

RESOLUTION NO. 02-33

A RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF MARCO ISLAND, FLORIDA OF NOT TO EXCEED \$6,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF CITY OF MARCO ISLAND, FLORIDA CAPITAL IMPROVEMENT REVENUE BONDS, IN ONE OR MORE SERIES, FOR THE PURPOSE OF FINANCING VARIOUS CAPITAL IMPROVEMENTS TO BE OWNED BY AND LOCATED WITHIN THE CITY; COVENANTING TO BUDGET AND APPROPRIATE ALL LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO SECURE THE PAYMENT THEREOF; MAKING CERTAIN COVENANTS AND AGREEMENTS FOR THE BENEFIT OF THE HOLDERS OF SUCH BONDS; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE SALE, ISSUANCE AND DELIVERY OF SUCH BONDS; TAKING CERTAIN OTHER ACTIONS WITH RESPECT TO SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE.

## TABLE OF CONTENTS

<u>Contents</u>	<u>Page No.</u>
ARTICLE I - GENERAL .....	1
SECTION 1.01. Definitions .....	1
SECTION 1.02. Authority for Resolution .....	6
SECTION 1.03. Resolution to Constitute Contract .....	7
SECTION 1.04. Findings .....	7
SECTION 1.05. The Project .....	8
ARTICLE II - AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS .....	8
SECTION 2.01. Authorization of Bonds .....	8
SECTION 2.02. Description of Bonds .....	8
SECTION 2.03. Application of Bond Proceeds .....	9
SECTION 2.04. Execution of Bonds .....	9
SECTION 2.05. Authentication .....	10
SECTION 2.06. Temporary Bonds .....	10
SECTION 2.07. Bonds Mutilated, Destroyed, Stolen or Lost .....	10
SECTION 2.08. Transfer .....	11
SECTION 2.09. Coupon Bonds .....	12
SECTION 2.10. Form of Bonds .....	12
ARTICLE III - REDEMPTION OF BONDS .....	19
SECTION 3.01. Privilege of Redemption .....	19
SECTION 3.02. Selection of Bonds to be Redeemed .....	19
SECTION 3.03. Notice of Redemption .....	19
SECTION 3.04. Redemption of Portions of Bonds .....	20
SECTION 3.05. Payment of Redeemed Bonds .....	20
ARTICLE IV - SECURITY, SPECIAL FUNDS AND APPLICATION THEREOF .....	20
SECTION 4.01. Bonds not to be Indebtedness of Issuer .....	20
SECTION 4.02. Bonds Secured by Pledge of Pledged Funds .....	21
SECTION 4.03. Construction Fund .....	22
SECTION 4.04. Funds and Accounts .....	22
SECTION 4.05. Flow of Funds .....	22
SECTION 4.06. Investments .....	23
SECTION 4.07. Separate Accounts .....	24
ARTICLE V - OTHER OBLIGATIONS AND COVENANTS OF ISSUER .....	24
SECTION 5.01. Special Covenants and Financial Ratios .....	24
SECTION 5.02. Books and Records .....	25
SECTION 5.03. No Impairment .....	25
SECTION 5.04. Federal Income Tax Covenants; Taxable Bonds .....	25

ARTICLE VI - DEFAULTS AND REMEDIES .....	27
SECTION 6.01. Events of Default .....	27
SECTION 6.02. Remedies .....	27
SECTION 6.03. Directions to Trustee as to Remedial Proceedings.....	28
SECTION 6.04. Remedies Cumulative .....	28
SECTION 6.05. Waiver of Default .....	28
SECTION 6.06. Application of Moneys After Default.....	28
ARTICLE VII -SUPPLEMENTAL RESOLUTIONS.....	29
SECTION 7.01. Supplemental Resolutions without Bondholders' Consent.....	29
SECTION 7.02. Supplemental Resolutions with Bondholders' Consent .....	30
SECTION 7.03. Supplemental Resolutions with Insurer's Consent in lieu of Bondholders' Consent.....	31
SECTION 7.04. Insurer Consent. ....	31
ARTICLE VIII - MISCELLANEOUS .....	32
SECTION 8.01. Defeasance.....	32
SECTION 8.02. Sale of Bonds .....	33
SECTION 8.03. General Authority .....	33
SECTION 8.04. No Third Party Beneficiaries .....	33
SECTION 8.05. Validation .....	33
SECTION 8.06. No Personal Liability .....	34
SECTION 8.07. Severability of Invalid Provisions .....	34
SECTION 8.08. Repeal of Inconsistent Resolutions .....	35
SECTION 8.09. Effective Date .....	35
EXHIBIT A        THE PROJECT DESCRIPTION	

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

## ARTICLE I

### GENERAL

SECTION 1.01. Definitions. When used in this Resolution, the following terms shall have the following meanings, unless the context clearly otherwise requires:

"Act" shall mean Chapter 166, Florida Statutes, the Constitution of the State of Florida, the City Charter, and other applicable provisions of law.

"Amortization Installment" shall mean an amount designated as such by Supplemental Resolution of the Issuer and established with respect to any Term Bonds.

"Annual Debt Service" shall mean, with respect to any Bond Year, the aggregate amount of (1) all interest required to be paid on the Outstanding Bonds during such Bond Year, except to the extent that such interest is to be paid from deposits in the Construction Fund or the Interest Account made from Bond proceeds, (2) all principal of Outstanding Serial Bonds maturing in such Bond Year, and (3) all Amortization Installments herein designated with respect to such Bond Year.

"Authorized Issuer Officer" shall mean any person authorized by this Resolution or Supplemental Resolution of the Issuer to perform such act or sign such document.

"Bond Amortization Account" shall mean the separate account in the Debt Service Fund established pursuant to Section 4.04 hereof.

"Bond Counsel" shall mean Bryant, Miller and Olive, P.A., or any 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 Year" shall mean the period commencing on November 2 of each year and continuing through the next succeeding November 1.

"Bondholder" or "Holder" or "holder" or any similar term, when used with reference to a Bond or Bonds, shall mean any person who shall be the registered owner of any Outstanding Bond or Bonds as provided in the registration books of the Issuer.

"Bonds" shall mean any of the City of Marco Island, Florida Capital Improvement Revenue Bonds issued pursuant to this Resolution, in one or more series.

"Chairman" shall mean the Chairman of the City Council of the Issuer, or in his or her absence, the Vice-Chairman of the City Council of the Issuer, or such other person as may be duly authorized by the Issuer to act on his or her behalf.

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

"City Charter" shall mean the municipal charter of the City of Marco Island, Florida, as amended from time to time.

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

"City Council" shall mean the City Council of the City of Marco Island, Florida.

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

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations and rules thereunder in effect or proposed.

"Construction Fund" shall mean the City of Marco Island Capital Improvement Revenue Bonds Construction Fund established pursuant to Section 4.03 hereof.

"Cost" when used in connection with a Project, shall mean (1) the Issuer's cost of physical construction; (2) costs of acquisition by or for the Issuer of such Project; (3) costs of land and interests therein and the costs of the Issuer incidental to such acquisition; (4) the cost of any indemnity and surety bonds and premiums for insurance during construction; (5) all interest due to be paid on the Bonds and other obligations relating to the Project during the construction period of such Project and for a reasonable period thereafter; (6) engineering, legal and other consultant fees and expenses; (7) costs and expenses incidental to the issuance of the Bonds for up to one year, including legal and financial advisory fees and expenses and the fees and expenses of any auditors, Paying Agent, Registrar or depository; (8) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any indebtedness of the Issuer (other than the Bonds) incurred for such Project; (9) costs of machinery or equipment required by the Issuer for the commencement of operation of such Project; or (10) any other costs properly attributable to such construction, acquisition, or equipping, 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" shall mean the City of Marco Island Capital Improvement Revenue Bonds Debt Service Fund established pursuant to Section 4.04 hereof.

"Federal Securities" shall mean:

1. Cash

2. U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs")
3. Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities.
4. Resolution Funding Corp. (REFCORP). Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.
5. Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P. If, however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition.
6. Obligations issued by the following agencies which are backed by the full faith and credit of the U.S.:
  - a. U.S. Export-Import Bank (Eximbank)  
Direct obligations or fully guaranteed certificates of beneficial ownership
  - b. Farmers Home Administration (FmHA)  
Certificates of beneficial ownership
  - c. Federal Financing Bank
  - d. General Services Administration  
Participation certificates
  - e. U.S. Maritime Administration  
Guaranteed Title XI financing
  - f. U.S. Department of Housing and Urban Development (HUD)  
Project Notes  
Local Authority Bonds  
New Communities Debentures – U.S. government guaranteed debentures and U.S. Public Housing Notes and Bonds – U.S. government guaranteed public housing notes and bonds

"Financial Advisor" shall mean First Southwest Company or such other financial advisor as may be duly appointed by the Issuer.

"Finance Director" shall mean the Finance Director or any deputy, assistant, acting or interim Finance Director or such other person as may be duly authorized by the Issuer to act on his or her behalf.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law.

"Insurance Policy" shall mean any policy of bond insurance, letter of credit, guarantee, or other similar form of credit enhancement issued by an Insurer and insuring or guaranteeing the payment when due of all or any portion of the principal of and interest on the Bonds. All references in this Resolution to the Insurance Policy shall be of no force and effect at such time as there are no Bonds Outstanding with respect to which an Insurer has issued an Insurance Policy.

"Insurer" shall mean the issuer or issuers of any Insurance Policy or any successor corporation that assumes the obligations of the issuer of such Insurance Policy. All references in this Resolution to the Insurer shall be of no force and effect at such time as there are no Bonds Outstanding with respect to which an Insurer has issued an Insurance Policy.

"Interest Account" shall mean the separate account in the Debt Service Fund established pursuant to Section 4.04 hereof.

"Interest Date" shall be such date or dates for the payment of interest on the Bonds as shall be provided by Supplemental Resolution.

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

"Maximum Annual Debt Service" shall mean the largest amount of Annual Debt Service for any Bond Year in which Bonds shall be Outstanding, excluding all Bond Years which shall have ended prior to the Bond Year in which Maximum Annual Debt Service shall be computed.

"Maximum Interest Rate" shall mean, with respect to any particular Variable Rate Bonds, a numerical rate of interest, which shall be set forth in the Supplemental Resolution of the Issuer delineating the details of such Bonds, that shall be the maximum rate of interest such Bonds may at any time bear in the future in accordance with the terms of such Supplemental Resolution.

"Non-Ad Valorem Revenues" shall mean all legally available non-ad valorem revenues of the Issuer (excluding revenues of any enterprise fund of the Issuer), which are legally available to make the payments required by this Resolution, but only after provision has been made by the Issuer for payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Issuer or which are legally mandated by applicable law.

"Outstanding" when used with reference to Bonds and as of any particular date, shall describe all Bonds theretofore and thereupon being authenticated and delivered except, (1) any Bond in lieu of which another Bond or other Bonds have been issued under an agreement to replace lost, mutilated or destroyed Bonds, (2) any Bond surrendered by the Holder thereof in exchange for another Bond or other Bonds under Sections 2.06 and 2.08 hereof, and (3) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity.

"Paying Agent" shall mean any paying agent for Bonds appointed by or pursuant to a Supplemental Resolution and its successors or assigns, and any other Person which may at any time be substituted in its place pursuant to this Resolution.

"Permitted Investments" shall mean any investments to the extent the same are legal for investment under the laws of the State and the investment policy of the City.

"Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or governmental entity.

"Pledged Funds" shall mean (1) Non-Ad Valorem Revenues budgeted and appropriated by the Issuer in accordance with Section 4.02 hereof and deposited into the Debt Service Fund, and (2) until applied in accordance with the provisions of this Resolution, all moneys, including the investments thereof, in the funds and accounts established hereunder, with the exception of the Rebate Fund.

"Principal Account" shall mean the separate account in the Debt Service Fund established pursuant to Section 4.04 hereof.

"Project" shall mean the capital improvements specifically set forth in Exhibit A, including, without limitation, all property rights, appurtenances, easements, franchises and equipment relating thereto and deemed necessary or convenient for the acquisition, construction, erection thereof, in accordance with certain plans on file or to be on file with the City Clerk, with such changes, substitutions, deletions, additions or modifications to the enumerated improvements, equipment and facilities, or such other improvements as approved in writing by the City Manager of the Issuer in accordance with the Act and filed with the City Clerk.

"Rebate Amount" means the excess of the future value, as of a computation date, of all receipts on nonpurpose investments (as defined in Section 1.148-1(b) of the Income Tax Regulations) over the future value, as of that date, of all payments on nonpurpose investments, all as provided by regulations under the Code implementing Section 148 thereof.

"Rebate Fund" shall mean the City of Marco Island Capital Improvement Revenue Bonds Rebate Fund established pursuant to Section 5.04 hereof.

"Redemption Price" shall mean, with respect to any Bond or portion thereof, the principal amount or portion thereof, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or this Resolution.

"Registrar" shall mean any registrar for the Bonds appointed by or pursuant to a Supplemental Resolution and its successors and assigns, and any other Person which may at any time be substituted in its place pursuant to Supplemental Resolution.

"Reserve Account" shall mean the separate account in the Debt Service Fund established pursuant to Section 4.04 hereof.

"Reserve Account Policy" shall mean any surety bond, irrevocable letter of credit, guaranty or insurance policy, in lieu of a cash deposit, that satisfies the Reserve Account Requirement following the issuance of the Bonds.

"Reserve Account Requirement" shall mean an amount, if any, determined by Supplemental Resolution.

"Resolution" shall mean this Resolution, as the same may from time to time be amended, modified or supplemented by Supplemental Resolution.

"Serial Bonds" shall mean all of the Bonds other than the Term Bonds.

"State" shall mean the State of Florida.

"Supplemental Resolution" shall mean any resolution of the Issuer amending or supplementing this Resolution adopted and becoming effective in accordance with the terms of Sections 7.01, 7.02 and 7.03 hereof.

"Taxable Bond" shall mean any Bond which states, in the body thereof, that the interest income thereon is includable in the gross income of the Holder thereof for federal income tax purposes or that such interest is subject to federal income taxation.

"Term Bonds" shall mean those Bonds which shall be designated as Term Bonds hereby or by Supplemental Resolution of the Issuer and which are subject to mandatory redemption by Amortization Installments.

"Variable Rate Bonds" shall mean Bonds or other obligations issued with a variable, adjustable, convertible or other similar rate which is not fixed in percentage for the entire term thereof at the date of issue.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms, shall refer to this Resolution; the term heretofore shall mean before the date of adoption of this Resolution; and the term "hereafter" shall mean after the date of adoption of this Resolution.

Words importing the masculine gender include every other gender.

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

SECTION 1.02. Authority for Resolution. This Resolution is adopted pursuant to the provisions of the Act.

SECTION 1.03. Resolution to Constitute Contract. In consideration of the purchase and acceptance of any or all of the Bonds by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Issuer with the Holders of the Bonds and shall be deemed to be and shall constitute a contract between the Issuer and the Holders from time to time of the Bonds. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer shall be for the equal benefit, protection and security of the Holders of any and all of said Bonds and the Insurer. All of the Bonds, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or pursuant to this Resolution.

SECTION 1.04. Findings. It is hereby ascertained, determined and declared:

- (1) That the Issuer deems it necessary, desirable and in the best interests of the Issuer and its citizens and to serve a paramount public purpose that the Project be acquired, constructed and equipped.
- (2) That the Project shall be financed and/or refinanced with the proceeds of the Bonds, together with certain other legally available funds of the Issuer, if any.
- (3) That in order to preserve and protect the public health, safety and welfare of the inhabitants of the Issuer, it is necessary and desirable to acquire, construct and equip the Project.
- (4) That, except with regard to a \$985,000 loan as evidenced by that certain Loan Agreement dated as of November 15, 2000 (the "Loan Agreement") by and between the Issuer and the Florida Municipal Loan Council (the "Loan"), prior to the issuance of the Bonds, the City has not otherwise secured any other indebtedness of the Issuer with covenants to budget and appropriate Non Ad-Valorem Revenues.
- (5) That the estimated Pledged Funds will be sufficient to pay the principal of and interest on the Bonds and the Loan, as the same become due, and all other payments provided for in this Resolution.
- (6) That the principal of and interest on the Bonds and all other payments provided for in this Resolution will be paid solely from the Pledged Funds; and the ad valorem taxing power of the Issuer will never be necessary or authorized to pay the principal of and interest on the Bonds and, except as otherwise provided herein, the Bonds shall not constitute a lien upon any property of the Issuer.
- (7) That the Issuer will be in compliance with Section 2.02(a) of the Loan Agreement upon the issuance of the Bonds, such compliance to be evidenced by a certificate of the Finance Director setting forth the calculation of financial ratios in that section and certifying compliance with the provisions thereof, and the Issuer shall make the requisite notifications as required by such section.

SECTION 1.05. The Project. The Issuer does hereby authorize the acquisition, construction and equipping of the Project in accordance with Exhibit A attached hereto and made a part hereof.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

SECTION 2.01. Authorization of Bonds. This Resolution creates one or more issues of Bonds of the Issuer to be designated as the "City of Marco Island, Florida, Capital Improvement Revenue Bonds" in an aggregate principal amount of not to exceed \$6,000,000, in one or more series, with a series designation to be determined by the Issuer, for the purpose of financing the acquisition, construction and equipping of the Project, paying any premiums associated with the issuance of the Insurance Policy, making a deposit into the Reserve Account in the amount of the Reserve Account Requirement, if required, or purchasing a Reserve Account Policy in lieu of such a deposit, if required, and paying certain costs of issuance incurred with respect thereto. The aggregate principal amount of the Bonds which may be executed and delivered under this Resolution is not limited except as is or may hereafter be provided in this Resolution or as limited by the Act or by law.

The Bonds may, if and when authorized by the Issuer pursuant to this Resolution, be issued with such further appropriate particular designations added to or incorporated in such title for the Bonds as the Issuer may determine.

The Bonds shall bear interest at such rate or rates not exceeding the maximum rate permitted by law; and shall be payable in lawful money of the United States of America on such dates; all as determined hereunder or by Supplemental Resolution of the Issuer.

The Bonds shall be issued in such denominations, in such form, whether coupon or registered; shall be dated such date; shall bear such numbers; shall be payable at such place or places; shall contain such redemption provisions; shall have such Paying Agent and Registrar; shall mature in such years and amounts; shall provide that the proceeds thereof be used in such manner; all as determined hereunder or by Supplemental Resolution of the Issuer.

SECTION 2.02. Description of Bonds. The Bonds shall have such series designation or designations; shall be dated as of the first day of the month in which occurs the delivery of the Bonds to the purchaser or purchasers thereof or such other date as may be set forth by Supplemental Resolution of the Issuer; shall be issued as fully registered Bonds; shall be numbered consecutively from one upward in order of maturity preceded by the letter "R"; shall bear interest at a rate or rates not exceeding the maximum rate allowed by Florida law, payable in such manner and on such dates; shall consist of such amounts of Serial Bonds, Term Bonds and/or Variable Rate Bonds; maturing in such amounts or installments and in such years; shall be payable in such place or places; shall have such Paying Agent and Registrar; and shall contain such redemption provisions; all as the Issuer shall provide hereafter by Supplemental Resolution.

The principal of or Redemption Price, if applicable, on the Bonds are payable upon presentation and surrender of the Bonds at the designated office of the Paying Agent. Interest payable on any such Bond on any Interest Date will be paid by check or draft of the Paying Agent to the Holder in whose name such Bond shall be registered at the close of business on the date which shall be the fifteenth day (whether or not a business day) of the calendar month next preceding such Interest Date, or, unless otherwise provided by Supplemental Resolution, at the option of the Paying Agent, and at the request and expense of such Holder, by bank wire transfer for the account of such Holder. In the event the interest payable on any such Bond is not punctually paid or duly provided for by the Issuer on such Interest Date, such defaulted interest will be paid to the Holder in whose name such Bond shall be registered at the close of business on a special record date for the payment of such defaulted interest as established by notice to such Holder, not less than ten days preceding such special record date. All payments of principal of or Redemption Price, if applicable, and interest on the Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 2.03. Application of Bond Proceeds. Except as otherwise provided by Supplemental Resolution, the proceeds derived from the sale of the Bonds, including accrued interest and premium, if any, together with legally available funds of the Issuer, if any, shall, simultaneously with the delivery of the Bonds to the purchaser or purchasers thereof, be applied by the Issuer as follows:

(1) Accrued interest, if any, shall be deposited in the Interest Account and shall be used only for the purpose of paying the interest which shall thereafter become due on the Bonds.

(2) A sufficient amount of proceeds of the Bonds shall be deposited in the Reserve Account which, together with any moneys and securities on deposit therein and any surety bond, irrevocable letter of credit, guaranty or insurance policies obtained in accordance with Section 4.05 hereof, shall equal the Reserve Account Requirement.

(3) A sufficient amount of the proceeds of the Bonds shall be applied to the payment of costs and expenses relating to the issuance of the Bonds which must be paid upon delivery of the Bonds, including any premium for the Insurance Policy, any premium for any Reserve Account Policy, and legal and financial advisory fees and expenses. Such amount may, at the option of the Issuer, be deposited in and disbursed from the Construction Fund.

(4) The balance of the proceeds of the Bonds shall be deposited in the Construction Fund to be used to pay Costs of the Project, including but not limited to costs of issuance of the Bonds and any capitalized interest related thereto.

SECTION 2.04. Execution of Bonds. The 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 City Clerk and shall be approved as to form by the City Attorney. The official seal of the Issuer shall be imprinted on each Bond. In case any one or more of

the officers who shall have signed or sealed any of the Bonds or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Bond shall hold the proper office of the Issuer, although, at the date of such Bond, 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 Bonds shall be actually sold and delivered.

SECTION 2.05. Authentication. No Bond of any Series shall be secured hereunder or be entitled to the benefit hereof or shall be valid or obligatory for any purpose unless there shall be manually endorsed on such Bond a certificate of authentication by the Registrar or such other entity as may be approved by the Issuer for such purpose. Such certificate on any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution. The form of such certificate shall be substantially in the form provided in Section 2.10 hereof.

SECTION 2.06. Temporary Bonds. Until the definitive Bonds are prepared, the Issuer may execute, in the same manner as is provided in Section 2.04 hereof, and deliver, upon authentication by the Registrar pursuant to Section 2.05 hereof, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, except as to the denominations thereof, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, in denominations authorized by the Issuer by Supplemental Resolution, and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The Issuer, at its own expense, shall prepare and execute definitive Bonds, which shall be authenticated by the Registrar. Upon the surrender of such temporary Bonds for exchange, the Registrar, without charge to the Holder thereof, shall deliver in exchange therefor definitive Bonds, of the same aggregate principal amount and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds issued pursuant to this Resolution. All temporary Bonds surrendered in exchange for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith canceled by the Registrar.

SECTION 2.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver, and the Registrar shall authenticate, a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder furnishing the Issuer and the Registrar proof of such Holder's ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer and the Registrar may incur. All Bonds so surrendered or otherwise substituted shall be canceled by the Registrar. If any of the Bonds shall have matured or be about to mature, instead of

issuing a substitute Bond, the Issuer may pay the same or cause the Bond to be paid, upon being indemnified as aforesaid, and if such Bonds be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this Section 2.07 shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bond be at any time found by anyone, and such duplicate Bond shall be entitled to equal and proportionate benefits and rights as to lien on the Pledged Funds to the same extent as all other Bonds issued hereunder.

SECTION 2.08. Transfer. Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing, may, at the option of the Holder thereof, be exchanged for an equal aggregate principal amount of registered Bonds of the same Series and maturity of any other authorized denominations.

The Bonds issued under this Resolution shall be and have all the qualities and incidents of negotiable instruments under the commercial laws and the Uniform Commercial Code of the State, subject to the provisions for registration and transfer contained in this Resolution and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Issuer shall maintain and keep, at the office of the Registrar, books for the registration and transfer of the Bonds.

Each Bond shall be transferable only upon the books of the Issuer, at the office of the Registrar, under such reasonable regulations as the Issuer may prescribe, by the Holder thereof in person or by such Holder's attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed and guaranteed by the Holder or such Holder's duly authorized attorney. Upon the transfer of any such Bond, the Issuer shall issue, and cause to be authenticated, in the name of the transferee a new Bond or Bonds of the same aggregate principal amount and Series and maturity as the surrendered Bond. The Issuer, the Registrar and any Paying Agent or fiduciary of the Issuer may deem and treat the Person in whose name any Outstanding Bond shall be registered upon the books of the Issuer as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price, if applicable, and interest on such Bond and for all other purposes, and all such payments so made to any such Holder or upon such Holder's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid and neither the Issuer nor the Registrar nor any Paying Agent or other fiduciary of the Issuer shall be affected by any notice to the contrary.

The Registrar, in any case where it is not also the Paying Agent in respect to the Bonds, forthwith (A) following the fifteenth day prior to an Interest Date; (B) following the fifteenth day next preceding the date of first mailing of notice of redemption of any Bonds; and (C) at any other time as reasonably requested by the Paying Agent, shall certify and furnish to such Paying Agent the names, addresses and holdings of Bondholders and any other relevant information reflected in the registration books. Any Paying Agent of any fully registered Bond shall effect payment of interest on such Bonds by mailing a check or draft to the Holder entitled thereto or may, in lieu thereof, upon the request and at the

expense of such Holder, transmit such payment by bank wire transfer for the account of such Holder.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Issuer shall execute and the Registrar shall authenticate and deliver such Bonds in accordance with the provisions of this Resolution. Execution of Bonds in the same manner as is provided in Section 2.04 hereof for purposes of exchanging, replacing or transferring Bonds may occur at the time of the original delivery of the Bonds. All Bonds surrendered in any such exchanges or transfers shall be held by the Registrar in safekeeping until directed by the Issuer to be canceled by the Registrar. For every such exchange or transfer of Bonds, the Issuer or the Registrar may make a charge sufficient to reimburse it for any tax, fee, expense or other governmental charge required to be paid with respect to such exchange or transfer. The Issuer and the Registrar shall not be obligated to make any such exchange or transfer of Bonds during the fifteen days next preceding an Interest Date on the Bonds (other than Variable Rate Bonds), or, in the case of any proposed redemption of Bonds, then during the fifteen days next preceding the date of the first mailing of notice of such redemption and continuing until such redemption date.

SECTION 2.09. Coupon Bonds. The Issuer, at its discretion, may by Supplemental Resolution authorize the issuance of coupon Bonds, registrable as to principal only or as to both principal and interest. Such Supplemental Resolution shall provide for the negotiability, transfer, interchangeability, denominations and form of such Bonds and coupons appertaining thereto. Coupon Bonds (other than Taxable Bonds) shall only be issued if an opinion of Bond Counsel is received to the effect that issuance of such coupon Bonds will not adversely affect the exclusion from gross income of interest earned on such Bonds for federal income tax purposes.

SECTION 2.10. Form of Bonds. The text of the Bonds, except as otherwise provided pursuant to Section 2.09 hereof, the form of which shall be provided by Supplemental Resolution of the Issuer, shall be in substantially the following form with such omissions, insertions and variations as may be necessary and/or desirable and approved by the Chairman prior to the issuance thereof (which necessity and/or desirability and approval shall be presumed by the Issuer's delivery of the Bonds to the purchaser or purchasers thereof):

No. R. \_\_\_\_\_

\$

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
COLLIER COUNTY, FLORIDA  
CITY OF MARCO ISLAND, FLORIDA  
CAPITAL IMPROVEMENT REVENUE BOND  
SERIES \_\_\_\_\_

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
_____ %	_____, _____	_____, _____	

Registered Holder: \_\_\_\_\_

Principal Amount: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that the City of Marco Island, Florida, a municipal corporation of the State of Florida (the "Issuer"), for value received, hereby promises to pay, solely from the Pledged Funds hereinafter described, to the Registered Holder identified above, or registered assigns as hereinafter provided, on the Maturity Date identified above, the Principal Amount identified above and interest on such Principal Amount from the Date of Original Issue identified above or from the most recent interest payment date to which interest has been paid at the Interest Rate per annum identified above on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year commencing \_\_\_\_\_ 1, \_\_\_\_\_ until such Principal Amount shall have been paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may be or become applicable hereto.

The principal of and redemption premium, if applicable, on this Bond is payable upon presentation and surrender of this Bond at the designated office of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as Paying Agent. Interest payable on this Bond on any interest date will be paid by check or draft of the Paying Agent to the Registered Holder in whose name this Bond shall be registered at the close of business on the date which shall be the fifteenth day (whether or not a business day) of the calendar month next preceding such interest payment date, or, at the option of the Paying Agent, and at the request and expense of such Registered Holder, by bank wire transfer for the account of such Registered Holder. In the event the interest payable on this Bond is not punctually paid or duly provided for by the Issuer on such interest payment date, such defaulted interest will be paid to the Registered Holder in whose name this Bond shall be registered at the close of business on a special record date for the payment of such defaulted interest as established by notice to such Registered Holder, not less than ten days preceding such special record date. All payments of principal of and redemption premium, if applicable, and interest on this Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds") of like date, tenor and effect, except as to [series designation,] maturity date, interest rate, denomination and number, issued for the purpose of \_\_\_\_\_, under the authority of and in full compliance with Chapter 166, Florida Statutes, the Constitution of the State of Florida, the municipal charter of the City of Marco Island, Florida and other applicable provisions of law (the "Act"), and Resolution No. \_\_\_\_ duly adopted by the City Council of the Issuer on \_\_\_\_\_, 2002, as may be amended and supplemented from time to time, and as particularly amended and supplemented by Resolution No. \_\_\_\_ duly adopted by the City Council of the Issuer on \_\_\_\_\_, 2002 (collectively, the "Resolution"), and is subject to the terms and conditions of the Resolution.

The Bonds and the interest thereon are payable solely from and secured by an irrevocable pledge of the Pledged Funds. Pledged Funds consist of Non-Ad Valorem Revenues (as such term is defined in the Resolution) which are deposited into the Debt Service Fund (as such term is defined in the Resolution) and certain moneys on deposit in the accounts and funds established under the Resolution. Subject to satisfaction of the provisions in the Resolution, the Issuer may issue a separate series of bonds secured by a lien on Pledged Funds on parity and equal status with the Bonds. The Issuer has covenanted and has agreed to appropriate in its annual budget for each fiscal year sufficient amount of Non-Ad Valorem Revenues for the payment of principal of and interest on the Bonds in each fiscal year, and to make certain other payments required by the Resolution, subject to the limitations described in the Resolution. Reference is made to the Resolution for more complete description of the security for the Bonds.

IT IS EXPRESSLY AGREED BY THE REGISTERED HOLDER OF THIS BOND THAT THE FULL FAITH AND CREDIT OF THE ISSUER, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION THEREOF, ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THIS BOND AND THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF ANY TAXING POWER OF THE ISSUER, THE STATE OF FLORIDA, OR ANY POLITICAL SUBDIVISION THEREOF, TO THE PAYMENT OF SUCH PRINCIPAL, PREMIUM, IF ANY, AND INTEREST. THIS BOND AND THE OBLIGATION EVIDENCED HEREBY SHALL NOT CONSTITUTE A LIEN UPON ANY PROPERTY OF THE ISSUER, BUT SHALL CONSTITUTE A LIEN ONLY ON, AND SHALL BE PAYABLE SOLELY FROM, THE PLEDGED FUNDS.

Neither the members of the City Council of the Issuer nor any person executing this Bond shall be liable personally hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE SIDE HEREOF AND SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH IN THIS PLACE.

This Bond shall not be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Registrar.

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, and a facsimile of the official seal of the City to be imprinted hereon, all as of the \_\_ day of

CITY OF MARCO ISLAND, FLORIDA

(SEAL)

By: \_\_\_\_\_  
E. Glenn Tucker, Chairman, City Council

ATTESTED AND COUNTERSIGNED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

[Provisions on Reverse Side of Bond]

This Bond is transferable in accordance with the terms of the Resolution only upon the books of the Issuer kept for that purpose at the designated corporate trust office of the Registrar by the Registered Holder hereof in person or by such Holder's attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or such Holder's attorney duly authorized in writing, and thereupon a new Bond or Bonds in the same aggregate principal amount shall be issued to the transferee in exchange therefor, and upon the payment of the charges, if any, therein prescribed. The Bonds are issuable in the form of fully registered Bonds in the denominations of \_\_\_\_\_, not exceeding the aggregate principal amount of the Bonds maturing on the same date. The Issuer, the Registrar and any Paying Agent may treat the Registered Holder of this Bond as the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and shall not be affected by any notice to the contrary. The Issuer and the Registrar shall not be obligated to make any exchange or transfer of the Bonds during the fifteen days next preceding an interest payment date, or in the case of any proposed redemption of the Bonds, then, during the fifteen days next preceding the date of the first mailing of notice of such redemption.

[INSERT REDEMPTION PROVISIONS]

Notice of redemption, unless waived, is to be given by the Registrar by mailing an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Holders of the Bonds to be redeemed at such Holders' addresses shown on the registration books maintained by the Registrar or at such other addresses as shall be furnished in writing by such Registered Holders to the Registrar; provided, however, that no defect in any such notice to any Registered Holder of Bonds to be redeemed nor failure to give such notice to any such Registered Holder nor failure of any such Registered Holder to receive such notice shall in any manner defeat the effectiveness of a call for redemption as to all other Registered Holders of Bonds to be redeemed. Notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer shall default in the payment of the redemption price), such Bonds or portions of Bonds shall cease to bear interest.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed, in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of the Bonds does not violate any constitutional or statutory limitations or provisions.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
Insert Social Security or Other  
Identifying Number of Assignee

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ as  
attorneys to register the transfer of the said Bond on the books kept for registration thereof  
with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be  
guaranteed by a member firm of  
the New York Stock Exchange or  
a commercial bank or trust  
company.

\_\_\_\_\_  
NOTICE: The signature to this assignment must  
correspond with the name of the Registered  
Holder 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 other identifying number of  
such assignee must be supplied.

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

- TEN COM -- as tenants in common
- TEN ENT -- as tenants by the entireties
- JT TEN -- as joint tenants with right of survivorship and not as tenants in common

UNIF TRANS MIN ACT -- \_\_\_\_\_  
(Cust.)  
Custodian for \_\_\_\_\_  
under Uniform Transfer to Minors Act of \_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the list above.

### CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within-mentioned Resolution.

DATE OF AUTHENTICATION:

\_\_\_\_\_

\_\_\_\_\_  
Registrar

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

## ARTICLE III

### REDEMPTION OF BONDS

SECTION 3.01. Privilege of Redemption. The terms of this Article III shall apply to redemption of Bonds other than Variable Rate Bonds. The terms and provisions relating to redemption of Variable Rate Bonds shall be provided by Supplemental Resolution.

SECTION 3.02. Selection of Bonds to be Redeemed. The 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 Registrar) notify the Registrar of such redemption date and of the principal amount of Bonds to be redeemed. For purposes of any redemption of less than all of the Outstanding Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected not more than forty-five (45) days prior to the redemption date by the Registrar from the Outstanding Bonds of the maturity or maturities designated by the Issuer by such method as the Registrar shall deem fair and appropriate and which may provide for the selection for redemption of Bonds or portions of Bonds in authorized denominations.

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

SECTION 3.03. Notice of Redemption. Unless waived by any Holder of Bonds to be redeemed, notice of any redemption made pursuant to this section shall be given by the Registrar on behalf of the Issuer by mailing a copy of an official redemption notice by registered or certified mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to each Holder of Bonds to be redeemed at the address of such Holder shown on the registration books maintained by the Registrar or at such other address as shall be furnished in writing by such Holder to the Registrar; provided, however, that no defect in any notice given pursuant to this Section to any Holder of Bonds to be redeemed nor failure to give such notice shall in any manner defeat the effectiveness of a call for redemption as to all other Holders of Bonds to be redeemed.

Every official notice of redemption shall be dated and shall state:

- (1) the redemption date,
- (2) the Redemption Price,
- (3) if less than all Outstanding Bonds are to be redeemed, the number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed,

(4) that, on the redemption date, the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and

(5) that such Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated office of the Registrar.

Prior to any redemption date, the Issuer shall deposit with the Registrar an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds which are to be redeemed on that date.

SECTION 3.04. Redemption of Portions of Bonds. Any 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 Registrar duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Issuer shall execute and the Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds, of the same interest rate and maturity, and of any authorized denomination as requested by such Holder, in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bonds so surrendered.

SECTION 3.05. Payment of Redeemed Bonds. Notice of redemption having been given substantially as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar and/or Paying Agent at the appropriate Redemption Price, plus accrued interest. All Bonds which have been redeemed shall be canceled by the Registrar and shall not be reissued.

## ARTICLE IV

### SECURITY, SPECIAL FUNDS AND APPLICATION THEREOF

SECTION 4.01. Bonds not to be Indebtedness of Issuer. THE BONDS SHALL NOT BE OR CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF THE ISSUER AS "BONDS" WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION, BUT SHALL BE SPECIAL OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM AND SECURED BY A LIEN UPON AND PLEDGE OF THE PLEDGED FUNDS. NO HOLDER OF ANY BOND SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF ANY AD VALOREM TAXING POWER TO PAY SUCH BOND, OR BE ENTITLED TO PAYMENT OF SUCH BOND FROM ANY MONEYS OF THE ISSUER EXCEPT FROM THE PLEDGED FUNDS IN THE MANNER PROVIDED HEREIN.

SECTION 4.02. Bonds Secured by Pledge of Pledged Funds.

(1) The Issuer covenants and agrees to appropriate in its annual budget, by amendment if necessary, for each Fiscal Year in which the Bonds remain outstanding, sufficient amounts of Non-Ad Valorem Revenues for the payment of principal of and interest on the Bonds and to make certain other payments required hereunder in each such Fiscal Year. Such covenant and agreement on the part of the Issuer shall be cumulative and shall continue until all payments of principal of and interest on the Bonds shall have been budgeted, appropriated and actually paid. The Issuer agrees that this covenant and agreement shall be deemed to be entered into for the benefit of the holders of the Bonds and the Insurer and that this obligation may be enforced in a court of competent jurisdiction. Notwithstanding the foregoing or any provision of this Resolution to the contrary, the Issuer does not covenant to maintain any services or programs now maintained or provided by the Issuer, including those programs and services which generate Non-Ad Valorem Revenues. This covenant and agreement shall not be construed as a limitation on the ability of the Issuer to pledge all or a portion of such Non-Ad Valorem Revenues or to covenant to budget and appropriate Non-Ad Valorem Revenues for other legally permissible purposes. 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 Bonds or other person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer for the payment of the Issuer's obligations hereunder.

However, this covenant to budget and appropriate in its annual budget for the purposes and in the manner stated herein has the effect of making available for the payment of the Bonds the Non-Ad Valorem Revenues of the Issuer in the manner provided herein and placing on the Issuer a positive duty to appropriate and budget, by amendment if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Section 166.241, Florida Statutes, which makes it unlawful for any municipality to expend moneys not appropriated and in excess of such municipality's current budgeted revenues. The obligation of the Issuer to make such payments from its Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues or a covenant to budget and appropriate Non-Ad Valorem Revenues heretofore or hereinafter entered into (including the payment of debt service on bonds and other debt instruments), and funding requirements for essential public purposes affecting health, welfare and safety of the inhabitants of the Issuer; however, such obligation is cumulative and would carry over from Fiscal Year to Fiscal Year.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues until such funds are deposited in the Debt Service Fund established pursuant to Section 4.04 hereof, nor does it preclude the Issuer from pledging in the future or covenanting to budget and appropriate 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 Holders of the Bonds a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Issuer. The payment of the debt service of all of the Bonds issued hereunder, whether issued in one or more series, shall be secured forthwith equally and ratably by a pledge of and a lien upon the Pledged Funds, as now or hereafter constituted. The Issuer does hereby irrevocably pledge such Pledged Funds to the payment of the principal of and interest on the Bonds issued pursuant to this

Resolution, and the Issuer does hereby irrevocably agree to the deposit of Non-Ad Valorem Revenues into the Debt Service Fund at the times provided of the sums required to secure to the Holders of the Bonds issued hereunder, and the payment of the principal of and interest thereon when due. The Pledged Funds shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer.

(2) Until applied in accordance with this Resolution, the Non-Ad Valorem Revenues deposited by the Issuer in the Debt Service Fund and other amounts on deposit from time to time in the funds and accounts established pursuant to Section 4.03 hereof, plus any earnings thereon, shall be pledged to the repayment of the Bonds, whether in one or more series.

SECTION 4.03. Construction Fund. The Issuer covenants and agrees to establish a separate fund to be known as the "City of Marco Island Capital Improvement Revenue Bonds Construction Fund," which shall be used only for payment of the Cost of the Project. The Issuer shall maintain in the Construction Fund separate accounts for each series of Bonds, and separate accounts therein for capitalized interest funded from the proceeds of any series of Bonds. Moneys in the Construction Fund, until applied in payment of any item of the Cost of a Project in accordance with the provisions hereof, shall be held in trust by the Issuer and shall be subject to a lien and charge in favor of the Holders of the applicable series of Bonds and for the further security of such Holders.

SECTION 4.04. Funds and Accounts. The Issuer covenants and agrees to establish separate funds to be known as the "City of Marco Island Capital Improvement Revenue Bonds Debt Service Fund" (the "Debt Service Fund"). The Issuer shall maintain in the Debt Service Fund four accounts: the "Interest Account," the "Principal Account," the "Bond Amortization Account," and the "Reserve Account." Moneys in the aforementioned funds and accounts, until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Holders and for the further security of the Holders.

SECTION 4.05. Flow of Funds.

(1) Pursuant to Section 4.02 hereof, Non-Ad Valorem Revenues shall be deposited or credited at least five (5) business days prior to the applicable due date, in the following manner:

(a) Interest Account. The Issuer shall deposit into or credit to the Interest Account the sum which, together with the balance in said Account, shall be equal to the interest on all outstanding Bonds accrued and unpaid and to accrue on such Interest Date. Moneys in the Interest Account shall be used to pay interest on the Bonds as and when the same become due, whether by redemption or otherwise, and for no other purpose.

(b) Principal Account. The Issuer shall deposit into or credit to the Principal Account the sum which, together with the balance in said Account, shall equal the portion of the principal on the Outstanding Bonds next due. Moneys in the Principal

Account shall be used to pay the principal of the Bonds as and when the same shall mature, and for no other purpose.

(c) Bond Amortization Account. The Issuer shall deposit into or credit to the Bond Amortization Account the sum which, together with the balance in said Account, shall equal the portion of the Amortization Installments of all Bonds Outstanding next due. Moneys in the Bond Amortization Account shall be used to purchase or redeem Term Bonds in the manner herein provided, and for no other purpose. Payments to the Bond Amortization Account shall be on a parity with payments to the Principal Account.

(d) Reserve Account. The Issuer shall deposit into or credit to the Reserve Account a sum sufficient to maintain therein an amount equal to the Reserve Account Requirement. Moneys in the Reserve Account shall be used only for the purpose of the payment of maturing principal of or interest or Amortization Installments when the other moneys in the Debt Service Fund are insufficient therefor, and for no other purpose. However, whenever the moneys on deposit in the Reserve Account exceed the Reserve Account Requirement, such excess shall be withdrawn and deposited into the Interest Account.

Notwithstanding the foregoing provisions, in lieu of the required cash deposits into the Reserve Account, the Issuer may, at any time, cause to be deposited into the Reserve Account a surety bond, irrevocable letter of credit, guaranty or an insurance policy for the benefit of the Bondholders in an amount equal to the difference between the Reserve Account Requirement and the sums then on deposit in the Reserve Account, if any. Requirements of the issuer proving such surety bond, irrevocable letter of credit, guaranty or insurance policy shall be set forth in a Supplemental Resolution.

Whenever the amount in the Reserve Account, together with the other amounts in the Debt Service Fund, are sufficient to fully pay all Outstanding Bonds in accordance with their terms (including principal or applicable Redemption Price and interest thereon), the funds on deposit in the Reserve Account may be transferred to the other accounts of the Debt Service Fund for the payment of the Bonds.

(2) On the date established for payment of any principal of or Redemption Price, if applicable, or interest on the Bonds, the Issuer shall withdraw from the appropriate account of the Debt Service Fund sufficient moneys to pay such principal or Redemption Price, if applicable, or interest and deposit such moneys with the Paying Agent for the Bonds to be paid.

SECTION 4.06. Investments. The Construction Fund and the Debt Service Fund shall be continuously secured in the manner by which the deposit of public funds are authorized to be secured by the laws of the State. Moneys on deposit in the Construction Fund and the Debt Service Fund may be invested and reinvested in Permitted Investments maturing not later than the date on which the moneys therein will be needed. Any and all income received by the Issuer from the investment of moneys in each account of the Construction Fund, the Interest Account, the Principal Account, the Bond Amortization Account, and the Reserve Account (but only to the extent that the amount therein is less than the Reserve Account Requirement) shall be retained in such respective Fund or Account unless otherwise required by applicable law. To the extent that the amount in the

Reserve Account is equal to or greater than the Reserve Account Requirement, any and all income received by the Issuer from the investment of moneys therein shall be transferred, upon receipt, and deposited into the Interest Account.

Nothing contained in this Resolution shall prevent any Permitted Investments acquired as investments of or security for funds held under this Resolution from being issued or held in book-entry form on the books of the Department of the Treasury of the United States.

SECTION 4.07. Separate Accounts. The moneys required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single 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.

## ARTICLE V

### OTHER OBLIGATIONS AND COVENANTS OF ISSUER

SECTION 5.01. Special Covenants and Financial Ratios. During such time as Bonds are outstanding hereunder, the Issuer agrees and covenants with the Holders thereof that: (i) Non-Ad Valorem Revenues (average of actual receipts over the prior two years) must 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 will 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 the debt, in each case, secured by Issuer Non-Ad Valorem Revenues. As used above, the term "maximum annual non-ad valorem debt service" shall not include any debt or other obligations payable from revenues of a utility system owned by the Issuer, and shall only include debt service that the Issuer reasonably expects to apply Non-Ad Valorem Revenues to actually pay. For the purpose of calculating maximum annual non-ad valorem debt service on any indebtedness which bears interest at a variable rate, such indebtedness shall be deemed to bear interest at the greater of (i) 1.25 times the most recently published Bond Buyer Revenue Bond 30 Year

Index or (ii) 1.25 times actual average interest rate during the prior Fiscal Year of such Issuer. Notwithstanding anything herein to the contrary, the provisions of this Section 5.01 may be amended, supplemented, or waived from time to time only with the prior written consent of the Insurer.

SECTION 5.02. Books and Records. The Issuer shall keep proper books, records and accounts of the receipt of the Non-Ad Valorem Revenues in accordance with generally accepted accounting principles, and any Holder or Holders of Bonds shall have the right at all reasonable times to inspect such books, records, accounts and data of the Issuer relating thereto. The Issuer shall, by April 30<sup>th</sup> following the close of each Fiscal Year of the Issuer, cause an audit of such books, records and accounts to be made by an independent firm of certified public accountants.

Copies of each such audit report shall be placed on file with the Issuer and be made available at reasonable times for inspection by Holders of the Bonds.

SECTION 5.03. No Impairment. The pledging of the Pledged Funds in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the City Council of the Issuer.

SECTION 5.04. Federal Income Tax Covenants; Taxable Bonds.

(A) It is the intention of the Issuer and all parties under its control that the interest on the Bonds issued hereunder that are not Taxable Bonds be and remain excluded from gross income for federal income tax purposes and to this end the Issuer hereby represents to and covenants with each of the Holders of the Bonds issued hereunder that are not Taxable Bonds that it will comply with the requirements applicable to it contained in Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code to the extent necessary to preserve the exclusion of interest on the Bonds issued hereunder that are not Taxable Bonds from gross income for federal income tax purposes. Specifically, without intending to limit in any way the generality of the foregoing, the Issuer covenants and agrees:

(1) to make or cause to be made all necessary determinations and calculations of the Rebate Amount and required payments of the Rebate Amount;

(2) to set aside sufficient moneys in the Rebate Fund or elsewhere, from Non-Ad Valorem Revenues or other legally available funds of the Issuer, to timely pay the Rebate Amount to the United States of America;

(3) to pay the Rebate Amount to the United States of America from Non-Ad Valorem Revenues or from any other legally available funds, at the times and to the extent required pursuant to Section 148(f) of the Code;

(4) to maintain and retain all records pertaining to the Rebate Amount with respect to the Bonds issued hereunder that are not Taxable Bonds and required payments of the Rebate Amount with respect to the Bonds that are not Taxable Bonds for at least six years after the final

maturity of the Bonds issued hereunder that are not Taxable Bonds or such other period as shall be necessary to comply with the Code;

(5) to refrain from using proceeds from the Bonds issued hereunder that are not Taxable Bonds in a manner that might cause the such Bonds to be classified as private activity bonds under Section 141(a) of the Code; and

(6) to refrain from taking any action that would cause the Bonds issued hereunder that are not Taxable Bonds to become arbitrage bonds under Section 148 of the Code.

The Issuer understands that the foregoing covenants impose continuing obligations on the Issuer that will exist as long as the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code are applicable to the Bonds.

Notwithstanding any other provision of this Resolution, the obligation of the Issuer to pay the Rebate Amount to the United States of America and to comply with the other requirements of this Section 5.04 shall survive the defeasance or payment in full of the Bonds issued hereunder that are not Taxable Bonds.

(B) There is hereby created and established a fund to be known as the "City of Marco Island Capital Improvement Revenue Bonds Rebate Fund" (the "Rebate Fund"), and a separate account therein for each series of Bonds. The Issuer shall deposit into the appropriate account in the Rebate Fund, from investment earnings on moneys deposited in the other funds and accounts created hereunder, or from any other legally available funds of the Issuer, an amount equal to the Rebate Amount for such Rebate Year. The Issuer shall use such moneys deposited in the appropriate account in the Rebate Fund only for the payment of the Rebate Amount to the United States as required by this Section 5.04. In complying with the foregoing, the Issuer may rely upon any instructions or opinions from Bond Counsel.

If any amount shall remain in the Rebate Fund after payment in full of all Bonds issued hereunder that are not Taxable Bonds and after payment in full of the Rebate Amount to the United States in accordance with the terms hereof, such amounts shall be available to the Issuer for any lawful purpose.

The Rebate Fund shall be held separate and apart from all other funds and accounts of the Issuer, shall not be impressed with a lien in favor of the Bondholders and the moneys therein shall be available for use only as herein provided.

## ARTICLE VI

### DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. The following events shall each constitute an "Event of Default:"

(1) Default shall be made in the payment of the principal of, Amortization Installment, redemption premium or interest on any Bond when due.

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

(3) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Resolution on the part of the Issuer to be performed, and such default shall continue for a period of thirty (30) days after written notice of such default shall have been received from the Insurer or the Holders of not less than twenty-five percent (25%) of the aggregate principal amount of Bonds Outstanding or the Insurer of such amount of Bonds. Notwithstanding the foregoing, the Issuer shall not be deemed in default hereunder if such default can be cured within a reasonable period of time and if the Issuer in good faith institutes curative action and diligently pursues such action until the default has been corrected.

SECTION 6.02. Remedies. Any Holder of Bonds issued under the provisions of this Resolution or any trustee or receiver acting for such Bondholders may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted and 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.

The Holder or Holders of Bonds in an aggregate principal amount of not less than twenty-five percent (25%) of the Bonds then Outstanding may by a duly executed certificate in writing appoint a trustee for Holders of Bonds issued pursuant to this Resolution with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders and such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk. Notice of such appointment, together with evidence of the requisite signatures of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding and the trust instrument under which the trustee shall have

agreed to serve shall be filed with the Issuer and the trustee and notice of appointment shall be given to all Holders of Bonds in the same manner as notices of redemption are given hereunder. After the appointment of the first trust hereunder, no further trustees may be appointed; however, the Holders of a majority in aggregate principal amount of all the Bonds then Outstanding may remove the trustee initially appointed and appoint a successor and subsequent successors at any time.

SECTION 6.03. Directions to Trustee as to Remedial Proceedings. The Holders of a majority in principal amount of the Bonds then Outstanding or, if the Bonds are insured, the Insurer, shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the trustee, to direct the method and place of conducting all remedial proceedings to be taken by the trustee hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions hereof, and that the trustee shall have the right to decline to follow any such direction which in the opinion of the trustee would be unjustly prejudicial to Holders of Bonds not parties to such direction.

SECTION 6.04. Remedies Cumulative. No remedy herein conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 6.05. Waiver of Default. No delay or omission of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by Section 6.02 of this Resolution to the Bondholders may be exercised from time to time, and as often as may be deemed expedient.

SECTION 6.06. Application of Moneys After Default. If an Event of Default shall happen and shall not have been remedied, the Issuer or a trustee or receiver appointed for the purpose shall apply all Pledged Funds, on parity and equal status as to separate series of Bonds, as follows and in the following order:

(1) To the payment of the reasonable and proper charges, expenses and liabilities of the trustee or receiver, Registrar and Paying Agent hereunder; and

(2) To the payment of the interest and principal or Redemption Price, if applicable, then due on the Bonds, as follows:

(A) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST: to the payment to the Persons entitled thereto of all installments of interest then due, in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or preference;

SECOND: to the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at maturity or upon

mandatory redemption prior to maturity (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of Section 8.01 of this Resolution), in the order of their due dates, with interest upon such Bonds from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the Persons entitled thereto without any discrimination or preference; and

THIRD: to the payment of the Redemption Price of any Bonds called for optional redemption pursuant to the provisions of this Resolution.

(B) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, with interest thereon as aforesaid, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, or any series over another, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

## ARTICLE VII

### SUPPLEMENTAL RESOLUTIONS

SECTION 7.01. Supplemental Resolutions without Bondholders' Consent. The Issuer, from time to time and at any time, may adopt such Supplemental Resolutions without the consent of the Bondholders (which Supplemental Resolutions shall thereafter form a part hereof) for any of the following purposes:

(1) To cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Resolution or to clarify any matters or questions arising hereunder.

(2) To grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders.

(3) To add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Resolution other conditions, limitations and restrictions thereafter to be observed.

(4) To add to the covenants and agreements of the Issuer in this Resolution other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer.

(5) To specify and determine the matters and things referred to in Sections 2.01, 2.02 or 2.09 hereof, and also any other matters and things relative to such Bonds which are not contrary to or inconsistent with this Resolution as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first delivery of such Bonds.

(6) To issue an additional series of Bonds hereunder.

(7) To specify and determine matters necessary or desirable for the issuance of Variable Rate Bonds.

(8) To make any other change that, in the opinion of the Issuer, would not materially adversely affect the security for the Bonds.

If the Insurer of the Bonds is not then in default in the performance of any of its obligations under its Insurance Policy, it shall receive notice of all Supplemental Resolutions adopted pursuant to this Section 7.01.

**SECTION 7.02. Supplemental Resolutions with Bondholders' Consent.** Subject to the terms and provisions contained in this Section 7.02 and Section 7.01 hereof, the Holder or Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Resolution to the contrary notwithstanding, to consent to and approve the adoption of such Supplemental Resolution or resolutions hereto as shall be deemed necessary or desirable by the Issuer for the purpose of supplementing, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified Series or maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section 7.02. Any Supplemental Resolution which is adopted in accordance with the provisions of this Section 7.02 shall also require the written consent of the Insurer of any Bonds which are Outstanding at the time such Supplemental Resolution shall take effect. No Supplemental Resolution may be approved or adopted which shall permit or require (A) an extension of the maturity of the principal of or the payment of the interest on any Bond issued hereunder, (B) reduction in the principal amount of any Bond or the Redemption Price or the rate of interest thereon, (C) the creation of a lien upon or a pledge of other than the lien and pledge created by this Resolution which adversely affects any Bondholders, (D) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (E) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Resolution, unless such Supplemental Resolution has the approval of 100% of the Bondholders and any Insurer of the Bonds. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders of the adoption of any Supplemental Resolution as authorized in Section 7.01 hereof.

If, at any time the Issuer shall determine that it is necessary or desirable to adopt any Supplemental Resolution pursuant to this Section 7.02, the City Clerk shall cause the Registrar to give notice of the proposed adoption of such Supplemental Resolution and the form of consent to such adoption to be mailed, postage prepaid, to all Bondholders at their

addresses as they appear on the registration books. Such notice shall briefly set forth the nature of the proposed Supplemental Resolution and shall state that copies thereof are on file at the offices of the City Clerk and the Registrar for inspection by all Bondholders. The Issuer shall not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section 7.02 to be mailed and any such failure shall not affect the validity of such Supplemental Resolution when consented to and approved as provided in this Section 7.02.

Whenever the Issuer shall deliver to the City Clerk an instrument or instruments in writing purporting to be executed by the Holders or Insurers, as the case may be, of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed Supplemental Resolution described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Issuer may adopt such Supplemental Resolution in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder shall have consented thereto.

If the Holders of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such Supplemental Resolution shall have consented to and approved the adoption thereof as herein provided, no Holder of any Bond shall have any right to object to the adoption of such Supplemental Resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Issuer from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any Supplemental Resolution pursuant to the provisions of this Section 7.02, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Issuer and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

**SECTION 7.03. Supplemental Resolutions with Insurer's Consent in lieu of Bondholders' Consent.** Notwithstanding any provisions of Section 7.02 above to the contrary, if the Insurer of the Bonds is not then in default in the performance of any of its obligations under its Insurance Policy, the approvals, consents and notifications required by Section 7.02 above to be given by or to the Holders of the Bonds, as the case may be, may be given solely by or to the Insurer, as the case may be, and the instrument contemplated by Section 7.02 above shall be executed solely by the Insurer, and the Holders of the Bonds subject to such Insurance Policy shall have no right to receive such notification or give such approvals and consents or to execute such certificate except that the adoption of Supplemental Resolutions that would have any of the effects described in (A) through (E) in Section 7.02 above shall require the approval and consent of all Holders of Bonds then Outstanding and the Insurer.

**SECTION 7.04 Insurer Consent.** All Supplemental Resolutions adopted pursuant to Article VII shall have the consent of the Insurers.

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.01. Defeasance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid to the Holders of all Bonds, the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the pledge of the Pledged Funds, and all covenants, agreements and other obligations of the Issuer to the Bondholders, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Paying Agents shall pay over or deliver to the Issuer all money or securities held by them pursuant to this Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

Any Bonds or interest installments appertaining thereto, whether at or prior to the maturity or redemption date of such Bonds, shall be deemed to have been paid within the meaning of this Section 8.01 if (A) in case any such Bonds are to be redeemed prior to the maturity thereof, there shall have been taken all action necessary to call such Bonds for redemption and notice of such redemption shall have been duly given or provision shall have been made for the giving of such notice, and (B) there shall have been deposited in irrevocable trust with a banking institution or trust company by or on behalf of the Issuer either moneys in an amount which shall be sufficient, or Federal Securities the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with such bank or trust company at the same time shall be sufficient, to pay the principal of or Redemption Price, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be. Except as hereafter provided, neither the Federal Securities nor any moneys so deposited with such bank or trust company nor any moneys received by such bank or trust company on account of principal of or Redemption Price, if applicable, or interest on said Federal Securities shall be withdrawn or used for any purpose other than, and all such moneys shall be held in trust for and be applied to, the payment, when due, of the principal of or Redemption Price, if applicable, of the Bonds for the payment or redemption of which they were deposited and the interest accruing thereon to the date of maturity or redemption; provided, however, the Issuer may substitute new Federal Securities and moneys for the deposited Federal Securities and moneys if the new Federal Securities and moneys are sufficient to pay the principal of or Redemption Price, if applicable, and interest on the refunded Bonds.

For purposes of determining whether Variable Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of moneys, or specified Federal Securities and moneys, if any, in accordance with this Section 8.01, the interest to come due on such Variable Rate Bonds on or prior to the maturity or redemption date thereof, as the case may be, shall be calculated at the Maximum Interest Rate; provided, however, that if on any date, as a result of such Variable Rate Bonds having borne interest at less than the Maximum Interest Rate for any period, the total amount of moneys and specified Federal Securities on deposit for the payment of interest on such Variable Rate Bonds is in excess of the total amount which would have been required to be deposited on such date in respect of such Variable Rate Bonds in order

to satisfy this Section 9.01, such excess shall be paid to the Issuer free and clear of any trust, lien, pledge or assignment securing the Bonds or otherwise existing under this Resolution.

In the event the Bonds for which moneys are to be deposited for the payment thereof in accordance with this Section 8.01 are not by their terms subject to redemption within the next succeeding sixty (60) days, the Issuer shall cause the Registrar to mail a notice to the Holders of such Bonds that the deposit required by this Section 8.01 of moneys or Federal Securities has been made and said Bonds are deemed to be paid in accordance with the provisions of this Section 8.01 and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of or Redemption Price, if applicable, and interest on said Bonds.

Nothing herein shall be deemed to require the Issuer to call any of the Outstanding Bonds for redemption prior to maturity pursuant to any applicable optional redemption provisions, or to impair the discretion of the Issuer in determining whether to exercise any such option for early redemption.

SECTION 8.02. Sale of Bonds. The Bonds shall be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent with the provisions of the Act, the requirements of this Resolution and other applicable provisions of law and as shall be approved by Supplemental Resolution of the Issuer.

SECTION 8.03. General Authority. The members of the City Council of the Issuer, the City Manager, the City Clerk, the Finance Director, the City Attorney and all other of the Issuer's officers, attorneys and other agents and employees are hereby authorized to perform all acts and things required of them by this Resolution or any Supplemental 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 Bonds, this Resolution, and any Supplemental 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 Bonds to effectuate the sale of the Bonds to said initial purchasers.

SECTION 8.04. No Third Party Beneficiaries. Except such other Persons as may be expressly described herein or in the Bonds, nothing in this Resolution, any Supplemental Resolution or in the Bonds, expressed or implied, is intended or shall be construed to confer upon any Person, other than the Issuer and the Holders, any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any Supplemental Resolution or any provision hereof or thereof, or of the Bonds, all provisions hereof and 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.

SECTION 8.05. Validation. To the extent deemed advisable by the City Attorney, the City Attorney is hereby authorized to institute appropriate proceedings for the validation of the Bonds and any and all other proceedings necessary for the Issuer to determine its authority to issue the Bonds and to acquire and construct the Project, and the

**EXHIBIT A**

**THE PROJECT**

The Project will consist of various capital improvements to be owned by and located within the City, including without limitation, transportation improvements (including, without limitation, bridges), storm drainage improvements, land acquisition and improvements for parks and recreation, and improvements to pedestrian and bicycle paths.

The Project may include supplemental or replacement capital improvements as may be subsequently approved in writing by the City Manager of the Issuer in accordance with the Act and filed with the City Clerk.



proper officers of the Issuer are hereby authorized to verify on behalf of the Issuer any pleadings in such proceedings.

SECTION 8.06. No Personal Liability. Neither the members of the City Council of the Issuer, the City Manager, the City Clerk, the City Attorney, nor any person executing the Bonds shall be personally liable therefor or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 8.07. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions of this Resolution shall 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 separable from the remaining covenants, agreements and provisions of this Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Bonds issued hereunder.

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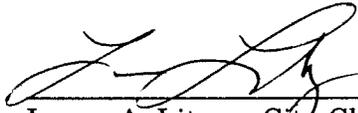
SECTION 8.08. Repeal of Inconsistent Resolutions. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

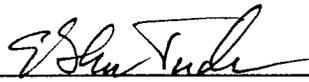
SECTION 8.09. Effective Date. This Resolution shall take effect immediately upon its adoption.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 4<sup>th</sup> day of November, 2002.

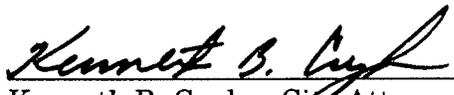
ATTEST:

CITY OF MARCO ISLAND, FLORIDA

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

By:   
\_\_\_\_\_  
E. Glenn Tucker, Chairman

Approved as to Form:

  
\_\_\_\_\_  
Kenneth B. Cuyler, City Attorney