

RESOLUTION NO. 06-19

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA; AUTHORIZING THE ISSUANCE OF A CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2006 OF THE CITY IN THE PRINCIPAL AMOUNT OF \$4,000,000 TO REIMBURSE AND FINANCE THE COST OF CAPITAL IMPROVEMENTS WITHIN THE CITY FOR THE PROJECT DESCRIBED HEREIN; PROVIDING THAT THE NOTE SHALL BE A LIMITED OBLIGATION OF THE CITY PAYABLE FROM NON-AD VALOREM REVENUES BUDGETED AND APPROPRIATED AS PROVIDED HEREIN; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

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

**Section 1:** Authority for this Resolution. This Resolution is adopted pursuant to Chapter 159, Part I, Chapter 166, Part II, Florida Statutes, the municipal charter of the City of Marco Island, Florida, and other applicable provisions of law (collectively, the "Act").

**Section 2:** Definitions. The following words and phrases shall have the following meanings when used herein:

"Act" shall have the meaning ascribed thereto in Section 1.

"Business Day" means any day except any Saturday or Sunday or day on which the Principal Office of the Original Purchaser is closed.

"Chairwoman" shall mean the Chairwoman, the Chairman or Vice Chairman or Chairwoman of the City Council of the City.

"City Attorney" shall mean the City Attorney or assistant or deputy City Attorney of the Issuer.

"City Manager" shall mean the City Manager or assistant, deputy, interim or acting City Manager of the Issuer.

"Clerk" shall mean the City Clerk or assistant or deputy City Clerk of the Issuer, or such other person as may be duly authorized by the City Council of the Issuer to act on his or her behalf.

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

"Construction Fund" shall mean the Construction Fund established with respect to the Note pursuant to Section 10 hereof.

"Finance Director" shall mean the Finance Director of the Issuer, or such other person as may be duly authorized by the City Manager of the Issuer to act on his or her behalf.

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

"Maturity Date" means August 1, 2010.

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

"Note" means the Capital Improvement Revenue Note, Series 2006 of the Issuer authorized by Section 4 hereof.

"Original Purchaser" means SunTrust Bank, Naples, Florida.

"Owner" or "Owners" means the Person or Persons in whose name or names a Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

"Person" means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

"Pledged Revenues" means the Non-Ad Valorem Revenues budgeted and appropriated as provided herein.

"Principal Office" means, with respect to the Original Purchaser, the office located 801 Laurel Oak Drive, Naples, Florida 34108 or such other office as the Original Purchaser may designate to the Issuer in writing.

"Project" means the capital improvements within the Issuer, including, but not limited to, the reconstruction of North Collier Boulevard.

"Resolution" means this Resolution, pursuant to which the Note is authorized to be issued, including any supplemental resolution(s).

"State" means the State of Florida.

**Section 3: Findings.**

(A) The Issuer hereby determines that it is in the best interest of its inhabitants and necessary for the health and welfare of the residents of the City to complete the Project. Issuance of the Note to reimburse and finance the Project satisfies a paramount public purpose.

(B) Debt service on the Note will be payable from a covenant to budget and appropriate Non-Ad Valorem Revenues as provided herein (collectively, the "Pledged Revenues"). The Pledged Revenues will be sufficient to pay the principal and interest on the Note herein authorized, as the same become due, and to make all deposits required by this Resolution.

(C) The Issuer has received an offer from the Original Purchaser to purchase the Note.

(D) In consideration of the purchase and acceptance of the Note authorized to be issued hereunder by those who shall be the Owner thereof from time to time, this Resolution shall constitute a contract between the Issuer and the Owner.

**Section 4: Authorization of Note.** Subject and pursuant to the provisions of this Resolution, obligations of the Issuer to be known as City of Marco Island, Florida, Capital Improvement Revenue Note, Series 2006 (the "Note") is hereby authorized to be issued under and secured by this Resolution, in the principal amount of \$4,000,000 for the purpose of providing funds to reimburse and pay the costs of the Project and paying the costs of issuing the Note. Because of the characteristics of the Note, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Note, it is in the best interest of the Issuer to accept the offer of the Original Purchaser to purchase the Note at a private negotiated sale. Prior to the issuance of the Note, the Issuer shall receive from the Original Purchaser a Purchaser's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

**Section 5: Description of Note.** The Note shall be dated the date of its delivery, which shall be a date agreed upon by the Issuer and the Original Purchaser, subject to the following terms:

(A) Interest Rate. The Note shall have an interest rate equal to 4.39% (subject to adjustment as described below, the "Interest Rate"), calculated on a 30/360 day basis; provided, however, that such interest rate shall in no event exceed the maximum interest rate permitted by the Act.

(B) Adjustments of Interest Rate. If any interest on the Note becomes includable in the gross income of the Owner for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Owner's after-tax yield with respect to the Note, then the Owner shall have the right to adjust the Interest Rate in order to maintain the same after-tax yield as if such event had not occurred. This adjustment 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 this Note is owned by the Owner, the Interest 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 this Note is owned by the Owner, or its successors and assigns, the Owner shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

(C) Principal and Interest Payment Dates. Interest on the Note shall be paid semi-annually, commencing August 1, 2006, and on each subsequent February 1 and August 1 thereafter until maturity. Principal on the note shall be paid annually on August 1, beginning on August 1, 2007.

Principal on the Note shall amortize on August 1 of the following years:

<u>Year</u>	<u>Principal Amortization</u>
2007	\$1,000,000
2008	1,000,000
2009	1,000,000
2010	1,000,000

(D) The Note is to be in substantially the form set forth in Exhibit A attached hereto, together with such non-material changes as shall be approved by the Chairwoman, such approval to be conclusively evidenced by the execution thereof by the Chairwoman. The Note shall be executed on behalf of the Issuer with the manual or facsimile signature of the Chairwoman and the official seal of the Issuer, and be attested and countersigned with the manual or facsimile signature of the City Clerk, to be approved as to form by the City Attorney. In case any one or more of the officers who shall have signed or sealed the Note or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Note so signed and sealed has been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Note shall hold the

proper office of the Issuer, although, at the date of such Note, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Note shall be actually sold and delivered.

**Section 6: Registration and Exchange of Note; Persons Treated as Owner.** The Note is initially registered to the Original Purchaser. So long as the Note shall remain unpaid, the Issuer will keep books for the registration and transfer of the Note. The Note shall be transferable only upon such registration books.

The Person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on such Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

**Section 7: Payment of Principal and Interest; Limited Obligation.** The Issuer promises that it will promptly pay the principal of and interest on the Note at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof. The Note shall not be or constitute a general obligation or indebtedness of the Issuer as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Pledged Revenues in accordance with the terms hereof. No holder of any Note issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Note, or be entitled to payment of such Note from any funds of the Issuer except from the Pledged Revenues as described herein.

**Section 8: Prepayment.** Fifteen percent (15%) of the original principal amount of the Note shall be prepayable at the option of the Issuer at any time without penalty, upon prior written notice of two (2) Business Days. The remainder of the original principal amount of the Note shall not be subject to prepayment at the option of the Issuer prior to the Maturity Date.

**Section 9: Covenant to Budget and Appropriate.** Subject to the next paragraph, the Issuer covenants and agrees 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 Issuer 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. The Issuer further acknowledges and agrees that the obligations of the Issuer to include the amount of any deficiency in payments in each of its

annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth 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 Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer 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 Issuer. 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 Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the Issuer hereunder shall be payable from the portion of Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the Issuer 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 Issuer. Notwithstanding any provisions of this Resolution or the Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither this Resolution nor the obligations of the Issuer hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided herein and is subject in all respects to the provisions of Section 166.241, Florida Statutes, and is subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Issuer.

**Section 10. Application of Proceeds of Note; Construction Fund.** At the time of delivery of the Note herein authorized, proceeds from the sale of the Note shall be used to reimburse and fund the Project and associated costs of issuance (including but not limited to legal and financial advisory fees and expenses) in accordance with the provisions in the next paragraph.

The Issuer hereby covenants that it will establish 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, one fund to be known as the "City of Marco Island, Florida, Capital Improvement Revenue Note, Series 2006, Construction Fund" (the "Construction Fund").

Proceeds from the sale of the Note herein authorized shall be deposited into the Construction Fund and shall be used as described above. When the construction of the Project has been completed and all construction costs have been paid in full, all funds remaining in the Construction Fund shall first be used to redeem the outstanding balance of the Note

corresponding to the Project. All moneys deposited in said Construction Fund shall be and constitute a trust fund created, with the remainder to be used to pay debt service on the Note, for the purposes stated, and there is hereby created a lien upon such fund in favor of the holders of the Note until the moneys thereof shall have been applied in accordance with this Resolution.

The funds and accounts created and established by this Resolution shall constitute trust funds for the purpose provided herein for such funds. All of 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 account created hereunder may be invested pursuant to applicable law and the Issuer'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 in this Resolution, and any loss resulting from such investment shall likewise be charged to said fund or account.

**Section 11: Tax Covenant.** The Issuer covenants to the purchasers of the Note provided for in this Resolution that the Issuer will not make any use of the proceeds of the Note at any time during the term of the 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 Issuer 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 12: Amendment.** This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Note except with the written consent of all of the Owners of the Note.

**Section 13: Limitation of Rights.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

**Section 14: Note Mutilated, Destroyed, Stolen or Lost.** In case the Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for

such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Issuer proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Note so surrendered shall be canceled.

**Section 15: Impairment of Contract.** The Issuer covenants with the Owner of the Note that it will not, without the written consent of the Owner of the Note, enact any ordinance or adopt any resolution which repeals, impairs or amends in any manner adverse to the Owner the rights granted to the Owner of the Note hereunder.

**Section 16: Budget and Financial Information.** The Issuer shall provide the Owner of the Note with a copy of its annual budget within 30 days of its adoption and such other financial information regarding the Issuer as the Owner of the Note may reasonably request. The Issuer hereby covenants that it shall promptly give written notice to the Owner of the Note of any litigation or proceeding which if determined adversely to the Issuer would adversely affect the security for the payment of the Note. The Issuer shall provide the Owner of the Note with annual financial statements for each fiscal year of the Issuer not later than 210 days after the close of such fiscal year, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant. All accounting terms not specifically defined or specified herein shall have the meanings attributed to such terms under generally accepted accounting principles as in effect from time to time, consistently applied.

**Section 17: Events of Default; Remedies of Noteholder.** The following shall constitute Events of Default: (i) if the Issuer fails to pay any payment of principal of or interest on any Note as the same becomes due and payable; (ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Note (other than set forth in (i) above) and fails to cure the same within thirty (30) days; or (iii) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and the continuance of any such event for 90 days undismissed or undischarged.

Upon the occurrence and during the continuation of any Event of Default, the Owner of the Note may, in addition to any other remedies set forth in this Resolution or the Note, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof.

**Section 18: Anti-Dilution Test:** During such time as the Note is outstanding hereunder, the Issuer agrees and covenants that it will not incur debt secured by and/or payable from Non-Ad Valorem Revenues unless: (i) Non-Ad Valorem Revenues (average of actual receipts over the prior two years) cover projected maximum annual debt service on debt secured by and/or payable solely from such Non-Ad Valorem Revenues by at least 1.5x; and (ii) projected maximum annual debt service requirements for all debt secured by and/or payable solely from such Non-Ad Valorem Revenues do not exceed 20% of Governmental Fund Revenues (defined as general fund, special fund, debt service fund and capital projects funds), exclusive of (i) ad valorem revenues restricted to payment of debt service on any debt and (ii) any debt proceeds, and based on the Issuer's audited financial statements (average of actual receipts of the prior two years). For the purposes of these covenants, maximum annual debt service means the lesser of the actual maximum annual debt service on all debt or 15% of the original par amount of such debt, in each case, secured by and/or payable from Non-Ad Valorem Revenues. The Issuer agrees that, as soon as practicable upon the issuance of debt by the Issuer which is secured by its Non-Ad Valorem Revenues, it shall deliver to the Original Purchaser a certificate setting forth the calculations of the financial ratios provided in this section and certifying that it is in compliance with the provisions of this section.

**Section 19: Severability.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**Section 20: Business Days.** In any case where the due date of interest on or principal of a Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Owner.

**Section 21: Applicable Provisions of Law.** This Resolution shall be governed by and construed in accordance with the laws of the State.

**Section 22: Rules of Interpretation.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**Section 23: Captions.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**Section 24: City Council Members of the Issuer Exempt from Personal Liability.** No recourse under or upon any obligation, covenant or agreement of this Resolution or the Note or

for any claim based thereon or otherwise in respect thereof, shall be had against any City Council member of the Issuer, as such, of the Issuer, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Council members of the Issuer, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such City Council member of the Issuer, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the issuance of the Note, on the part of the Issuer.

**Section 25: Authorizations.** The Chairwoman and any member of the City Council, the City Manager, the City Attorney, the City Clerk, the Finance Director and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**Section 26: Repealer.** All resolutions or parts thereof in conflict herewith are hereby repealed.

**Section 27: No Third Party Beneficiaries.** Except such other persons as may be expressly described in this Resolution or in the Note, nothing in this Resolution or in the Note, expressed or implied, is intended or shall be construed to confer upon any person, other than the Issuer and the Owner, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Issuer and the persons who shall from time to time be the holders.

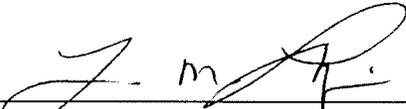
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**Section 28: Effective Date.** This Resolution shall take effect immediately upon its passage.

Passed in open and regular session through the roll call vote by the City Council of the City of Marco Island, Florida this 15<sup>th</sup> day of May, 2006.

**ATTEST**

**CITY OF MARCO ISLAND, FLORIDA**

  
\_\_\_\_\_  
Laura M. Litzan, City Clerk

  
\_\_\_\_\_  
Terri DiSciullo, Chairwoman

**Approved as to Form:**

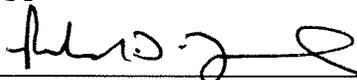
  
\_\_\_\_\_  
Richard D. Yovanovich, City Attorney

EXHIBIT A

[FORM OF NOTE]

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

May 16, 2006

\$4,000,000

CITY OF MARCO ISLAND, FLORIDA  
CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2006

Maturity Date: August 1, 2010

Interest Rate: 4.39% (subject  
to adjustment as described  
herein)

KNOW ALL MEN BY THESE PRESENTS that the City of Marco Island, Florida (the "Issuer"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of SunTrust Bank, Florida or registered assigns (hereinafter, the "Owner"), the principal sum of \$4,000,000 on the dates as hereinafter described, together with interest on the principal balance at the Interest Rate which is described above; provided, however, that such Interest Rate shall in no event exceed the maximum interest rate permitted by applicable law. The Interest Rate on this Note also may be adjusted as hereinafter provided. This Note shall have a final maturity date of August 1, 2010.

Principal of and interest on this Note is payable in lawful money of the United States of America at such place as the Owner may designate to the Issuer in writing.

If any interest on this Note becomes includable in the gross income of the Owner for Federal income tax purposes (an "Event of Taxability") or because of the enactment of any amendments to existing law, the effect of which would adversely affect the Owner's after-tax yield with respect to this Note, then the Owner shall have the right to adjust the Interest Rate with the same after-tax yield as if such event had not occurred. This adjustment shall survive payment of this Note until such time as the federal statute of limitations under which the interest on this Note could be declared taxable under the Internal Revenue Code of 1986, as amended, shall have expired. For so long as this Note is owned by the Owner, the Interest 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 this Note is owned by the Owner, or its successors and assigns, the Owner shall have the right to adjust such Interest Rate in order to maintain the same after-tax yield.

Interest shall be payable to the Owner on each February 1 and August 1, commencing on August 1, 2006.

Principal on this Note shall amortize on August 1 of the following years:

<u>Year</u>	<u>Principal Amortization</u>
2007	\$1,000,000
2008	1,000,000
2009	1,000,000
2010	1,000,000

A final payment in the amount of the entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date.

Fifteen percent (15%) of the original principal amount of this Note shall be prepayable at the option of the Issuer at any time without penalty, upon prior written notice of two (2) Business Days. The remainder of the original principal amount of this Note shall not be subject to prepayment at the option of the Issuer prior to the Maturity Date.

If any date for the payment of principal and interest hereon shall fall on a day which is not a Business Day (as defined in the Resolution hereinafter defined) the payment due on such date shall be due on the next succeeding day which is a Business Day, but the Issuer shall not receive credit for the payment until it is actually received by the Owner.

All payments by the Issuer pursuant to this Note shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to principal.

THIS NOTE DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS NOTE THAT SUCH NOTEHOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE ISSUER OR TAXATION OF ANY REAL OR PERSONAL PROPERTY THEREIN FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS NOTE OR THE MAKING OF ANY OTHER PAYMENTS PROVIDED FOR IN THE RESOLUTION.

This Note is issued pursuant to Chapter 159, Part I, Chapter 166, Part II, Florida Statutes, the municipal charter of the Issuer and a resolution duly adopted by the Issuer on

May 15, 2006, as amended and supplemented from time to time (herein referred to as the "Resolution"), and is subject to all the terms and conditions of the Resolution. All terms, conditions and provisions of the Resolution including, without limitation, remedies in the Event of Default are by this reference thereto incorporated herein as a part of this Note. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

Subject to the next paragraph, the Issuer has covenanted and agreed in the Resolution to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues, amounts sufficient to pay principal of and interest on this Note not being paid from other amounts as the same shall become due. Such covenant and agreement on the part of the Issuer 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. The Issuer further acknowledged and agreed in the Resolution that the obligations of the Issuer to include the amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth 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 Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Owner of this Note a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Issuer. 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 the Resolution to the contrary notwithstanding, it is understood and agreed that all obligations of the Issuer under the Resolution shall be payable from the portion of Non-Ad Valorem Revenues budgeted and appropriated as provided for thereunder and nothing therein shall be deemed to pledge ad valorem tax revenues or to permit or constitute a mortgage or lien upon any assets owned by the Issuer and no Owner of this Note nor any other person, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer. Notwithstanding any provisions of the Resolution or this Note to the contrary, the Issuer shall never be obligated to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or any Non-Ad Valorem Revenues. Neither the Resolution nor the obligations of the Issuer thereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Issuer, but shall be payable solely as provided in the Resolution and is subject in all respects to the provisions of Section 166.241, Florida Statutes, and is subject, further, to the payment of

services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Issuer.

This Note may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Resolution.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Marco Island, Florida has caused this Note to be executed in its name by the manual signature of its Chairwoman, attested and countersigned by the manual signature of its City Clerk and approved as to form by the manual signature of the City Attorney, and its seal to be impressed hereon, all as of this 16<sup>th</sup> day of May, 2006.

(SEAL)

ATTESTED AND COUNTERSIGNED:

CITY OF MARCO ISLAND, FLORIDA

By: \_\_\_\_\_  
Laura M. Litzan, City Clerk

By: \_\_\_\_\_  
Terri DiSciullo, Chairwoman, City Council

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Richard D. Yovanovich, City Attorney

**EXHIBIT B**

**FORM OF PURCHASER'S CERTIFICATE**

This is to certify that SunTrust Bank (the "Purchaser") has not required the City of Marco Island, Florida (the "Issuer") 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 Issuer in connection with the issuance of the \$4,000,000 City of Marco Island, Florida, Capital Improvement Revenue Note, Series 2006 (the "Note"), and no inference should be drawn that the Purchaser, in the acceptance of said Note, is relying on Bond Counsel or Issuer's Counsel as to any such matters other than the legal opinion rendered by Bond Counsel, Bryant Miller Olive, and by Issuer's Counsel, Goodlette, Coleman & Johnson, P.A., City Attorney. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in the resolution adopted by the City Council of the Issuer on May 15, 2006 authorizing the issuance of the Note (the "Resolution").

We acknowledge and understand that the Resolution 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 Issuer, Bond Counsel nor Issuer's 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 bank, trust company, savings institution, insurance company, dealer, investment company, pension or profit-sharing trust, or qualified institutional buyer as contemplated by Section 517.061(7), Florida Statutes. 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.

We are an "accredited investor" as such term is defined in the Securities Act of 1933, as amended, and Regulation D thereunder.

DATED this 16<sup>th</sup> day of May, 2006.

SUNTRUST BANK

By: \_\_\_\_\_

Name: Darren R. Gersch

Title: Vice President

EXHIBIT C

**FORM OF DISCLOSURE LETTER**

The undersigned, as purchaser, proposes to negotiate with the City of Marco Island, Florida (the "Issuer") for the private purchase of its City of Marco Island, Florida, Capital Improvement Revenue Note, Series 2006 (the "Note") in the principal amount of \$4,000,000. Prior to the award of the Note, the following information is hereby furnished to the Issuer:

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 Issuer):

Nabors, Giblin & Nickerson, P.A.  
Bank Counsel Fees \$2,500

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:

None

(b) No person has entered into an understanding with the Bank, or to the knowledge of the Bank, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer 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 reimburse and finance capital improvements within the Issuer including but not limited to the reconstruction of North Collier Boulevard.

Unless earlier redeemed, the Note is expected to be repaid by August 1, 2010; at an interest rate of 4.39%, total interest paid over the life of the Note is estimated to be \$475,583.33.

The Note will be payable solely from a covenant to budget and appropriate from Non-Ad Valorem Revenues sufficient to make such payments, appropriated and deposited as described in a resolution of the Issuer adopted on May 15, 2006 (the "Resolution"). See the Resolution for a definition of Non-Ad Valorem Revenues. Issuance of the Note is estimated to result in an annual average of approximately \$1,118,895.83 of revenues of the Issuer not being available to finance the services of the Issuer during the life of the Note.

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

SunTrust Bank  
801 Laurel Oak Drive  
Naples, Florida 34108

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this 16<sup>th</sup> day of May, 2006.

SUNTRUST BANK

By: \_\_\_\_\_

Name: Darren R. Gersch

Title: Vice President