate Wastewater Note and the 2008 Subordinate Water Note; and

WHEREAS, as proposed in the Commitment, to the extent Designated Revenues are insufficient, the Bank will be further secured by the City's covenant to budget and appropriate Non-Ad Valorem Revenues in the manner and to the extent provided herein; and

WHEREAS, the City has accepted the Commitment and the Bank is willing to purchase the Note, but only upon the terms and conditions of this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITION OF TERMS

Section 1.01. Definitions. Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings ascribed thereto in the Senior Lien Bond Resolution or as follows:

"Act" shall have the meaning assigned to that term in the recitals hereof.

"Advance" shall have the meaning assigned thereto pursuant to Section 3.02(e) hereof.

"Agreement" shall mean this Loan Agreement and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Bank" shall mean Bank of America, N.A., and its successors and assigns.

"Bond Counsel" shall mean, initially, Bryant Miller Olive 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.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which the payment office of the Bank is lawfully closed.

"City" shall mean the City of Marco Island, Florida, a municipal corporation.

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

"Designated Revenues" shall mean Net Revenues of the System, after making all required payments pursuant to the Senior Lien Bond Resolution.

"Determination of Taxability" shall mean the circumstance that shall be deemed to have occurred if interest paid or payable on the Note becomes includable for federal income tax purposes in the gross income of the Noteholder as a consequence of any act, omission or event whatsoever, and regardless of whether the same was within or beyond the control of the City. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the City or a Noteholder of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable on the Note is includable in the gross income of the Noteholder; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Note is includable in the gross income of a Noteholder; or (c) receipt by the City or the Noteholder of an

opinion of Bond Counsel to the effect that any interest on the Note has become includable in the gross income of the Noteholder for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Note is deemed includable in the gross income of the Noteholder. A Determination of Taxability shall not occur in the event such interest is taken into account in determining adjusted current earnings for the purpose of the alternative minimum tax imposed on corporations.

In the case of (a) and (b) above, no Determination of Taxability shall be deemed to occur unless the City has been given timely written notice that such a determination has been made by the Internal Revenue Service and an opportunity to participate in and seek, at its own expense, a final administrative determination or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the existence of such event of taxability; provided that the City, at its own expense, delivers to the Bank an opinion of Bond Counsel acceptable to the Bank to the effect that such appeal or action for judicial or administrative review is not without merit and there is a reasonable possibility that the judgment, order, ruling or decision from which such appeal or action for judicial or administrative review is taken will be reversed, vacated or otherwise set aside.

"Event of Default" shall mean an Event of Default as defined in Section 5.01 of this Agreement.

"Final Maturity Date" shall mean the date on which all principal and all unpaid interest accrued on the Note shall be due and payable in full, which date shall be, if not sooner due to acceleration or prepayment, March 3, 2012.

"Finance Director" shall mean the Finance Director or any assistant, deputy or interim Finance Director of the City.

"Fiscal Year" shall mean the twelve month period commencing October 1 of each year and ending on the succeeding September 30, or such other twelve month period as the City may designate as its "fiscal year" as permitted by law.

"Loan" shall collectively refer to an amount equal to the outstanding and unpaid draws, together with unpaid interest which has accrued, made under the non-revolving line of credit in the aggregate principal amount of $14,155,000 granted by the Bank of the City pursuant to and in accordance with this Agreement.

"Maximum Corporate Tax Rate" shall mean (a) on the date of issuance of the Note, 35% and (b) thereafter, the maximum marginal rate of income tax imposed on corporations under Section 11 of the Code.

"Net Revenues" shall have the meaning ascribed thereto in the Senior Lien Bond Resolution.

"Non-Ad Valorem Revenues" means all revenues of the City not derived from ad valorem taxation, and which are lawfully available to pay debt service on the Note.

"Note" shall mean the promissory note issued by the City under this Agreement.

"Note Rate" shall mean a variable interest rate (the "Variable Rate") equal to the sum of (i) 63.7 percent (63.7%) of the 30-day London Interbank Offered Rate ("LIBOR Rate") as evidenced in The Wall Street Journal, and (ii) 235 basis points (2.35%), as adjusted on each Business Day, notice of such adjustments to be delivered by the Bank no less often than monthly.

"Note Resolution" shall mean a resolution related to the Note which was adopted by the City Council of the City on March 2, 2009 which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note and such supplementary resolutions of the City as are satisfactory to the Bank.

"Noteholder" shall mean the Bank as the holder of the Note and any subsequent registered holder of the Note.

"Parity Notes" shall mean, collectively, the 2007 Subordinate Wastewater Note, the 2008 Subordinate Wastewater Note and the 2008 Subordinate Water Note.

"Pledged Revenues" shall have the meaning ascribed thereto in the Senior Lien Bond Resolution.

"Prime Rate" shall mean a rate of interest equal to the announced prime commercial lending rate per annum of the Bank. The Prime Rate is a reference rate for the information and use of the Bank in establishing the actual rate to be charged to the City. The Prime Rate is purely discretionary and is not necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

"Project" shall mean certain wastewater collection improvements and wastewater treatment capacity improvements within certain assessment areas inside the City.

"Registrar" shall mean the City Clerk of the City, or any deputy or assistant City Clerk.

"Senior Lien Bond Resolution" shall mean Resolution No. 03-55 adopted by the City Council of the City on September 29, 2003, as amended and supplemented, and as particularly

amended by Resolution No. 04-06 adopted by the City Council of the City on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the City on October 17, 2005.

"2007 Subordinate Wastewater Note" shall have the meaning assigned to that term in the recitals hereof.

"2008 Subordinate Wastewater Note" shall have the meaning assigned to that term in the recitals hereof.

"2008 Subordinate Water Note" shall have the meaning assigned to that term in the recitals hereof.

"System" shall have the meaning ascribed thereto in the Senior Lien Bond Resolution.

"Variable Rate" shall mean the variable rate of interest described in the definition of Note Rate herein.

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 Senior Lien Bond 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.

[Remainder of page intentionally left blank]

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE PARTIES; CONSENT OF THE BANK

Section 2.01. Representations and Warranties of City. The City represents and warrants to the Bank as follows:

(a) Existence. The City is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full power to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Note to the Bank. The making, execution and performance of this Agreement on the part of the City and the issuance and delivery of the Note have been duly authorized by all necessary action on the part of the City and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the City or any of its material properties is bound.

(b) Validity, Etc. This Agreement and the Note are and will be valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) No Financial Material Adverse Change. No financial material adverse change has occurred in the City since the last audited financial statement was prepared.

(d) Powers of City. The City has the legal power and authority to pledge the Designated Revenues and to covenant to budget and appropriate Non-Ad Valorem Revenues in the manner and to the extent described herein.

Section 2.02. Representations and Warranties of Bank. The Bank represents and warrants to the City as follows:

(a) Existence. The Bank is a national banking association, authorized to do business in the State of Florida, with full power to enter into this Agreement, to perform its obligations hereunder and to make the Loan. The performance of this Agreement on the part of the Bank and the making of the Loan have been duly authorized by all necessary action on the part of the Bank and will not violate or conflict with applicable law or any material agreement, indenture or other instrument by which the Bank or any of its material properties is bound.

(b) Validity. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the

enforcement of creditors' rights (and specifically creditors' rights as the same relate to banks) and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) Knowledge and Experience. The Bank (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of making the Loan and investing in the Note; (ii) has received and reviewed such financial information concerning the City as it has needed in order to fairly evaluate the merits and risks of making the Loan and investing in the Note; (iii) is a "national bank" under the laws of the United States of America; and (iv) is purchasing the Note as an investment for its own account and not with a view toward resale to the public. The Bank will not transfer Note except to other banks affiliated with Bank of America, N.A. or any subsidiary thereof, or an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933, as amended.

Section 2.03. Consent to Parity Lien on Designated Revenues. Pursuant to Section 4.6 of the loan agreements related to the 2007 Subordinate Wastewater Note, the 2008 Subordinate Wastewater Note and the 2008 Subordinate Water Note, the Bank hereby consents to the issuance of the Note which will have a parity lien on Designated Revenues.

[Remainder of page intentionally left blank]

ARTICLE III

THE NOTE

Section 3.01. The Line of Credit; Purpose and Use. On the date of this Agreement, the Bank shall make available to the City the Loan in the principal amount of Fourteen Million One Hundred Fifty-Five Thousand Dollars ($14,155,000). The City shall be permitted to make one or more draws under the Note. The proceeds of each draw under this Agreement shall be used to finance components of the Project.

Section 3.02. The Note. The Note shall be substantially in the form set forth as Exhibit "A" to this Agreement. The general terms of the Note shall be as follows:

(a) Amount of Note. The Note shall have a principal amount equal to Fourteen Million One Hundred Fifty Five Thousand Dollars ($14,155,000).

(b) Interest. The Note shall bear interest at the Note Rate, payable monthly on the 3rd day of each month (unless not a Business Day, in which case interest is payable on the next succeeding Business Day) through an automatic debit from the following account: Fifth Third Bank, Cincinnati, Ohio; ABA # 042-000314; Account Name: City of Marco Island; Account # 839-34326 Attn: Fifth Third Bank, Florida. Upon the occurrence of one or more of the events specified in Section 3.03 of this Agreement, the Note Rate shall be adjusted as therein provided. Interest on the Note shall be computed on the basis of a 360-day year and the actual number of days elapsed.

(c) Advances Under the Note. On or before the Final Maturity Date, the Note may be drawn upon in multiple drawings (each in "Advance") under the following terms:

(i) each Advance must be requested by the City (an "Advance Request") in writing and executed by the Finance Director, from the Bank, no later than one (1) Business Day prior to such Advance, in substantially the form attached hereto as Exhibit B;

(ii) each Advance Request must indicate which assessment area it applies to, and whether it is in the category of a construction charge or a capacity charge (an Advance Request cannot apply to more than one assessment area and must be in the category of a construction charge or a capacity charge, but not both);

(iii) each Advance Request must state that the City remains in full compliance with the terms of this Agreement, and the agreements which are incorporated herein by reference, that no Event of Default currently exists and that no Event of Default would exist with the passage of time or the giving of notice;

(iv) no Advance Request shall be honored after the Final Maturity Date or after the occurrence of an Event of Default;

(v) the conditions set forth in Section 3.05 of this Agreement must have been satisfied prior to the first Advance; and

(vi) the Advance must be for Project costs (costs of issuance will be paid from sources other than Note proceeds); and

A copy of each Advance Request shall be provided by the City to Bond Counsel by facsimile (813.223.2705) or email (ddraper@bmolaw.com), Attn: Duane Draper.

(d) Prepayments. The Note shall be subject to prepayment by the City prior to maturity, subject to the terms of Section 4.07 herein.

Section 3.03. Adjustments to Note Rate. The Note Rate shall be subject to adjustment by the Bank as hereinafter described. If any amendments are enacted to existing law, the effect of which would adversely affect the Bank's after-tax yield, or upon the occurrence of a Determination of Taxability, then the Bank shall have the right to adjust the Note Rate in order to maintain the same after-tax yield as if such events had not occurred. Any adjustments in this Section 3.03 shall survive payment of the Note until such time as the federal statute of limitations under which the interest on the Note could be declared taxable under the Code shall have expired. For so long as the Note is owned by the Bank, the Note Rate set forth above assumes a Maximum Corporate Tax Rate of 35%. In the event of a change in the Maximum Corporate Tax Rate, so long as the Note is owned by the Bank, or its successors and assigns, the Bank shall have the right to adjust such Note Rate in order to maintain the same after-tax yield.

Section 3.04. Compliance with Section 215.84, Florida Statutes. The City represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

Section 3.05. Conditions Precedent to Initial Advance. Prior to or simultaneously with the delivery of the Note issued hereunder by the City in connection with the initial Advance, there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the City to the effect that (i) this Agreement and the Note have been duly authorized, executed and delivered by the City and each constitutes a valid, binding and enforceable agreement of the City in accordance with their respective terms, except to the extent that the enforceability of the rights and remedies set forth herein may be limited by bankruptcy, insolvency, financial emergency or other laws affecting creditors' rights generally or by usual equity principles; (ii) the City's execution, delivery and performance of this Agreement and execution and issuance of the Note are not subject to any authorization,

consent, approval or review of any governmental body, public officer or regulatory authority not heretofore obtained or effected, and no taxes are payable in connection therewith; (iii) the execution, issuance and delivery of the Note has been duly and validly authorized by the City, and the Note constitutes a valid and binding special obligation of the City enforceable in accordance with its terms; (iv) the City (A) is a municipal corporation duly organized and validly existing under the laws of the State of Florida, and (B) has power and authority to execute and deliver this Agreement, to execute and deliver the Note, and to consummate the transactions contemplated by such instruments; (v) the execution, delivery and performance of the Note and this Agreement, and compliance with the terms thereof and hereof, under the circumstances contemplated hereby, do not and will not in any material respect conflict with, or constitute on the part of the City a breach or default under, any indenture, mortgage, deed of trust, agreement or other instrument to which the City or to which its properties are subject or conflict with, violate or result in a breach of any existing law, administrative rule or regulation, judgment, court order or consent decree to which the City or its properties are subject; (vi) to the best of such counsel's knowledge, there is no claim, action, suit, proceeding, inquiry, investigation, litigation or other proceeding, at law or in equity, pending or threatened in any court or other tribunal, state or federal (W) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the Note, (X) in any way questioning or affecting the validity or enforceability of any provision of this Agreement or the Note, (Y) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the Note, or of any provision made or authorized for the payment thereof, or (Z) questioning or affecting the organization or existence of the City or the right of any of its officers to their respective offices; (vii) the City has the legal power to make the capital improvements that comprise the Project, to grant a lien on the Designated Revenues and to covenant to budget and appropriate Non-Ad Valorem Revenues in the manner and to the extent as described herein; and (viii) all conditions contained in the ordinances and resolutions of the City precedent to the issuance of the Note have been complied with; and

(b) an opinion of Bond Counsel (who may rely on opinion of Counsel to the City), stating that such counsel are of the opinion that: (i) this Loan Agreement constitutes a valid and binding obligation of the City enforceable upon the City in accordance with its terms; (ii) the Note is a valid and binding special obligation of the City enforceable in accordance with its terms, payable solely from the sources provided therefore in this Loan Agreement; and (iii) assuming compliance by the City with certain covenants relating to requirements contained in the Code (a) interest on the Note is excluded from gross income for purposes of federal income taxation, and (b) interest on the Note is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations; and

(c) a copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service by the City; and

(d) such other documents as the Bank reasonably may request (including, without limitation, appropriate executed Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (d), inclusive, of this Section shall have been filed with the Bank, and when the Note shall have been executed as required by this Agreement, the City shall deliver the Note to or upon the order of the Bank, but only against the City's receipt of the initial proceeds of the Advance.

Section 3.06. Registration of Transfer; Assignment of Rights of Bank. The City shall keep at the office of the City Clerk in the City's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the City together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Exhibit A to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the City shall execute and deliver in exchange for the applicable Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the City shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The City may make a charge for every such registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charges required to be paid with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Note on the registration books of the City shall be deemed to affect a transfer of the rights and obligations of the Bank under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Bank under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Bank. The City and the transferor shall execute and record such instruments and take such other actions as the City and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Bank under this Agreement and the Note.

In the event any Note is mutilated, lost, stolen, or destroyed, the City shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the City, and in the case of any lost, stolen, or destroyed Note, there first shall be furnished to the City evidence of such loss, theft or destruction together with an indemnity satisfactory to it.

Notwithstanding anything herein to the contrary, no transfer shall be permitted absent the City's (and the Bank's) receipt of a letter in form and substance similar to the one delivered by the Bank pursuant to Section 218.385, Florida Statutes from such proposed transferee, and a certificate in form and substance similar to the one attached to the Note Resolution as Exhibit C certifying, among other things, that such holder is an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933, as amended.

Nothing in this Agreement or in the Note shall be construed to prohibit the Bank from granting participation or participations in the Note to any other bank or banks affiliated with Bank of America, N.A. or any subsidiary thereof. No such bank participant shall, however, be a registered holder of the Note or any portion thereof.

Section 3.07. Ownership of the Note. The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the Note shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

Section 3.08. Use of Proceeds of Note Permitted Under Applicable Law. The City represents warrants and covenants that the proceeds of the Note will be used solely for the Project and that such use is permitted by applicable law.

Section 3.09. Authentication. Only if the Note shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A, duly executed by the manual signature of the Registrar and authenticating agent, shall it be entitled to any benefit or security under this Loan Agreement. The Note shall not be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly adopted by the Registrar and such certificate of the Registrar upon any such Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Loan Agreement.

[Remainder of page intentionally left blank]

ARTICLE IV

COVENANTS OF THE CITY

Section 4.01. Performance of Covenants. The City covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the City relating to the Loan.

Section 4.02. Payment of Note.

(a) The City covenants that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided herein and in the Note, in accordance with the terms thereof. Except as otherwise provided herein, the Note shall be payable solely from the Designated Revenues in accordance with the terms hereof, on parity with the lien thereof granted to the holders of the Parity Notes and junior and subordinate in all respects to "Bonds" and "Parity Contract Obligations" under the Senior Lien Bond Resolution as to lien on and source of security for payment from Pledged Revenues pursuant to the Senior Lien Bond Resolution.

(b) Except as otherwise provided herein, the Note will be a special obligation of the City secured solely by the Designated Revenues, and is payable from the Designated Revenues, in the manner and to the extent described in Section 4.02(a) hereof. The Note will not constitute a general debt, liability or obligation of the City or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory provision. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Note and the Noteholder shall never have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment. The Note shall not constitute a lien upon any property of the City except upon the Designated Revenues in the manner and to the extent described herein.

(c) Subject to the next paragraph, in the event Designated Revenues are insufficient to pay principal and or interest on the Note, the City covenants and agrees and has a positive and affirmative duty to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay principal of and interest on the Note not being paid from other amounts as the same shall become due. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. No lien upon or pledge of such budgeted Non-Ad Valorem Revenues shall be in effect until such monies are budgeted and appropriated as provided herein. The City further acknowledges and agrees that the obligations of the City to include the amount of such amendments in each of its annual budgets

and to pay such amounts from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Until such monies are budgeted and appropriated as provided herein, such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the City from pledging in the future its Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the holder of the Note a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to budget and appropriate Non-Ad Valorem Revenues is subject in all respects to the prior payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). Anything in this Agreement to the contrary notwithstanding, it is understood and agreed that all obligations of the City hereunder shall be payable from the portion of Non-Ad Valorem Revenues budgeted and appropriated as herein provided, and nothing herein shall be deemed to pledge ad valorem tax power or ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the City and no holder of the Note nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the City or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder or to maintain or continue any of the activities of the City which generate user service charges, regulatory fees, or any other Non-Ad Valorem Revenues. Notwithstanding any provisions of this Agreement or the Note to the contrary, the City shall never be obligated to maintain or continue any of the activities of the City which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Until such monies are budgeted and appropriated as herein provided, neither this Agreement nor the obligations of the City hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the City, but shall be payable solely as provided herein and, notwithstanding anything herein to the contrary, is subject to the funding obligations for essential governmental services of the City, and is further subject to (i) the provisions of Section 166.241, Florida Statutes, and (ii) to the extent applicable, the limitations in Section 1.03 of the municipal charter of the City, insofar as it is not lawful for the City to appropriate and use non-utility enterprise funds to pay principal of and interest on the Note to the extent that it would cause the City to exceed the expenditure limitations described therein.

Section 4.03. Tax Covenant. The City covenants to the purchasers of the Note provided for in this Agreement that the City will not make any use of the proceeds of the Note at any time during the respective terms of such Note which, if such use had been reasonably expected on the date the Note was issued, would have caused such Note to be an "arbitrage bond" within the meaning of the Code. The City will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

Section 4.04. Budget and Other Financial Information. The City shall:

(a) Within two hundred seventy (270) days following the end of each Fiscal Year of the City, provide the Noteholder with a copy of the City's audited financial statements for the preceding Fiscal Year; and

(b) Upon request, provide the Noteholder with a copy of its resolution adopting its annual budget, a completed budget book upon the completion of the same, and such other financial information regarding the City as the Noteholder may reasonably request.

Section 4.05. Compliance with Laws and Regulations. The City shall maintain compliance with all federal, state and local laws and regulations regarding the acquisition, construction and maintenance of the Project.

Section 4.06. Financial Ratios and Issuance of Other Debt.

(a) The City covenants that it will comply with the rate covenant described in Section 20(R) of the Senior Lien Bond Resolution. For purposes of meeting that covenant hereunder, the references in such covenant to the phrase "Bond Service Requirement" shall be deemed to include debt service on the Note, based on the assumption that all of the principal is drawn as of the date hereof and is amortized annually on each October 1st over a period of 30 years from the date hereof to produce substantially equal annual debt service payments assuming an interest rate of 4.50%.

(b) The City may issue "Additional Parity Obligations" and execute "Parity Contract Obligation" pursuant to the Senior Lien Bond Resolution, without limitation, so long as it complies with the requirements of Section 20(Q) of the Senior Lien Bond Resolution. For purposes of meeting that covenant hereunder, the references in such covenant to the phrase "Bond Service Requirement" shall be deemed to include debt service on the 2007 Subordinate Wastewater Note, the 2008 Subordinate Wastewater Note, the 2008 Subordinate Water Note, and the Note, based on the assumption that all of the principal is drawn as of the date hereof and is amortized annually on each October 1st over a period of 30 years from the date hereof to produce substantially equal annual debt service payments assuming an interest rate of 4.50%.

(c) The City is not permitted to incur indebtedness with a parity lien on Designated Revenues, without the prior written consent of the holders of the Note.

(d) The City may incur subordinate indebtedness secured by Designated Revenues, without limitation, but only if there is an express statement that such obligations are junior and subordinate in all respects to the Note as to lien and source of security from payment from Designated Revenues.

Section 4.07. Prepayment. The Note shall be prepayable at any time without penalty.

Section 4.08. Application of Proceeds of Note; Project Fund. At the time of delivery of each Advance herein authorized, proceeds thereof shall be used to finance a component of the Project in accordance with the provisions of the next paragraph.

The City hereby covenants that it will establish for each Advance with a depository in the State of Florida, which is a member of the Federal Deposit Insurance Corporation and which is eligible under the laws of the State of Florida to receive municipal funds, funds to be known as the "City of Marco Island, Florida Subordinate Wastewater Improvement Revenue Note, Series 2009 – Draw No. ___ (_____ Assessment Area-- [Construction or Capacity] Charge), Project Fund" (the "Project Fund").

Proceeds from each Advance authorized herein shall be deposited into its respective Project Fund and shall be used as described above. When the construction of the component Project associated with that Advance has been completed and all construction costs have been paid in full, all funds remaining in the Project Fund shall be used to redeem the outstanding balance of the Note corresponding to that component Project. All moneys deposited in said Project Fund shall be and constitute a trust fund created for the purposes stated, and there is hereby created a lien upon such fund in favor of the holder of the Note until the moneys thereof shall have been applied in accordance with the terms hereof.

The funds and accounts created and established by this Agreement shall constitute trust funds for the purpose provided herein for such funds. All such funds, except as hereinafter provided, shall be continuously secured in the same manner as municipal deposits of funds are required to be secured by the laws of the State of Florida. Moneys on deposit to the credit of all funds and accounts created hereunder may be invested pursuant to applicable law and the City's investment policy and shall mature not later than the dates on which such moneys shall be needed to make payments in the manner herein provided. The securities so purchased as an investment of funds shall be deemed at all times to be a part of the account from which the said investment was withdrawn, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, except as expressly provided herein, and any loss resulting from such investment shall likewise be charged to said fund or account.

The cash required to be accounted for in each of the funds and accounts described in this Section 4.08 may be deposited in a single bank account, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein for the various purposes of such funds and accounts as herein provided. The designation and establishment of the various funds in and by this Agreement shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the City for certain purposes

and to establish certain priorities for application of such revenues and assets as herein provided.

Section 4.09. Unfunded Fee. The City shall pay the Bank a fee in the amount of 0.20% per annum of the average daily amount available to be drawn on the Loan from time to time (calculated on the basis of 360-day year and the actual number of days elapsed), payable quarterly in arrears, as of and within 15 days after the 3rd day of each March, June, September and December, commencing June 3, 2009, and on the termination or expiration of the Loan. The City may reduce the principal amount of the Loan at any time upon written notice to the Bank. Once the principal balance of the Loan is so reduced, the Bank shall not be obligated to provide funding in excess of the reduced principal amount.

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ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following is hereby declared an "Event of Default:"

(a) payment of the principal of the Note shall not be made when the same shall become due and payable; or

(b) payment of any installment of interest on the Note shall not be made when the same shall become due and payable; or

(c) the City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Note or in this Agreement and such default shall continue for thirty (30) days after written notice shall have been given to the City by the Noteholder specifying such default and requiring the same to be remedied; provided, however, that if, in the reasonable judgment of the Noteholder, the City shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the City to diligently complete such curative action; or

(d) any proceedings are instituted with the consent or acquiescence of the City, for the purpose of effecting a compromise between the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted; or

(e) the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(f) the City is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the City, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

(g) if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any

substantial part of its property and such custody or control shall not be terminated within ninety (90) days from the date of assumption of such custody or control; or

(h) an event of default under the Senior Lien Bond Resolution.

Section 5.02. Exercise of Remedies. Upon the occurrence and during the continuance of an Event of Default, a Noteholder may, by a notice in writing to the City, declare the principal of the Note (if not then due and payable) to be immediately due and payable, and upon such declaration, the same shall be immediately due and payable, anything contained in the Note or this Agreement to the contrary notwithstanding. Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the City to perform its obligations under Article IV of this Agreement.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the City for principal, interest or otherwise under any of the provisions of this Agreement or of the Note then unpaid, with interest on overdue payments of principal and interest (to the extent permitted by law), together with any and all costs and expenses of collection and of all proceedings hereunder and under the Note (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), but payable from the sources provided and in the manner and to the extent provided herein, without prejudice to any other right or remedy of the Noteholder, and to recover and enforce any judgment or decree against the City, but solely as provided herein and in the Note, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect (but from sources provided and in the manner and to the extent provided herein) in any manner provided by law, the monies adjudged or decreed to be payable.

Section 5.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

Section 5.04. Waivers, Etc. No delay or omission of the Noteholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and

remedy given by this Agreement to the Noteholder may be exercised from time to time and as often as may be deemed expedient.

The Noteholder may waive any default which, in its opinion, shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

[Remainder of page intentionally left blank]

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01. Covenants of City, Etc.; Successors. All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Section 6.02. Term of Agreement. This Agreement shall be in full force and effect from the date hereof until the Note and all other sums payable to the Bank hereunder have been paid in full and shall survive the termination of this Agreement in relation to those provisions that deal with retroactive cost increases for the Bank in relation to the tax exempt status of the Note.

Section 6.03. Notice of Changes in Fact. Promptly after the City becomes aware of the same, the City will notify the Bank of any default under this Agreement, specifying in each case the nature thereof and what action the City has taken, is taking and/or proposes to take with respect thereto.

Section 6.04. Amendments and Supplements. This Agreement may be amended or supplemented from time to time only by a writing duly executed by each of the City and the Noteholder. The Senior Lien Bond Resolution may not be amended in a manner which would be materially adverse to the Bank, without the prior written consent of the Bank.

Section 6.05. Notices. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or the Bank, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by certified mail, return receipt requested:

(a) As to the City:

City of Marco Island, Florida
50 Bald Eagle Drive
Marco Island, Florida 34145
Attention: Finance Director

(b) As to the Bank:

Bank of America, N.A.
9000 Southside Boulevard, Suite 100
Jacksonville, Florida 32256

Either party may, by notice sent to the other, designate a different or additional address to which notices under this Agreement are to be sent.

Section 6.06. Benefits Exclusive. Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the City and the Noteholder.

Section 6.07. Severability. In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent from time to time permitted by law.

Section 6.08. 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 6.09. Applicable Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

Section 6.10. No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the City in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the City Council, officer, employee or agent of the City, officer, employee or agent of a successor to the City, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-

observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the City or any successor to the City, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

Section 6.11. Incorporation by Reference. All of the terms and obligations of this Agreement and the Exhibits hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

[Remainder of page intentionally left blank]

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

"CITY"

CITY OF MARCO ISLAND, FLORIDA

(SEAL)

By:_____
William D. Trotter, Chairman

ATTEST:

By:_____
Laura M. Litzan
City Clerk of the City of
Marco Island, Florida

"BANK"

BANK OF AMERICA, N.A.

By:_____
Name: Holly L. Kuhlman
Title: Senior Vice President

EXHIBIT A

FORM OF NOTE

ANY HOLDER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE NOTE RESOLUTION (HEREIN DEFINED) CERTIFYING, AMONG OTHER THINGS, THAT SUCH HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN REGULATION D TO THE SECURITIES ACT OF 1933, AS AMENDED.

CITY OF MARCO ISLAND, FLORIDA
SUBORDINATE WASTEWATER IMPROVEMENT REVENUE NOTE,
SERIES 2009

Principal Sum	Maturity Date	Date of Issuance
$14,155,000	March 3, 2012	March 3, 2009

The CITY OF MARCO ISLAND, FLORIDA (the "City"), for value received, hereby promises to pay, from certain sources described in the within mentioned Agreement, to the order of BANK OF AMERICA, N.A., a national banking association, or its successors or assigns (the "Holder"), at 4501 North Tamiami Trail, Naples, Florida, or at such other place as the Holder may from time to time designate in writing (the "Payment Office of the Bank"), the principal amounts advanced under that certain Loan Agreement Related to Wastewater Improvements by and between the Holder and the City, dated as of March 3, 2009 (the "Agreement"), such aggregate principal amount not to exceed the Principal Sum, together with interest thereon as hereinafter provided until the Maturity Date stated above or the date the principal amount of this Note is paid in the manner hereinafter set forth 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, which payments shall be made to the Holder hereof by check mailed to the Holder at the address designated in writing by the Holder for purposes of payment or by bank wire or bank transfer as such Holder may specify in writing to the City or otherwise as the City and the Holder may agree.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

This Note shall bear interest at a variable interest rate (the "Variable Rate") equal to the sum of (i) 63.7 percent (63.7%) of the 30-day London Interbank Offered Rate ("LIBOR Rate") as evidenced in The Wall Street Journal plus 235 basis points (2.35%), as adjusted on each Business Day (the "Note Rate"). Notice of such adjustments shall be delivered by the Bank no less often than monthly. The Note Rate may be adjusted in accordance with Sections 3.03 of the Agreement and herein.

Interest on this Note shall be computed on the basis of a 360 day year and the actual number of days elapsed.

Principal on this Note is due on the Maturity Date. This Note shall bear interest at the Note Rate, payable monthly on the 3rd day of each month (unless not a Business Day, in which case interest is payable on the next succeeding Business Day) through an automatic debit from the following account: Fifth Third Bank, Cincinnati, Ohio; ABA # 042-000314; Account Name: City of Marco Island; Account # 839-34326 Attn: Fifth Third Bank, Florida.

This Note shall be prepayable at any time without penalty.

All payments made by the City hereon shall apply first to accrued interest, then to other charges due the Holder, and the balance thereof shall apply to the principal amount then due on this Note.

This Note is authorized to be issued in the outstanding aggregate principal amount not to exceed the Principal Sum under the authority of and in full compliance with the Florida Constitution, Chapter 166, Part II, Florida Statutes, Chapter 159, Florida Statutes, the municipal charter of the City and any other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Resolution No. 03-55 adopted by the City Council of the City on September 29, 2003, as amended and supplemented, and as particularly amended by Resolution No. 04-06 adopted by the City Council of the City on March 1, 2004 and Resolution No. 05-71 adopted by the City Council of the City on October 17, 2005 (collectively, the "Senior Lien Bond Resolution") and a resolution adopted by the City Council of the City on March 2, 2009 (the "Note Resolution"), and is subject to all terms and conditions of the Agreement and the Senior Lien Bond Resolution. Any term used in this Note and not otherwise defined shall have the meaning ascribed to such term in the Agreement.

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 nonsurious interest allowed under the State of Florida as presently in effect and to the extent an increase is allowable by such laws, but in no event shall any amount ever be paid or payable by the City greater than the amount contracted for herein. In the event the maturity of this Note is accelerated or prepaid in accordance with the provisions hereof, then such amounts that constitute payments of interest, together with any costs or considerations which constitute interest under the laws of the State of Florida, may never exceed an amount which would result in payment of interest at a rate in excess of that permitted by Section 215.84(3), Florida Statutes, as presently in effect and to the extent an increase is allowable by such laws; and excess interest, if any, shall be cancelled automatically as of the date of such acceleration, or, if theretofore paid, shall be credited on the

principal amount of this Note unpaid, but such crediting shall not cure or waive any default under the Agreement.

THIS NOTE, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE CITY OR THE STATE OF FLORIDA (THE "STATE"), WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE DESIGNATED REVENUES ON PARITY STATUS WITH THE PARITY NOTES AND A COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES, IN THE MANNER AND TO THE EXTENT AS PROVIDED IN THE AGREEMENT. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST THEREON.

Upon the occurrence of an Event of Default the principal of this Note may become or be declared due and payable before the Maturity Date in the manner, with the effect and subject to the conditions set forth in the Agreement. The Holder shall also have such other remedies as described in the Agreement. Upon the occurrence of an Event of Default, the Note Rate shall become the Prime Rate plus four (4) percent. Further, the City shall pay a late payment fee of four (4) percent upon any amounts due and owing hereunder and more than 15 days late.

The City hereby waives presentment, demand, protest and notice of dishonor. This Note is governed and controlled by the Agreement and reference is hereby made thereto regarding interest rate adjustments, acceleration, and other matters.

THE CITY, AND THE OWNER, BY ACCEPTANCE OF THIS NOTE, AGREE TO WAIVE TRIAL BY JURY IN ANY CONTROVERSY OR CLAIM BETWEEN THE PARTIES HERETO INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THE AGREEMENT OR ANY RELATED INSTRUMENTS, AGREEMENTS OR DOCUMENTS.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City has caused this Note to be signed by its Chairman on behalf of the City Council, either manually or with facsimile signature, and the seal of the City to be affixed hereto or imprinted or reproduced hereon, and attested by the City Clerk of the City, either manually or with facsimile signature, and this Note to be dated the Date of Issuance set forth above.

CITY OF MARCO ISLAND, FLORIDA

(SEAL)

By:_____
Name: William D. Trotter
Title: Chairman

ATTEST:

By:_____
Name: Laura M. Litzan
Title: City Clerk

FORM OF CERTIFICATE OF AUTHENTICATION

Date of Authentication: March 3, 2009

This Note is being delivered pursuant to the within mentioned Agreement.

City Clerk, City of Marco Island, Florida,
as Registrar

By:_____
Name: Laura M. Litzan
Title: City Clerk

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto _____ (please print or typewrite name, address and tax identification number of assignee) _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder:_____

By:_____

EXHIBIT B

FORM OF ADVANCE REQUEST

Bank of America, N.A.
Attention: Holly L. Kuhlman
4501 North Tamiami Trail, Suite 400
Naples, Florida 34103

The City of Marco Island, Florida (the "City") does hereby request the following Advance Request made pursuant to a Loan Agreement Related to Wastewater Improvements by and between the City and Bank of America, N.A. (the "Bank") dated March 3, 2009 (the "Loan Agreement").

1. This advance shall be designated as the "City of Marco Island, Florida, Subordinate Wastewater Improvement Revenue Note, Series 2009 – Draw No. ___ (_____ Assessment Area-- [Construction or Capacity] Charge)."

2. The principal amount of this advance shall be $_____ and the advance date shall be _____, ____. The wire instructions for the transfer are as follows:

[To Come]

3. The City warrants and represents that (a) it remains in full compliance with the terms of the Loan Agreement and the agreements which are incorporated therein by reference, (b) that no Event of Default under the Loan Agreement currently exists, and (c) that no Event of Default would exist with the passage of time or the giving of notice.

4. Following this advance, the remaining principal amount of advances the City may draw upon pursuant to the requirements of the Loan Agreement is $_____.

Dated _____, ____ (must be at least one Business Day prior to advance)

CITY OF MARCO ISLAND, FLORIDA

By:_____
Name:_____
Title: Finance Director

cc: Bryant Miller Olive P.A.
Attention: Duane Draper
Facsimile: 813.223.2705
Email: ddraper@bmolaw.com

{25128/013/00301621.DOCv1}

EXHIBIT C

FORM OF PURCHASER'S CERTIFICATE

This is to certify that Bank of America, N.A. (the "Purchaser") has not required the City of Marco Island, Florida (the "City") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the City in connection with the issuance of not to exceed $14,155,000 City of Marco Island, Florida Subordinate Wastewater Improvement Revenue Note, Series 2009 (the "Note"), and no inference should be drawn that the Purchaser, in the acceptance of said Note, is relying on Bond Counsel or City's General Counsel as to any such matters other than the legal opinions rendered by Bond Counsel, Bryant Miller Olive P.A. and by City's Counsel, Weiss Serota Helfman Pastoriza Cole & Boniske P.L. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the Loan Agreement related to the Note dated March 3, 2009 between the City and Bank of America, N.A. (the "Loan Agreement").

We are aware that investment in the Note involves various risks, that the Note is not a general obligation of the City or payable from ad valorem tax revenues, and that the payment of the Note is secured solely from the sources described in the Loan Agreement (the "Note Security").

We have made such independent investigation of the Note Security as we, in the exercise of sound business judgment, consider to be appropriate under the circumstances. In making our investment decision, we have relied upon the accuracy of information which has been provided to us by the City.

We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Note and can bear the economic risk of our investment in the Note.

We acknowledge and understand that the Loan Agreement is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the City, Bond Counsel nor City's General Counsel shall have any obligation to effect any such registration or qualification.

We are not acting as a broker or other intermediary, and are purchasing the Note as an investment for our own account and not with a present view to a resale or other distribution to the public. We understand that the Note may not be transferred except to a bank, savings association, insurance company or other "accredited investor" as described below in accordance with the restrictions set forth in the Note.

We are a "national bank" under the laws of the United States of America. We are not purchasing the Note for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

DATED this 3rd day of March, 2009.

BANK OF AMERICA, N.A.

By:_____
Name: Holly L. Kuhlman
Title: Senior Vice President

EXHIBIT D

FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, proposes to negotiate with the City of Marco Island, Florida (the "City") for the private purchase of its not-to-exceed $14,155,000 City of Marco Island, Florida Subordinate Wastewater Improvement Revenue Note, Series 2009 (the "Note"). Prior to the award of the Note, the following information is hereby furnished to the City:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us (the "Bank") in connection with the issuance of the Note (such fees and expenses to be paid by the City):

Holland & Knight LLP
$4,500

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Bank in connection with the issuance of the Note to any person not regularly employed or retained by the Bank (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Bank, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, with the City, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the City and the Bank or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Note.

3. The amount of the underwriting spread expected to be realized by the Bank is $0.

4. The management fee to be charged by the Bank is $0.

5. Truth-in-Bonding Statement:

The Note is being issued primarily to finance the costs of wastewater collection improvements and wastewater treatment capacity improvements within certain assessment areas within the City (collectively the "Project").

Unless earlier redeemed, the Note is expected to be repaid by March 3, 2012; at an estimated interest rate of ____% and assuming all funds are drawn at closing, total interest paid over the life of the Note is estimated to be $_____.

The Note will be payable in the manner and to the extent described in the Loan Agreement related to the Note dated March 3, 2009 (the "Loan Agreement") between the City and Bank of America, N.A. Issuance of the Note is estimated to result in an annual average of approximately $_____ of revenues of the City not being available to finance other services of the City during the life of the Note.

6. The name and address of the Bank is as follows:

Bank of America, N.A.
4501 North Tamiami Trail, Suite 400
Naples, Florida 34103

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this 3rd day of March, 2009.

BANK OF AMERICA, N.A.

By:_____
Name: Holly L. Kuhlman
Title: Senior Vice President