

RESOLUTION NO. 0404

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$10,000,000 OF CITY OF MARCO ISLAND, FLORIDA GENERAL OBLIGATION BONDS, SERIES 2004 WHICH WILL BE PAYABLE FROM AD VALOREM TAXATION, AND WHICH WILL BE ISSUED FOR THE PURPOSE OF FINANCING THE ACQUISITION OF CERTAIN LAND WITHIN THE CITY; PROVIDING FOR THE LEVY OF NECESSARY AD VALOREM TAXES; PROVIDING FOR OTHER COVENANTS WITH RESPECT TO THE BONDHOLDERS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF IF DECLARED INVALID; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AUTHORITY FOR THIS BOND RESOLUTION. This Bond Resolution is adopted pursuant to the Constitution of the State of Florida, Chapter 166, Florida Statutes, other applicable provisions of law, the municipal charter of the City of Marco Island, Florida (the "Issuer") and a majority vote of the electors of the City of Marco Island, Florida on December 9, 2003.

SECTION 2. FINDINGS. It is hereby found and determined:

(A) The financing of the acquisition of real property being located in the Town Center Mixed Use District commonly known as the Glon Property (the "Project") to be used for open space and public facilities, constituted a capital project authorized by law for which bonds payable from municipal ad valorem taxes could be issued pursuant to Article VII, Section 12 of the Constitution of the State of Florida so long as such bonds were approved by a majority vote of the electors who are owners of freeholds therein not wholly exempt from taxation.

(B) Pursuant to Resolution No. 03-59 adopted by the City Council of the Issuer on October 20, 2003, an election was held on December 9, 2003 to determine if the electors of the Issuer approved of the issuance of not exceeding \$10,000,000 of general obligation bonds of the Issuer for the purpose of financing the acquisition of the Project, payable from ad valorem taxes on all the taxable property within the Issuer (the "Bond Referendum"). The Bond Referendum was duly held and conducted in all respects according to law, and a majority of electors casting a ballot voted in favor of the issuance of such bonds for such purpose.

(C) Article VII, Section 12(a) of the Constitution of the State of Florida provides that upon approval by a majority vote of the electors municipalities may issue bonds payable from ad valorem taxation to finance capital projects authorized by law.

(D) The Issuer deems it a paramount public purpose and deems it necessary, beneficial and in its best interest to provide for the financing of the Project.

(E) Ad valorem taxes levied by the Issuer in accordance with this Bond Resolution should be sufficient to pay all principal of and interest and redemption premium, if any, on the City of Marco Island, Florida General Obligation Bonds, Series 2004 (the "Series 2004 Bonds") to be issued hereunder, as the same become due, and to make all required deposits or payments required by this Bond Resolution.

(F) The estimated sum required to finance the Project will be derived from a portion of the proceeds from the sale of the Series 2004 Bonds.

(G) The full faith, credit and taxing power and the ad valorem taxes of the Issuer are not currently pledged.

SECTION 3. DEFINITIONS. As used in this Bond Resolution:

"BOND COUNSEL" means Bryant Miller & Olive P.A., or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America.

"BOND INSURER" means the municipal bond insurance company which is designated by supplemental resolution of the City Council relating to all or a portion of the Series 2004 Bonds.

"BOND REFERENDUM" shall have the same meaning as set forth above in Section 2.

"BOND REGISTRAR AND PAYING AGENT" means any trust company or bank with trust powers appointed from time to time by supplemental resolution of the City Council to serve under this Bond Resolution.

"BOND RESOLUTION" means this resolution, as may be amended and supplemented from time to time.

"BOND SERVICE PAYMENT DATE" means the date in which any component of Debt Service Requirement becomes due.

"BOND YEAR" means each twelve-month period ending on July 1<sup>st</sup> of each year.

"CHAIRMAN" means the Chairman or Vice Chairman of the City of Marco Island, Florida.

"CITY" or "ISSUER" means City of Marco Island, Florida.

"CITY ATTORNEY" means the City Attorney of the Issuer, or any assistant, acting or interim City Attorney.

"CITY COUNCIL" means the City Council of the Issuer.

"CITY CHARTER" or "CHARTER" means the municipal charter of the Issuer.

"CITY MANAGER" means the City Manager of the Issuer, or any assistant or deputy City Manager.

"CLERK" means the City Clerk of the Issuer, or any assistant or deputy City Clerk.

"CODE" means the Internal Revenue Code of 1986, as amended.

"COST" when used in connection with the Project, means (1) costs of acquisition by or for the Issuer of such Project; (2) costs of land and interests therein and the cost of the Issuer incidental to such acquisition; (3) costs of any capitalized interest with respect to the Bonds; and (4) any other costs properly attributable to such acquisition, as determined by generally accepted accounting principles and shall include reimbursement to the Issuer for any such items of Cost heretofore paid by the Issuer. Any Supplemental Resolution may provide for additional items to be included in the aforesaid Costs.

"DEBT SERVICE FUND" means the "City of Marco Island, Florida General Obligation Bonds, Series 2004, Debt Service Fund" created pursuant to Section 17(A) hereof.

"DEBT SERVICE REQUIREMENT," for any Bond Year, means the sum of the amount required to be deposited into the Debt Service Fund in such year.

"FEDERAL SECURITIES" means direct obligations of the United States of America and obligations the principal of and interest on which are fully guaranteed by the United States of America, none of which permit redemption prior to maturity at the option of the obligor, or "FEDERAL SECURITIES" shall have a meaning as set forth by supplemental resolution of the City Council.

"FINANCE DIRECTOR" means the Finance Director of the Issuer, or any assistant or Deputy Finance Director.

"HOLDER" or "HOLDER OF BONDS" or "BONDHOLDER" or "SERIES 2004 BONDHOLDER" or any similar term means any person who shall be the registered owner of any outstanding Series 2004 Bonds.

"PERMITTED INVESTMENTS" means investments permitted by applicable law and the investment policy of the Issuer.

"PROJECT" shall have the same meaning as set forth above in Section 2.

"PROJECT FUND" means the "City of Marco Island, Florida General Obligation Bonds, Series 2004, Project Fund" created pursuant to Section 14(A) hereof.

"REBATE FUND" means the "City of Marco Island, Florida General Obligation Bonds, Series 2004, Rebate Fund" created pursuant to Section 23(C) hereof.

"SERIES 2004 BONDS" means the City of Marco Island, Florida General Obligation Bonds, Series 2004, to be issued pursuant to this Bond Resolution.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Series 2004 Bonds," "owner," "holder" and "person" shall include the plural as well as the singular number, and the word "person" shall include corporations, associations and public bodies as well as natural persons.

**SECTION 4. AUTHORIZATION OF PROJECT AND AUTHORIZATION OF SERIES 2004 BONDS.** There is hereby authorized the financing of the Project in the manner provided herein. For the purpose of financing the Project, subject and pursuant to the provisions hereof, there are hereby authorized to be issued and sold City of Marco Island, Florida General Obligation Bonds, Series 2004, in the principal amount not to exceed \$10,000,000.

**SECTION 5. BOND RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the acceptance of the Series 2004 Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Bond Resolution shall be deemed to be and shall constitute a contract between the Issuer and such holders. The covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the legal holders of any and all of such Series 2004 Bonds, all of which shall be of equal rank and without preference, priority or distinction of any of the Series 2004 Bonds over any other thereof, except as expressly provided therein and herein.

**SECTION 6. DESCRIPTION OF SERIES 2004 BONDS.** The Series 2004 Bonds shall be issued in fully registered form, shall be dated, shall be numbered consecutively from R-1 upward and shall be in the denomination of \$5,000 each, or integral multiples thereof, shall bear interest at a rate or rates not exceeding the maximum rate allowed by law, payable semiannually in each year on such dates, shall be serial bonds or term bonds, shall mature on

such dates with a final maturity not later than thirty (30) years following the date of their issuance, and may be subject to redemption prior to maturity, all as shall be fixed by supplemental resolution of the City Council before the Series 2004 Bonds are delivered to the purchasers.

Each Series 2004 Bond shall bear interest from the Bond Service Payment Date next preceding the date on which it is authenticated, unless authenticated on a Bond Service Payment Date, in which case it shall bear interest from such Bond Service Payment Date, or, unless authenticated prior to the first Bond Service Payment Date, in which case it shall bear interest from its date; provided, however, that if at the time of authentication, interest is in default, such Series 2004 Bond shall bear interest from the date to which interest shall have been paid.

The principal of and the interest on the Series 2004 Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of the Series 2004 Bonds shall be payable only to the registered Holder or his legal representative at the principal corporate trust office of the Bond Registrar and Paying Agent, and payment of the interest on the Series 2004 Bonds shall be made by the Bond Registrar and Paying Agent on each Bond Service Payment Date to the person appearing on the registration books of the Issuer hereinafter provided for as the registered Holder thereof, by wire transfer or check mailed to such registered Holder at his address as it appears on such registration books maintained by the Bond Registrar on the 15<sup>th</sup> day of the calendar month (whether or not a business day) preceding the interest payment date. Payment of the principal of all Series 2004 Bonds shall be made upon the presentation and surrender of such Series 2004 Bonds as the same shall become due and payable. Interest on the Series 2004 Bonds will be computed on the basis of a 360-day year consisting of twelve 30-day months.

**SECTION 7. EXECUTION.** Said Series 2004 Bonds shall be signed by, or bear the facsimile signature of the Chairman, shall be attested and countersigned by or bear the facsimile signature of the Clerk, and shall be approved as to form by the City Attorney. The official seal of the Issuer shall be imprinted on each Series 2004 Bond.

**SECTION 8. SIGNATURES; REGISTRATION.** In the event that any officer whose signature, or a facsimile of whose signature, shall appear on any Series 2004 Bond shall cease to be such officer before the delivery of such Series 2004 Bonds, said signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery. Any Series 2004 Bond may bear the facsimile signature of, or may be signed by, such person who, at the actual time of the execution of such Series 2004 Bonds, shall be the proper officer to sign such Series 2004 Bonds although, at the date of said Series 2004 Bonds, such person may not have been such an officer.

Only such of the Series 2004 Bonds as shall have been endorsed thereon, a certificate of authentication substantially in the form hereinbelow set forth, duly executed by the Bond

Registrar and Paying Agent, as authenticating agent, shall be entitled to any benefit or security under this Bond Resolution. No Series 2004 Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly and manually executed by the Bond Registrar and Paying Agent, and such certificate of the Bond Registrar and Paying Agent upon any such Series 2004 Bond shall be conclusive evidence that such Series 2004 Bond has been duly authenticated and delivered under this Bond Resolution. The certificate of authentication on any bond shall be deemed to have been duly executed if signed by an authorized officer of the Bond Registrar and Paying Agent, but it shall not be necessary that the same officer sign the certificate of authentication of all of the Series 2004 Bonds that may be issued hereunder at any one time.

Any Series 2004 Bonds, upon surrender thereof at the principal corporate trust office of the Bond Registrar and Paying Agent, together with an assignment duly executed by the Series 2004 Bondholder or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar and Paying Agent, may, at the option of the Series 2004 Bondholder, be exchanged for an aggregate principal amount of Series 2004 Bonds equal to the designated amount of the Series 2004 Bond or Series 2004 Bonds so surrendered.

The Bond Registrar and Paying Agent shall make provision for the exchange of Series 2004 Bonds at the principal corporate trust office of the Bond Registrar and Paying Agent.

**SECTION 9. NEGOTIABILITY, REGISTRATION AND TRANSFER OF SERIES 2004 BONDS.** The Bond Registrar and Paying Agent shall keep books for the registration of transfers of Series 2004 Bonds as provided in this Bond Resolution. The transfer of any Series 2004 Bonds may be registered only upon such books and only upon surrender thereof to the Bond Registrar and Paying Agent together with an assignment duly executed by the Series 2004 Bondholder or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar and Paying Agent. Upon any such registration of transfer, the Issuer shall execute, and the Bond Registrar and Paying Agent shall authenticate and deliver in exchange for such Series 2004 Bond, a new Series 2004 Bond or Series 2004 Bonds registered in the name of the transferee, and in an aggregate principal amount equal to the principal amount of such Series 2004 Bond or Series 2004 Bonds so surrendered.

In all cases in which Series 2004 Bonds shall be exchanged, the Issuer shall execute, and the Bond Registrar and Paying Agent shall authenticate and deliver, at the earliest practicable time, Series 2004 Bonds in accordance with the provision of this Bond Resolution. All Series 2004 Bonds surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Bond Registrar and Paying Agent. The Issuer or the Bond Registrar and Paying Agent may make a charge for every such exchange or registration of transfer of Series 2004 Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any Series 2004 Bondholder for the privilege of exchanging or registering the transfer of Series 2004 Bonds under the provisions of this Bond Resolution. Neither the Issuer nor the Bond Registrar and Paying Agent shall be required to make any such exchange or registration of

transfer of Series 2004 Bonds during fifteen (15) days immediately preceding any Bond Service Payment Date or, in the case of any proposed redemption of the Series 2004 Bonds then, for the Series 2004 Bonds called for redemption, during the fifteen (15) days preceding the date of the mailing of notice of such redemption and continuing until such redemption date.

The person in whose name any Series 2004 Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or redemption price of any such Series 2004 Bond, and the interest on any such Series 2004 Bonds, shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2004 Bond including the premium, if any, and interest thereon to the extent of the sum or sums so paid.

**SECTION 10. SERIES 2004 BONDS MUTILATED, DESTROYED, STOLEN OR LOST.** In case any Series 2004 Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may, in its discretion, cause to be executed, and the Bond Registrar and Paying Agent shall authenticate and deliver, a new Series 2004 Bond of like date and tenor as the Series 2004 Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series 2004 Bond upon surrender and cancellation of such mutilated Series 2004 Bond or in lieu of and substitution for the Series 2004 Bond destroyed, stolen or lost, and upon the Holder furnishing the Issuer and the Bond Registrar and Paying Agent proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer and the Bond Registrar and Paying Agent may prescribe and paying such expenses as the Issuer and the Bond Registrar and Paying Agent may incur. All Series 2004 Bonds so surrendered shall be canceled by the Issuer. If any of the Series 2004 Bonds shall have matured or be about to mature, instead of issuing a substitute Series 2004 Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Series 2004 Bond is lost, stolen or destroyed, without surrender thereof.

**SECTION 11. REDEMPTION PROVISIONS.** The terms of this Section 11 shall apply to redemption of the Series 2004 Bonds.

(A) Prior Redemption. The Series 2004 Bonds may be subject to redemption prior to their maturity as shall be fixed by supplemental resolution of the City Council before the Series 2004 Bonds are delivered to the purchasers.

(B) Selection of the Series 2004 Bonds to be Redeemed. The Series 2004 Bonds shall be redeemed only in the principal amount of \$5,000 each and integral multiples thereof. The Issuer shall, at least sixty (60) days prior to the redemption date (unless a shorter time period shall be satisfactory to the Bond Registrar) notify the Bond Registrar of such redemption date and of the principal amount of the Series 2004 Bonds to be redeemed. For purposes of any redemption of less than all of the outstanding Series 2004 Bonds of a single maturity, the particular Series 2004 Bonds or portions of the Series 2004 Bonds to be redeemed shall be selected not more than forty-five (45) days prior to the redemption date by the Bond Registrar

from the outstanding Series 2004 Bonds of the maturity or maturities designated by the Issuer by such method as the Bond Registrar shall deem fair and appropriate and which may provide for the selection for redemption of the Series 2004 Bonds or portions of the Series 2004 Bonds in the principal amounts of \$5,000 and integral multiples thereof.

If less than all of the outstanding Series 2004 Bonds of a single maturity are to be redeemed, the Bond Registrar shall promptly notify the Issuer and Paying Agent (if the Bond Registrar is not the Paying Agent for such Series 2004 Bonds) in writing of the Series 2004 Bonds or portions of the Series 2004 Bonds selected for redemption and, in the case of any Series 2004 Bond selected for partial redemption, the principal amount thereof to be redeemed.

(C) Notice of Redemption. Notice of redemption shall be given by the deposit in the United States mail of a copy of the redemption notice, postage prepaid, at least thirty (30) and not more than sixty (60) days before the redemption date, to the Bond Insurer and all registered owners of the Series 2004 Bonds or portions of the Series 2004 Bonds to be redeemed at their addresses as they appear on the registration books to be maintained in accordance with this Section 11. Failure to mail any such notice or any defect therein shall not affect the validity of the proceedings for redemption of any Series 2004 Bond or portion thereof with respect to which no failure or defect occurred. Any notice mailed as provided in this Section 11 shall be conclusively presumed to have been duly given, whether or not the Bond Insurer or the owner of such Series 2004 Bond receives such notice.

Notwithstanding any other provision of this Bond Resolution, if, on any day prior to the 5<sup>th</sup> business day preceding any date fixed for redemption of the Series 2004 Bonds pursuant to this Bond Resolution, the City notifies the Bond Registrar and Paying Agent in writing that the City has elected to revoke its election to redeem such Series 2004 Bonds because it has determined that the source of money for such redemption specified in the notice given by the City pursuant to this Section 11 is not available, the Series 2004 Bonds shall not be redeemed on such date and any notice of redemption mailed to the Bond Insurer or the Series 2004 Bondholders pursuant to this Section 11 shall be null and void. In such event, within five business days after the date on which the City elects to revoke its election to redeem such Series 2004 Bonds, the City shall cause a notice of such revocation to be mailed to the Bond Insurer and all Series 2004 Bondholders owning such Series 2004 Bonds. The right of revocation of a notice of redemption shall not apply to any notice of redemption which contains an express statement of the City to the effect that such notice is irrevocable and given in compliance with this Bond Resolution.

So long as the Series 2004 Bonds are registered in the name of Cede & Co., as nominee of DTC (or in the name of any successor securities depository), notices of redemption and notices of revocation of redemption notices shall only be given on behalf of the Issuer to the Bond Insurer and Cede & Co., or any such successor securities depository.

(D) Effect of Notice of Redemption; Payment. Notice having been given in the manner and under the conditions provided under this Section 11, subject to the right of

revocation as heretofore described, the Series 2004 Bonds or portions of the Series 2004 Bonds so called for redemption shall, on the redemption date designated in such notice, become and be due and payable at the redemption price provided for redemption of such Series 2004 Bonds or portions of the Series 2004 Bonds on such date. On the date so designated for redemption, moneys for payment of the redemption price being held in separate accounts by the Paying Agent in trust for the registered owners of the Series 2004 Bonds or portions of the Series 2004 Bonds to be redeemed, interest on the Series 2004 Bonds or portions of the Series 2004 Bonds so called for redemption shall cease to accrue, such Series 2004 Bonds and portions of the Series 2004 Bonds shall cease to be entitled to any lien, benefit or security under this Bond Resolution, and the registered owners of such Series 2004 Bonds or portions of the Series 2004 Bonds shall have no right in respect thereof except to receive payment of the redemption price thereof and to receive the Series 2004 Bonds for any unredeemed portions of such Series 2004 Bonds. All Series 2004 Bonds which have been redeemed shall be canceled by the Bond Registrar and shall not be reissued.

(E) Redemption of Portions of the Series 2004 Bonds. Any Series 2004 Bond which is to be redeemed only in part shall be surrendered at any place of payment specified in the notice of redemption (with due endorsement by, or written instrument of transfer in form satisfactory to, the Bond Registrar duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Issuer shall execute and the Bond Registrar shall authenticate and deliver to the Holder of such Series 2004 Bond, without service charge, a new Series 2004 Bond or Series 2004 Bonds, of the same interest rate and maturity, and of any authorized denomination as requested by the Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Series 2004 Bonds so surrendered.

SECTION 12. FORM OF SERIES 2004 BONDS. The Series 2004 Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted in this Bond Resolution or in any supplemental resolution of the City Council adopted prior to the issuance thereof:

[Remainder of page intentionally left blank]

[Form of Fully Registered Bond]

NO. R-\_\_

\$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
COLLIER COUNTY  
CITY OF MARCO ISLAND  
GENERAL OBLIGATION BONDS,  
SERIES 2004

MATURITY DATE:                      INTEREST RATE:                      DATED DATE:                      CUSIP:

REGISTERED OWNER:

PRINCIPAL AMOUNT:

KNOW ALL MEN BY THESE PRESENTS, that the City of Marco Island, Florida (hereinafter referred to as the "Issuer"), for value received, hereby promises to pay to the order of the Registered Owner identified above, or registered assigns as herein provided (the "Owner"), upon the presentation and surrender hereof at the principal corporate trust office of the Paying Agent (as hereinafter defined), on the Maturity Date identified above, or at prior redemption, if applicable, the Principal Amount identified above and in like manner to pay interest at the Interest Rate identified above, on said principal sum from and including the date hereof until payment of said principal sum has been made or duly provided for, at the rate and on the dates set forth herein. Principal of this Bond is payable at the principal office of Wells Fargo Bank, National Association, as Bond Registrar and Paying Agent (the term "Paying Agent" where used herein refers to said Bond Registrar and Paying Agent or its successors) and interest is payable by wire transfer or check payable to the person in whose name this Bond is registered on the 15<sup>th</sup> day of the calendar month (whether or not a business day) preceding interest payment date. The interest to the Maturity Date is payable on January 1 and July 1 in each year, commencing July 1, 2004. Interest on this Bond will be computed on the basis of a 360-day year consisting of twelve 30-day months.

This Bond is one of an authorized issue of Bonds, in the aggregate principal amount of \$\_\_\_\_\_ of like date, tenor and effect, except as to number, interest rate and maturity, issued to finance the acquisition of certain land within the Issuer, under the authority of and in full compliance with the Constitution and laws of the State of Florida.

The Bonds are issued pursuant to the Constitution of the State of Florida, Chapter 166, Florida Statutes, other applicable provisions of law, the municipal charter of the Issuer, as amended, a majority vote of the electors of the Issuer on December 9, 2003, and Resolution No. 04-\_\_ and Resolution No. 04-\_\_, respectively, each adopted by the City Council of the Issuer on \_\_\_\_\_, 2004, as amended and supplemented from time to time (collectively, the

"Bond Resolution"), and are subject to all the terms and conditions of said Original Resolution and Bond Resolution.

The Bonds are payable from ad valorem taxes on all the taxable property which existed within the Issuer at the time of the Bond Referendum, as provided in the Bond Resolution and herein. The Bond Resolution requires that in each year while any of the Bonds are outstanding, there shall be levied and collected a tax, without limitation as to rate or amount, on all taxable property which existed within the Issuer at the time of the Bond Referendum (excluding homestead exemptions and other exemptions as heretofore or hereafter provided by applicable law), in an amount which will be sufficient to pay the principal of and interest on the Bonds as they become due.

For the prompt payment of the principal of and interest on this Bond as the same shall become due, the full faith, credit and taxing power of the City of Marco Island, Florida is hereby irrevocably pledged.

It is hereby certified and recited that all acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond, have happened, exist and have been performed in due time, form and manner as required by the Constitution and the laws of the State of Florida applicable thereto; that the total indebtedness of said City, including the issue of Bonds of which this Bond is one, does not exceed any constitutional or statutory limitation; and that provision has been made for the levy and collection of a direct annual tax without limitation as to rate or amount upon all taxable property within the Issuer, sufficient to pay, together with other moneys available, if any, the principal of and interest on the Bonds as the same shall become due, which tax shall be levied, assessed and collected at the same time, and in the same manner as other ad valorem taxes are levied, assessed and collected.

This Bond is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code - Investment Securities Law of the State of Florida.

The Bonds consist of serial bonds maturing on July 1 of the years 20\_\_ through 20\_\_, inclusive, and term bonds maturing on July 1, \_\_\_\_.

The Bonds maturing prior to July 1, 2015 will not be subject to optional redemption prior to maturity. The Bonds maturing on or after July 1, 2015 shall be subject to redemption prior to their respective maturities, at the option of the Issuer, on or after July 1, 2014, as a whole or in part at any time, and if in part, by maturities to be selected by the Issuer and by lot within a maturity if less than a full maturity, at a redemption price (plus accrued interest to the date fixed for redemption) equal to the principal amount thereof, without premium.

The Bonds maturing on July 1, \_\_\_\_ are subject to mandatory redemption prior to their maturities in part by lot, at a redemption price of par plus accrued interest to the respective dates of redemption, but without premium, on the following dates and in the following

principal amounts, from amortization installments required to be paid on such dates and in such amounts:

<u>Date</u>	<u>Principal Amount</u>
July 1, ____	\$
July 1, ____	
July 1, ____*	

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\*Final maturity.

Any such redemption, either in whole or in part, shall be made in the manner and upon the terms and conditions provided in the Bond Resolution. Notice of such redemption shall be given in the manner provided in the Bond Resolution.

This transfer of this Bond is registrable by the registered owner hereof or his duly authorized attorney or legal representative at the office of the Bond Registrar and Paying Agent, but only in the manner and subject to the conditions provided in the Bond Resolution and upon surrender and cancellation of this Bond.

The Bond Registrar shall not be required to exchange or register any transfer of this Bond after this Bond has been selected for redemption.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, said City of Marco Island, Florida, by resolution duly adopted by its City Council, has caused this Bond to bear the signatures of its Chairman, to be attested and countersigned by the signature of its City Clerk, to be approved as to form by the City Attorney, and a facsimile of the official seal of the City to be affixed, impressed, imprinted, lithographed or reproduced hereon, all as of the \_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

CITY OF MARCO ISLAND, FLORIDA

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman,  
City Council

ATTESTED AND COUNTERSIGNED:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds issued under the provisions of the within mentioned Bond Resolution.

Date of Authentication:

\_\_\_\_\_

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

\_\_\_\_\_  
Bond Registrar, as Authenticating Agent

By: \_\_\_\_\_  
Authorized Officer

ASSIGNMENT AND TRANSFER

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_(Please insert Social Security or other identifying number of transferee) \_\_\_\_\_  
\_\_\_\_\_ the attached bond of the City of Marco Island, Florida, and does hereby  
constitute and appoint, \_\_\_\_\_, attorney, to transfer the said Bond on the  
books kept for registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

Signature Guaranteed by \_\_\_\_\_  
[member firm of the New York Stock  
Exchange or a commercial bank or a trust  
company.]

By: \_\_\_\_\_ (manual or facsimile)  
Authorized Officer

NOTICE: No transfer will be registered and no new Bonds will be issued in the name of the transferee, unless the signature to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the transferee is supplied.

STATEMENT OF INSURANCE

[INSERT INSURANCE PROVIDER LANGUAGE]

[END OF FORM OF BOND]

SECTION 13. SALE OF SERIES 2004 BONDS. The Series 2004 Bonds shall be issued and sold after such procedure, in such manner and at public or private sale and at such price or prices consistent with the applicable statutes, all at one time or in installments from time to time, as shall be determined by supplemental resolution of the City Council.

SECTION 14. PROJECT FUND; APPLICATION OF SERIES 2004 BOND PROCEEDS.

(A) The Issuer covenants and agrees to establish a special fund to be designated "City of Marco Island General Obligation Bonds, Series 2004 Project Fund," which shall be used only for payment of the Cost of the Project. Moneys in the Project Fund, until applied in payment of any item of the Cost of a Project, in the manner hereinafter provided, shall be held in trust by the Issuer and shall be subject to a lien and charge in favor of the Holders of the Series 2004 Bonds and for the further security of such Holders. Moneys on deposit in the Project Fund may be invested in Permitted Investments.

(B) The proceeds, including accrued interest and premium, if any, received from the sale of any or all of the Series 2004 Bonds, shall be applied by the Issuer simultaneously with the delivery of the Series 2004 Bonds to the purchaser thereof, as follows:

(1) Any accrued interest and interest to accrue on the Series 2004 Bonds from the dated date of the Series 2004 Bonds to the date of delivery shall be deposited in the Debt Service Fund and shall be used only for the purpose of paying interest becoming due on the Series 2004 Bonds.

(2) To the extent not reimbursed therefor by the original purchaser of the Series 2004 Bonds, the Issuer shall pay all costs and expenses in connection with the preparation, issuance and sale of the Series 2004 Bonds.

(3) Any remaining moneys from the Series 2004 Bonds shall be deposited in the Project Fund to be used as permitted in Section 14(A) hereof.

SECTION 15. SECURITY FOR SERIES 2004 BONDS. The Series 2004 Bonds are general obligations of the Issuer. The principal of and interest on the Series 2004 Bonds shall be secured by a pledge of the full faith, credit and taxing power of the Issuer without limitation in the manner and to the extent described herein.

SECTION 16. LEVY OF AD VALOREM TAXES. For so long as the Series 2004 Bonds are outstanding, the City Council shall, each year, levy an ad valorem tax, without limitation as to rate or amount, on all taxable property which existed within the Issuer at the time of the Bond Referendum (excluding homestead exemptions and other exemptions as heretofore or hereafter provided by applicable law) at least equal to the Debt Service Requirement for the ensuing Bond Year. Such tax shall be levied and collected at the same time and in the same manner as ad valorem taxes for the operating expenses of the Issuer and shall be in addition to all other taxes authorized to be levied by the Issuer. The Issuer covenants that it will not accept

payment of taxes levied for operating expenses of the Issuer unless there shall be paid at the same time the taxes required by this Bond Resolution.

All taxes levied pursuant to this Bond Resolution, as collected, shall immediately be deposited into the Debt Service Fund (hereinafter created) and held in trust for the payment of the principal of and interest on the Series 2004 Bonds as they severally become due and shall be expended for no other purpose.

SECTION 17. COVENANTS OF CITY. For so long as any of the principal of and interest on any of the Series 2004 Bonds shall be outstanding and unpaid or until there shall have been set apart in the Debt Service Fund, a sum sufficient to pay when due, the entire principal of the Series 2004 Bonds remaining unpaid, together with interest accrued or to accrue thereon, the Issuer covenants with the Holders of each and all of the Series 2004 Bonds as follows:

(A) Debt Service Fund. The Issuer covenants and agrees to establish a special fund to be designated "City of Marco Island, Florida General Obligation Bonds, Series 2004, Debt Service Fund."

From the Debt Service Fund shall be paid each installment of interest on and principal of the Series 2004 Bonds as they become due. No further payments shall be required to be made into the Debt Service Fund when the aggregate amount of moneys in the Debt Service Fund is at least equal to the aggregate principal amount of the Series 2004 Bonds then outstanding, plus the amount of interest then due or thereafter to become due on such Series 2004 Bonds then outstanding. At such time as the Series 2004 Bonds are no longer outstanding, any moneys remaining in the Debt Service Fund may be transferred to the "general fund" of the Issuer, and shall be used for any lawful purpose. Moneys on deposit in the Debt Service Fund may be invested in Permitted Investments.

(B) Special Funds. Each of the funds and accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds and accounts, respectively. All such funds shall be continuously secured in the manner by which the deposit of Issuer funds are authorized to be secured by the laws of the State of Florida. Earnings on investments in funds and accounts created under this Bond Resolution shall be retained in the funds and accounts from which such earnings derive.

The moneys required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single bank account, and funds allocated to the various funds and accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

The designation and establishment of the various funds and accounts in and by this Resolution 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 for certain purposes and to establish certain priorities for application of such revenues as herein provided.

(C) Books and Records. Books and records of the Issuer shall be kept in which complete and correct entries shall be made, in accordance with generally accepted accounting principles.

At least once a year, on or before April 30 of the year following the close of each fiscal year, the books, records and accounts of the Issuer shall be properly audited by an independent firm of certified public accountants. The results of such audit shall be mailed, upon request, and made available, at all reasonable times, to any Holder or Holders of Series 2004 Bonds or anyone acting for and on behalf of the Holders of such Series 2004 Bonds; provided, however, that any such costs shall be borne by such Holder or Holders as the case may be.

SECTION 18. DEFEASANCE. If, at any time, the Issuer shall have paid, or shall have made provision for payment of, the principal, interest, and redemption premiums, if any, with respect to any Series 2004 Bonds, then, and in that event, the pledge of and lien on the funds pledged in favor of the holders of such Series 2004 Bonds shall be no longer in effect. For purposes of the preceding sentence, deposit of sufficient cash and/or Federal Securities in irrevocable trust with a banking institution or trust company, for the sole benefit of the Series 2004 Bondholders in respect to which such Federal Securities, the principal and interest received will be sufficient to make timely payment of the principal, interest and redemption premiums, if any, on the outstanding Series 2004 Bonds, shall be considered "provision for payment." Nothing herein shall be deemed to require the Issuer to call any of the outstanding Series 2004 Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, if applicable, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption, if applicable.

SECTION 19. DEFAULTS; EVENTS OF DEFAULT AND REMEDIES. Except as provided below, if any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default:"

(A) Default in the due and punctual payment of any interest on the Series 2004 Bonds;

(B) Default in the due and punctual payment of the principal of and premium, if any, on any Series 2004 Bond, at the stated maturity thereof, or upon proceedings for redemption thereof, if applicable;

(C) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Bond Resolution or in the

Series 2004 Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer given by the Holders of not less than twenty-five percent (25%) of aggregate principal amount of Series 2004 Bonds then outstanding (provided, however, that with respect to any obligation, covenant, agreement or condition which requires performance by a date certain, if the Issuer performs such obligation, covenant, agreement or condition within thirty (30) days of written notice as provided above, the default shall be deemed to be cured);

(D) Failure by the Issuer promptly to remove any execution, garnishment or attachment of such consequence as will materially impair its ability to carry out its obligations hereunder; or

(E) Any act of bankruptcy or the rearrangement, adjustment or readjustment of the obligations of the Issuer under the provisions of any bankruptcy or moratorium laws or similar laws relating to or affecting creditors' rights.

The term "default" shall mean default by the Issuer in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Bond Resolution, any supplemental resolution or in the Series 2004 Bonds, exclusive of any period of grace required to constitute a default or an "Event of Default" as hereinabove provided.

For purposes of Section 19(A) and (B) hereof, no effect shall be given to any payments made under any municipal bond insurance policy.

Any Holder of Series 2004 Bonds issued under the provisions hereof or any trustee acting for the Holders of such Series 2004 Bonds may, either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights, including the right to the appointment of a receiver, existing under state or federal law, or granted and contained herein, and may enforce and compel the performance of all duties required herein or by any applicable law to be performed by the Issuer or by any officer thereof.

The foregoing notwithstanding:

(i) No remedy conferred upon or reserved to the Series 2004 Bondholders is intended to be exclusive of any other remedy, but each remedy shall be cumulative and shall be in addition to any other remedy given to the Series 2004 Bondholders hereunder.

(ii) No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient.

(iii) No waiver of any default or Event of Default hereunder by the Series 2004 Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

(iv) Acceleration of the payment of principal of and interest on the Series 2004 Bonds shall not be a remedy hereunder in the case of an Event of Default.

Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Series 2004 Bondholders under this Bond Resolution, the Series 2004 Bondholders shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the City and the funds pending such proceedings, with such powers as the court making such appointment shall confer.

Notwithstanding any provision of this Bond Resolution to the contrary, for all purposes of this Section 19, except the giving of notice of any Event of Default to the Holder of the Series 2004 Bonds, any Bond Insurer of Series 2004 Bonds shall be deemed to be the Holder of the Series 2004 Bonds it has insured.

On the occurrence of an Event of Default, to the extent such rights may then lawfully be waived, neither the Issuer nor anyone claiming through or under it, shall set up, claim or seek to take advantage of any stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Bond Resolution, and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent it may lawfully do so, the benefit of all such laws and all right of redemption to which it may be entitled.

Within 30 days of knowledge thereof, both the Issuer and the Bond Registrar and Paying Agent shall provide notice to any Bond Insurer of Series 2004 Bonds of the occurrence of any Event of Default.

Any Bond Insurer of Series 2004 Bonds shall be included as a party in interest and as a party entitled to (i) notify the Issuer or any applicable receiver of the occurrence of an Event of Default, and (ii) request the receiver to intervene in judicial proceedings that affect the Series 2004 Bonds or the security therefor. The receiver is required to accept notice of default from any Bond Insurer of Series 2004 Bonds.

Anything in this Bond Resolution to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, any Bond Insurer of Series 2004 Bonds in default shall be entitled to control and direct the enforcement of all rights and remedies granted to the Series 2004 Bondholders subject to such municipal bond insurance under this Bond Resolution, and the Bond Insurers of Series 2004 Bonds in default shall also be entitled to approve all waivers of events of default.

SECTION 20. MODIFICATION OR AMENDMENT. No material modification or amendment of this Bond Resolution or of any Bond Resolution or resolution amendatory

thereof or supplemental thereto may be made without the consent in writing of the Holders of fifty-one percent (51%) or more in principal amount of the Series 2004 Bonds then outstanding; provided, however, that no modification or amendment shall permit a change in the maturity of such Series 2004 Bonds or a reduction in the rate of interest thereon, or in the amount of the principal obligation, or affecting the unconditional promise of the Issuer to levy taxes, in the manner and to the extent provided herein, or to pay the principal of and interest on the Series 2004 Bonds, as the same shall become due, from the sources herein provided, or reduce such percentage of Holders of such Series 2004 Bonds required above for such modifications or amendments without the consent of all the Holders of the Series 2004 Bonds to be affected.

For purposes of this Section, to the extent any Series 2004 Bonds are insured by a policy of municipal bond insurance, then the consent of the issuer or issuers of such municipal bond insurance policy or policies shall be deemed to constitute the consent of the Holders of such Series 2004 Bonds.

**SECTION 21. SEVERABILITY OF INVALID PROVISION.** If any one or more of the covenants, agreements or provisions of this Bond Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Bond Resolution or of the Series 2004 Bonds issued hereunder.

**SECTION 22. ARBITRAGE.** No use will be made of the proceeds of the Series 2004 Bonds which will cause the same to be "arbitrage bonds" within the meaning of the Code. The Issuer, at all times while the Series 2004 Bonds and the interest thereon are outstanding, will comply with the requirements of Section 103(c) of the Code and applicable rules and regulations of the Internal Revenue Service.

**SECTION 23. TAX COVENANT.** With respect to any Series 2004 Bonds for which the Issuer intends on the date of issuance thereof for the interest thereon to be excluded from gross income for purposes of federal income taxation:

(A) The Issuer shall not use or permit the use of any proceeds of the Series 2004 Bonds or any other funds of the Issuer, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the Issuer with respect to the Series 2004 Bonds in any manner, and shall not take or permit to be taken any other action or actions, which would cause any such Series 2004 Bonds to be a "private activity bond" within the meaning of Section 141 or an "arbitrage bond" within the meaning of Section 148, or "federally guaranteed" within the meaning of Section 149(b), of the Code, or otherwise cause interest on such Series 2004 Bonds to become subject to federal income taxation.

(B) The Issuer shall, at all times, do and perform all acts and things permitted by law and this Bond Resolution which are necessary or desirable in order to ensure that interest paid

on such Series 2004 Bonds will be excluded from gross income for purposes of federal income taxes and shall take no action that would result in such interest not being so excluded.

(C) The Issuer shall pay or cause to be paid to the United States Government any amounts required by Section 148(f) of the Code and the regulations thereunder (the "Regulations"). In order to ensure compliance with the rebate provisions of Section 148(f) of the Code with respect to any Series 2004 Bonds for which the Issuer intends on the date of issuance thereof to be excluded from gross income for purposes of federal income taxation, the Issuer hereby creates the "City of Marco Island, Florida General Obligation Bonds, Series 2004, Rebate Fund" (the "Rebate Fund") to be held by the Issuer. The Rebate Fund need not be maintained so long as the Issuer timely satisfies its obligation to pay any rebatable earnings to the United States Treasury; however, the Issuer may, as an administrative convenience, maintain and deposit funds in the Rebate Fund from time to time. Moneys in the Rebate Fund (including earnings and deposits therein) shall be held for future payment to the United States Government as required by the Regulations and as set forth in instructions of Bond Counsel delivered to the Issuer upon issuance of such Series 2004 Bonds. Moneys on deposit in the Rebate Fund may be invested in Permitted Investments.

SECTION 24. ADDITIONAL RIGHTS TO BOND INSURER. Pursuant to one or more supplemental resolutions, the Issuer may provide additional rights, covenants, agreements and restrictions relating to the Bond Insurer, if any, and any municipal bond insurance policy.

SECTION 25. BOOK-ENTRY ONLY SYSTEM. The person in whose name any Series 2004 Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or redemption price, if applicable, of any such Series 2004 Bond, and the interest on any such Series 2004 Bonds shall be made only to or upon the order of the registered owner thereto or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2004 Bond including the premium, if any, and interest thereon to the extent of the sum or sums so paid.

It is intended that the Series 2004 Bonds be registered so as to participate in a global book-entry system with The Depository Trust Company ("DTC") as set forth herein and in a Blanket Issuer Letter of Representation dated October 20, 2003 on file with DTC (the "Letter of Representation"). The Series 2004 Bonds shall be initially issued in the form of a single fully registered Series 2004 Bond of each maturity. Upon initial issuance, the ownership of such Series 2004 Bonds shall be registered by the Bond Registrar and Paying Agent in the name of Cede & Co., as nominee for DTC. With respect to Series 2004 Bonds registered by the Bond Registrar and Paying Agent in the name of Cede & Co., as nominee of DTC, the Issuer and the Bond Registrar and Paying Agent shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Series 2004 Bonds from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a "Depository Participant") or to any person on behalf of whom such a Depository Participant holds an interest in the Series 2004 Bonds (each such person being herein

referred to as an "Indirect Participant"). Without limiting the immediately preceding sentence, the Issuer and the Bond Registrar and Paying Agent shall have no responsibility or obligation with respect to (a) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to the ownership interest in the Series 2004 Bonds, (b) the delivery to any Depository Participant or any Indirect Participant or any other person, other than a registered owner of a Series 2004 Bond as shown in the Series 2004 Bond register, of any notice with respect to the Series 2004 Bonds, including any notice of redemption, if applicable, or (c) the payment to any Depository Participant or Indirect Participant or any other person, other than a registered owner of a Series 2004 Bond as shown in the Series 2004 Bond register, of any amount with respect to principal of, premium, if any, or interest on, the Series 2004 Bonds. No person other than a registered owner of a Series 2004 Bond as shown in the Series 2004 Bond register shall receive a Series 2004 Bond certificate with respect to any Series 2004 Bond. Upon delivery by DTC to the Bond Registrar and Paying Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions hereof with respect to the payment of interest by the mailing of checks or drafts to the registered owners of Series 2004 Bonds appearing as registered owners in the registration books maintained by the Bond Registrar and Paying Agent at the close of business on a regular record date, the name "Cede & Co." in this Bond Resolution shall refer to such new nominee of DTC.

In the event that (a) the City determines that DTC is incapable of discharging its responsibilities described herein and in the Letter of Representation, (b) the agreement among the City, the Bond Registrar and Paying Agent and DTC evidenced by the Letter of Representation shall be terminated for any reason or (c) the Issuer determines that it is in the best interests of the beneficial owners of the Series 2004 Bonds that they be able to obtain certificated Series 2004 Bonds, the Issuer shall notify DTC of the availability through DTC of Series 2004 Bond certificates and the Series 2004 Bonds shall no longer be restricted to being registered in the Series 2004 Bond register in the name of Cede & Co., as nominee of DTC. At that time, the Issuer may determine that the Series 2004 Bonds shall be registered in the name of and deposited with a successor depository operating a universal book-entry system, as may be acceptable to the Issuer, or such depository's agent or designee, and if the Issuer does not select such alternate universal book-entry system, then the Series 2004 Bonds may be registered in whatever name or names registered owners of Series 2004 Bonds transferring or changing Series 2004 Bonds designate, in accordance with the provisions hereof. Notwithstanding any other provision of this Bond Resolution to the contrary, so long as any Series 2004 Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Series 2004 Bond and all notices with respect to such Series 2004 Bond shall be made and given, respectively, in the manner provided in the Letter of Representation.

As long as any Series 2004 Bonds are outstanding in book-entry form, the provisions of this Bond Resolution inconsistent with such system of book-entry registration shall not be applicable to such Series 2004 Bonds, and the Issuer covenants to cause adequate records to be

kept with respect to the ownership of the Series 2004 Bonds issued in book-entry form or the beneficial ownership of Series 2004 Bonds issued in the name of a nominee.

SECTION 26. PRELIMINARY OFFICIAL STATEMENT. The preparation and distribution of a Preliminary Official Statement relating to the Series 2004 Bonds is hereby approved and authorized, as is the use thereof in connection with the sale of the Series 2004 Bonds. The form of such Preliminary Official Statement will be approved by supplemental resolution of the City Council. The distribution of the final Official Statement relating to the Series 2004 Bonds (as it may be amended and supplemented from time to time, the "Official Statement") is hereby authorized, and the execution of such Official Statement by the Chairman and the Finance Director is hereby authorized. The Finance Director of the Issuer is hereby authorized to execute and deliver a certificate of the Issuer which deems such Preliminary Official Statement "final" within the contemplation of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule").

SECTION 27. CONTINUING DISCLOSURE. The Issuer hereby covenants and agrees that, in order to assist the original purchaser in complying with the continuing disclosure requirements of the Rule with respect to the Series 2004 Bonds, it will comply with and carry out all of the provisions of a continuing disclosure certificate to be executed by the Issuer prior to the time the Issuer delivers the Series 2004 Bonds to the underwriter, as it may be amended from time to time in accordance with the terms thereof (the "Continuing Disclosure Certificate"). The form of such agreement will be approved by supplemental resolution of the City Council. Notwithstanding any other provision of this Bond Resolution, failure of the Issuer to comply with such agreement shall not be considered an Event of Default hereunder. However, the agreement shall be enforceable by the Series 2004 Bondholders in the event that the Issuer fails to cure a breach thereunder within a reasonable time after written notice from a Series 2004 Bondholder to the Issuer that a breach exists. Any rights of the Series 2004 Bondholders to enforce the provisions of the covenant shall be on behalf of all Series 2004 Bondholders and shall be limited to a right to obtain specific performance of the Issuer's obligations thereunder.

SECTION 28. APPOINTMENT OF BOND REGISTRAR AND PAYING AGENT. The Bond Registrar and Paying Agent will be appointed by supplemental resolution of the City Council. The form of an agreement between the Bond Registrar and Paying Agent and the Issuer will be approved by supplemental resolution of the City Council.

SECTION 29. GENERAL AUTHORITY. The members of the City Council of the Issuer and the Issuer's officers, attorneys and other agents and employees, including but not limited to the City Manager, the Finance Director, the Clerk, and the City Attorney, are hereby authorized to perform all acts and things required of them by this Bond Resolution or desirable or consistent with the requirements hereof for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Series 2004 Bonds and this Bond Resolution, and they are hereby authorized to execute and deliver all documents which shall be required by Bond Counsel or the initial purchasers of the Series 2004 Bonds to effectuate the sale of the Series 2004 Bonds to said initial purchasers.

SECTION 30. NO THIRD PARTY BENEFICIARIES. Except as may be expressly described herein or in a supplemental resolution of the City Council, nothing in this Bond Resolution, or in the Series 2004 Bonds, expressed or implied, is intended or shall be construed to confer upon anyone of another entity other than the City and the Holders any right, remedy or claim, legal or equitable, under and by reason of this Bond Resolution or any provision hereof, or of the Series 2004 Bonds, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the City and the Holders from time to time.

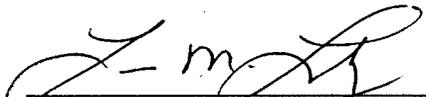
SECTION 31. NO PERSONAL LIABILITY. Neither the members of the City Council of the Issuer nor any person executing the Series 2004 Bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 32. REPEAL OF INCONSISTENT INSTRUMENTS. All resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

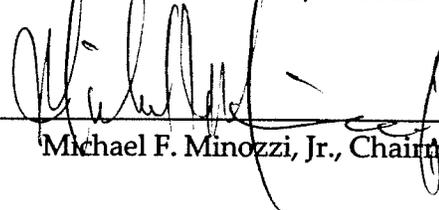
SECTION 33. EFFECTIVE DATE. This Bond Resolution shall take effect immediately upon its passage.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 1<sup>st</sup> day of March, 2004.

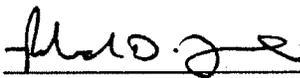
ATTEST:

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

CITY OF MARCO ISLAND, FLORIDA

By:   
\_\_\_\_\_  
Michael F. Minozzi, Jr., Chairman

Approved as to Form:

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