

1. Requested Motion:

Meeting Date: Aug 5, 2013

Move to approve Resolution Nos. 13-12 and 13-13 refinancing the Revenue Refunding Note, Series 2007 and authorizes Revenue Refunding Note, Series 2013.

Why the action is necessary:

The prior utility system note matures in August, 2013 and must be refinanced or paid.

What the action accomplishes:

Authorizes the execution of all documents necessary to accomplish the refinancing of the prior utility system loan.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background:

In 2001 the Town financed the acquisition of the Water Utility using a note payable to a financial institution. The note was refinanced in August 2010. That note bears an interest rate of 2.78% which is collateralized by a lien on and a pledge of the net revenues of the utility. Additionally, the Town of Fort Myers Beach has, by way of resolution, pledged its non-ad valorem revenues for payment of principal and interest on this debt in the event the utility's net revenues are insufficient to make those payments. The Series 2010 note matures August 2013 and must be refinanced or paid off.

The attached documents authorize the refunding and refinancing of the note for a period of eleven years at the rate of 1.98% based upon an 11-year straight line amortization schedule with level principal payments of \$180,000 plus accrued interest paid annually. The Lender will allow prepayment in whole or in part without any penalty after 12 months. The associated documents have been reviewed and prepared by Nabors, Giblin, Nickerson and the Town Attorney.

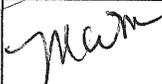
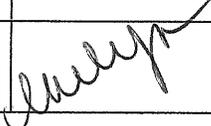
6. Alternative Action:

Not approve the resolutions.

7. Management Recommendations:

Approve the resolutions authorizing refinancing of the outstanding water utility debt and authorize issuance of Revenue Refunding Note, Series 2013.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

TOWN OF FORT MYERS BEACH, FLORIDA

**AMENDED AND RESTATED
WATER AND WASTEWATER REVENUE BOND RESOLUTION**

ADOPTED AUGUST 5, 2013

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RESOLUTION NO. 13-12

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING AND RESTATING A RESOLUTION OF THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. ADOPTED ON DECEMBER 10, 2010 ENTITLED "A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TOWN OF FORT MYERS BEACH PUBLIC WORKS SERVICES, INC. PROVIDING FOR THE ISSUANCE OF UTILITY REVENUE BONDS, FROM TIME TO TIME, FOR THE PRINCIPAL PURPOSE OF FINANCING AND REFINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF VARIOUS CAPITAL IMPROVEMENTS TO THE CORPORATION'S WATER SYSTEM AND ANY FUTURE WASTEWATER SYSTEM ACQUIRED BY THE CORPORATION; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SUCH BONDS; PROVIDING FOR THE PAYMENT THEREOF FROM, AND A PLEDGE OF, NET REVENUES OF THE WATER SYSTEM AND ANY FUTURE WASTEWATER SYSTEM ACQUIRED BY THE CORPORATION AND CERTAIN OTHER MONEYS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; FURTHER PROVIDING FOR THE ISSUANCE OF THE CORPORATION'S UTILITY REVENUE REFUNDING BONDS, SERIES 2011, IN AN AMOUNT NOT TO EXCEED \$18,000,000 FOR THE PRINCIPAL PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS AND TO REFINANCE CERTAIN PRIOR INDEBTEDNESS OF THE CORPORATION AS MORE PARTICULARLY DESCRIBED HEREIN, IN A MANNER DETERMINED BY THE CORPORATION UPON THE ADVICE OF ITS FINANCIAL ADVISOR; AND PROVIDING AN EFFECTIVE DATE;" AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 3, 2011, the Town Council of the Town of Fort Myers Beach, Florida (the "Issuer") effected the dissolution of The Town of Fort Myers Beach Public Works Services, Inc.; and

WHEREAS, pursuant to the definition of "Issuer" provided in Section 1.01 of that certain Water and Wastewater Bond Resolution No. 10-07-U, adopted by the Town of Fort Myers Beach Public Works Services, Inc. on December 20, 2010 (the "Prior Resolution"), the Issuer has assumed all of the powers and responsibilities of The Town of Fort Myers Beach Public Works Services, Inc. with respect to the ownership, financing, operation, enlargement, improvement and maintenance of the System (as defined herein); and

WHEREAS, the Prior Resolution contemplated the issuance of utility revenue refunding bonds in the amount of \$18,000,000 in 2011 which bonds were validated pursuant to Chapter 75, Florida Statutes, but due to market conditions and other considerations, were never issued; and

WHEREAS, the Issuer deems it necessary to amend and restate the Prior Resolution in its entirety in order to reflect the aforementioned changes in circumstance.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

**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:

"Accreted Value" shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond (the principal amount at its initial offering) plus the interest accrued on such Capital Appreciation Bond from the date of delivery to the original purchasers thereof to the Interest Date next preceding the date of computation or the date of computation if an Interest Date, such interest to accrue at a rate not exceeding the legal rate, compounded semiannually, plus, with respect to matters related to the payment upon redemption or acceleration of the Capital Appreciation Bonds, if such date of computation shall not be an Interest Date, a portion of the difference between the Accreted Value as of the immediately preceding Interest Date and the Accreted Value as of the immediately succeeding Interest Date, calculated based on the assumption that Accreted Value accrues during any semi-annual period in equal daily amounts on the basis of a 360-day year.

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

"Additional Bonds" shall mean the obligations issued at any time under the provisions of Section 6.02 hereof on a parity with the Series 2013 Bond.

"Annual Audit" shall mean the annual audit prepared pursuant to the requirements of Section 5.06 hereof.

"Annual Budget" shall mean the annual budget prepared pursuant to the requirements of Section 5.03 hereof.

"Annual Debt Service" shall mean the aggregate amount of Debt Service on the Bonds for each applicable Fiscal Year.

"Authorized Denominations" shall mean such denominations as shall be provided by Supplemental Resolution providing the terms and details of the Bonds.

"Authorized Investments" shall mean any of the following, if and to the extent that the same are at the time permitted by the policies of the Issuer and legal for investment of funds of the Issuer:

(1) direct obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America, or obligations the principal of and interest on which are unconditionally guaranteed by) the United States of America;

(2) bonds, debentures or notes or other evidence of indebtedness payable in cash issued by any one or a combination of any of the following federal agencies whose obligations represent full faith and credit of the United States of America: Export Import Bank of the United States, Small Business Administration, Farmer's Home Administration, Federal Housing Administration, Maritime Administration, Public Housing Authority, Government National Mortgage Association, Federal Financing Bank, Federal Farm Credit Bank, Federal Home Loan Bank;

(3) bonds, notes or other evidence of indebtedness rated "AAA" by Standard & Poor's and "Aaa" by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(4) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by Standard & Poor's and "P-1" by Moody's and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);

(5) commercial paper which is rated at the time of purchase "A-1" by Standard & Poor's and "P-1" by Moody's and which matures not more than 270 days after the date of purchase;

(6) investments in a money market fund registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating of "AAAm" or "Aam-G" or "Aam" or better by Standard & Poor's;

(7) Prerefunded Obligations;

(8) units of participation in the Local Government Surplus Funds Trust Fund established pursuant to Part IV, Chapter 218, Florida Statutes, or any similar common trust fund which is established pursuant to State law as a legal depository of public moneys;

(9) investments in the Florida Local Government Investment Trust;

(10) repurchase agreements that meet the following criteria:

(A) A master repurchase agreement or specific written purchase agreement, substantially similar in form and substance to the Public Securities Association or Bond Market Association master repurchase agreement, governs the transaction.

(B) Acceptable providers shall consist of registered broker/dealers subject to Securities Investors' Protection Corporation jurisdiction or commercial banks insured by the FDIC, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed rating of "A3/P-1" or better by Moody's and "A-/A-1" or better by Standard & Poor's.

(C) The repurchase agreement shall require termination thereof if the Counterparty's ratings are suspended, withdrawn or fall below "A3" or "P-1" from Moody's, or "A-" or "A-1" from Standard & Poor's. Within ten days, the Counterparty shall repay the principal amount plus any accrued and unpaid interest on the investments.

(D) The repurchase agreement shall limit acceptable securities to U.S. Government Securities and to Government National Mortgage Association ("GNMA") guaranteed mortgage-backed securities and guaranteed participation certificates, Federal National Mortgage Association ("FNMA") senior debt obligations rated "Aaa" by Moody's and "AAA" by Standard & Poor's, or Federal Home Loan Mortgage Corporation's ("FHLMC") participation certificates and senior debt obligations rated "Aaa" by Moody's and "AAA" by Standard & Poor's. The fair market value of the securities in relation to the amount of the repurchase obligation, including principal and accrued interest, is equal to a collateral level of at least 104% for U.S. Government Securities and 105% for GNMA's, FNMA's or FHLMC's. The repurchase agreement shall require (i) the hereinafter described Agent to value the collateral securities no less frequently than weekly, (ii) the delivery of additional securities if the fair market value of the securities is below the required level on any valuation date, and (iii) liquidation of the repurchase securities if any deficiency in the required percentage is not restored within two business days of such valuation.

(E) The repurchase securities shall be delivered free and clear of any lien to an independent third party acting solely as agent ("Agent") for the Issuer, provided such Agent is (i) a Federal Reserve Bank, or (ii) a bank which is a member of the

FDIC and which has combined capital, surplus and undivided profits or, if appropriate, a net worth, or not less than \$50 million.

(F) A perfected first security interest in the repurchase securities shall be created for the benefit of the Agent, and the Issuer and the Agent shall receive an opinion of counsel as to the perfection of the security interest in such repurchase securities and any proceeds thereof.

(G) The repurchase agreement shall have a term of one year or less, or shall be due on demand.

(H) The repurchase agreement shall establish the following as events of default, the occurrence of any of which shall require the immediate liquidation of the repurchase securities:

(i) insolvency of the broker/dealer or commercial bank serving as the Counterparty under the repurchase agreement;

(ii) failure by the Counterparty to remedy any deficiency in the required collateral level or to satisfy the margin maintenance call under item (10)(D) above; or

(iii) failure by the Counterparty to repurchase the repurchase securities on the specified date for repurchase.

(11) other investments approved by the Insurer or Insurers of the Bonds, provided all Outstanding Bonds are insured as to payment by such Insurer or Insurers.

"Authorized Issuer Officer" shall mean the Mayor (or his or her designee), and when used in reference to any act or document, also means any other person authorized by resolution of the Issuer to perform such act or sign such document.

"Balloon Bonds" means Bonds of a Series designated as such by Supplemental Resolution adopted in connection with the issuance thereof, for which either (1) no serial maturities or Sinking Fund Installments prior to the maturity thereof have been established, or (2) the aggregate of such serial maturities and Sinking Fund Installments that have been established is less than the amount necessary to amortize such Bonds on a substantially level debt service basis.

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

"Bond Insurance Policy" shall mean the municipal bond new issue insurance policy or policies issued by an Insurer guaranteeing the payment of the principal of and interest on any portion of the Bonds.

"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.

"Bondholder Subsidy Bonds" shall mean any Bonds which provide for the Bondholder to receive subsidy payments on such Bonds directly from the United States Treasury Secretary or other party as designated by the federal government to issue such payments.

"Bonds" shall mean the Series 2013 Bond, together with any Additional Bonds issued pursuant to this Resolution and any Subordinated Indebtedness which accedes to the status of Bonds pursuant to Section 6.04 hereof.

"Capital Appreciation Bonds" shall mean those Bonds so designated by Supplemental Resolution of the Issuer, which may be either Serial Bonds or Term Bonds and which shall bear interest payable at maturity or redemption. In the case of Capital Appreciation Bonds that are convertible to Bonds with interest payable prior to maturity or redemption of such Bonds, such Bonds shall be considered Capital Appreciation Bonds only during the period of time prior to such conversion.

"Clerk" shall mean the Clerk of the Issuer, or her or his duly authorized designee.

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

"Connection Fees" shall mean the Water Connection Fees and the Wastewater Connection Fees.

"Construction Fund" shall mean the fund established pursuant to Section 4.03 hereof.

"Consulting Engineers" shall mean any engineering firm of reputation for skill and experience with respect to the construction and operation of facilities similar to the System, which is duly licensed under the laws of the State of Florida and designated by the Issuer to perform the duties of the Consulting Engineers under the provisions 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 cost 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 System during the period of acquisition and construction of such Project and for such period subsequent to completion as the Issuer shall determine; (6) engineering, legal and other consultant fees and expenses; (7) costs and expenses of the financing, including audits, fees and expenses of any Paying Agent, Registrar or depository; (8) amounts, if any, required by this Resolution to be paid into the Interest Account upon the issuance of any Series of Bonds; (9) 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 a Project for the System; (10) costs of machinery, equipment and supplies and reserves required by the Issuer for the commencement of operation of such Project; (11) any costs properly attributable to such construction or acquisition, as determined by generally accepted accounting principles applicable to public utility systems similar to the System, and shall include reimbursement to the Issuer for any such items of Cost heretofore paid by the Issuer and interest on any interfund loan related thereto; and (12) any other costs approved by Bond Counsel. Any Supplemental Resolution may provide for additional items to be included in the aforesaid Costs.

"Council" shall mean the Town Council of the Issuer or the board, commission or council of any successor and assigns, including but not limited to, any authority or other governmental entity to which may hereafter be transferred some or all of the powers and responsibilities of the Issuer with respect to the ownership, financing, operation, enlargement, improvement and maintenance of the System

"Counterparty" shall mean the entity entering into a Hedge Agreement with the Issuer. Counterparty would also include any guarantor of such entity's obligations under such Hedge Agreement.

"Credit Bank" shall mean as to any particular Series of Bonds, the Person (other than an Insurer) providing a letter of credit, a line of credit or other credit or liquidity facility, as designated in the Supplemental Resolution providing for the issuance of such Bonds.

"Credit Facility" shall mean as to any particular Series of Bonds, an irrevocable letter of credit, a line of credit or other credit or legal liquidity facility (other than an insurance policy issued by an Insurer), as approved in the Supplemental Resolution providing for the issuance of such Bonds.

"Debt Service" shall mean, at any time, the aggregate amount in the then applicable period of time of (1) interest required to be paid on the Outstanding Bonds during such period of time, except to the extent that such interest is to be paid from deposits in the Interest Account made from Bond proceeds, (2) principal of Outstanding Serial Bonds maturing in such period of time, and (3) the Sinking Fund Installments herein designated with respect to such period of time. For purposes of this definition, (A) all amounts payable on a Capital Appreciation Bond shall be considered a principal payment in the year it

becomes due, (B) subject to the provisions of Section 5.22 hereof, with respect to debt service on any Bonds which are subject to a Qualified Hedge Agreement, interest on such Bonds during the term of such Qualified Hedge Agreement shall be deemed to be the Hedge Payments coming due during such period of time, and (C) the amount on deposit in the Reserve Account (or any subaccount thereof) on any date of calculation of Debt Service shall be deducted from the amount of principal due at the final maturity of the Bonds which are secured by such Reserve Account (or subaccount thereof) and in each preceding year until such amount is exhausted.

With respect to Balloon Bonds, the unamortized principal coming due on the final maturity date thereof shall be ignored and in lieu thereof there shall be added to the Debt Service for the applicable period of time in which such final maturity occurs and to each year thereafter up to the 30th anniversary of the issuance of such Bonds or such shorter amount of time as reasonably determined by the Issuer (the "Reamortization Period") the amount of substantially level principal and interest payments (assuming for such purposes such interest rate as a financial advisor selected by the Issuer and having experience in the pricing of municipal bonds shall determine is a reasonable estimate of the rate that such Balloon Bonds would bear based upon such Reamortization Period and the characteristics of such Balloon Bonds) that if paid in each year during the Reamortization Period would be sufficient to pay in full the unamortized portion of such Balloon Bonds by such anniversary.

"Event of Default" shall have the meaning ascribed to it in Section 7.01 hereof.

"Federal Securities" shall mean obligations described in paragraphs (1) and (2) of the definition of "Authorized Investments." "Federal Securities" shall also include direct obligations of the United States Treasury, Treasury Receipts, CATS, STRPS, Refcorp interest strips and TIGRS. All such obligations shall not permit redemption prior to maturity at the option of the obligor.

"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.

"Fitch" means Fitch Ratings and any assigns and successors thereto.

"Fund Balance" shall mean an amount of money equal to the unencumbered moneys on deposit in the Utility Reserve Fund as of September 30 of the immediately preceding Fiscal Year. Moneys shall be considered unencumbered to the extent such moneys may be used for purposes relating to the System.

"Governing Body" shall mean the Council, or its successor and assigns in function.

"Government Grant" when used with respect to the System shall mean any sum of money heretofore or hereafter received by the Issuer from the United States of America or any agency thereof or from the State of Florida or any agency or political subdivision thereof as or on account of a grant or contribution, not repayable by the Issuer, for or with respect to (1) the construction, acquisition or other development of an addition, extension or improvement to any part of the System or any costs of any such construction, acquisition or development, or (2) the financing of any such construction, acquisition, development or costs; provided, however, Government Grants shall not include any grants or contributions received by the Issuer for the purpose of funding Operating Expenses.

"Gross Revenues" shall mean all income and moneys received by the Issuer from the rates, fees, rentals, charges and other income to be made and collected by the Issuer for the use of the products, services and facilities to be provided by the System, or otherwise received by the Issuer or accruing to the Issuer in the management and operation of the System, calculated in accordance with generally accepted accounting principles applicable to public utility systems similar to the System, including, without limiting the generality of the foregoing, (1) moneys deposited from the Rate Stabilization Fund into the Revenue Fund in accordance with the terms hereof within 90 days following the end of a Fiscal Year may be designated by the Issuer as Gross Revenues of such prior Fiscal Year, (2) proceeds from use and occupancy insurance on the System, (3) Investment Earnings, and (4) any Issuer Bond Subsidy Payments. "Gross Revenues" shall not include (A) Government Grants, to the extent prohibited or restricted as to its use by the terms of the Government Grant, (B) proceeds of Bonds or other Issuer debt, (C) moneys deposited to the Rate Stabilization Fund from the Utility Reserve Fund, including any moneys transferred from the Utility Reserve Fund to the Rate Stabilization Fund within 90 days following the end of a Fiscal Year which the Issuer determines not to be Gross Revenues of such prior Fiscal Year, (D) Water Connection Fees, (E) Wastewater Connection Fees, and (F) Special Assessments Proceeds. Gross Revenues may include Special Assessments Proceeds and/or other revenues related to the System which are not enumerated in the definition of "Gross Revenues" if and to the extent the same shall be approved for inclusion by the Insurers, if any, and Bond Counsel.

"Hedge Agreement" shall mean an agreement in writing between the Issuer and the Counterparty pursuant to which (1) the Issuer agrees to pay to the Counterparty an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on the debt of the Counterparty specified in such agreement in the period specified in such agreement, and (2) the Counterparty agrees to pay to the Issuer an amount, either at one time or periodically, which may, but is not required to, be determined by reference to the amount of interest (which may be at a fixed or variable rate) payable on all or a portion of a Series of Bonds specified in such agreement during the period specified in such agreement. Hedge Agreement shall also include any financial product or agreement which is used by the Issuer

as a hedging device with respect to its obligations to pay interest on the Bonds, or any portion thereof, which is designated by the Issuer as a "Hedge Agreement."

"Hedge Payments" shall mean any regularly scheduled amounts payable by the Issuer as interest on the related notional amount under a Qualified Hedge Agreement; excluding, however, any payments due as a penalty or a fee or by virtue of termination of a Qualified Hedge Agreement or any obligation to provide collateral.

"Hedge Receipts" shall mean any amounts receivable by the Issuer on the related notional amount under a Qualified Hedge Agreement.

"Initial Rating Requirement" shall mean, with regard to a Qualified Hedge Agreement, a Counterparty which at the time it enters into a Qualified Hedge Agreement is rated "A-" or better by Standard & Poor's and "A3" or better by Moody's.

"Insurer" shall mean such Person as shall be in the business of insuring or guaranteeing the payment of principal of and interest on municipal securities and whose credit is such that, at the time of any action or consent required or permitted by the Insurer pursuant to the terms of this Resolution, all municipal securities insured or guaranteed by it are then rated, because of such insurance or guarantee, in one of the three most secure grades by one of the Rating Agencies.

"Interest Account" shall mean the separate account in the Sinking Fund established pursuant to Section 4.04(C) hereof.

"Interest Date" or **"interest payment date"** shall be such date or dates as shall be provided by Supplemental Resolution of the Issuer.

"Investment Earnings" shall mean all income and earnings derived from the investment of moneys in the funds and accounts established hereunder, other than the Rebate Fund.

"Issuer" or **"Town"** shall mean the Town of Fort Myers Beach, Florida, its successors and assigns, including, but not limited to, any authority or other governmental entity to which may hereafter be transferred some or all of the powers and responsibilities of the Issuer with respect to the ownership, financing, operation, enlargement, improvement and maintenance of the System.

"Issuer Bond Subsidy Payments" shall mean, with respect to any Issuer Subsidy Bonds issued pursuant to this Resolution, payments due the Issuer directly from the United States Treasury Secretary, or other party as designated by the federal government to issue such payments, on the related Issuer Subsidy Bonds. For all purposes of the Resolution, such payments shall not constitute Government Grants.

"Issuer Subsidy Bonds" shall mean any Bonds which provide for the Issuer to receive Issuer Bond Subsidy Payments on such Bonds directly from the United States Treasury Secretary, or other party as designated by the federal government to issue such payments.

"Maximum Annual Debt Service" shall mean the largest aggregate amount of the Annual Debt Service becoming due in any Fiscal Year in which Bonds are Outstanding.

"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 particular time bear.

"Mayor" shall mean the Mayor of the Issuer or any duly authorized designees.

"Moody's" shall mean Moody's Investors Service, and any assigns and successors thereto.

"Net Revenues" shall mean Gross Revenues less Operating Expenses.

"Operating Expenses" shall mean the Issuer's expenses for operation, maintenance, repairs and replacements with respect to the System and shall include, without limiting the generality of the foregoing, administration expenses, payments for the purchase of materials essential to or used in the operation of the System including bulk purchases of water services, fees for the management of the System or any portion thereof, any insurance and surety bond fees, the fees to the provider of a Reserve Account Insurance Policy or Reserve Account Letter of Credit (but excluding any expenses or reimbursement obligations for draws made thereunder), accounting, legal and engineering expenses, ordinary and current rentals of equipment or other property, refunds of moneys lawfully due to others, payments to others for disposal of sewage or other wastes, payments to pension, retirement, health and hospitalization funds currently owing or the annual required contribution related thereto, and any other expenses required to be paid for or with respect to proper operation or maintenance of the System, including appropriate reserves therefor, all to the extent properly attributable to the System in accordance with generally accepted accounting principles applicable to public utility systems similar to the System, and disbursements for the expenses, liabilities and compensation of any Paying Agent or Registrar under this Resolution, but does not include any costs or expenses in respect of original construction or improvement other than expenditures necessary to prevent an interruption or continuance of an interruption of service or of Gross Revenues or minor capital expenditures necessary for the proper and economical operation or maintenance of the System, or any provision for interest, depreciation, amortization or similar charges.

"Operation and Maintenance Fund" shall mean the fund created pursuant to Section 4.04(B) hereof.

"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 other Bond or Bonds have been issued under agreement to replace lost, mutilated or destroyed Bonds, (2) any Bond surrendered by the Holder thereof in exchange for other Bond or Bonds under Sections 2.05 and 2.07 hereof, (3) Bonds deemed to have been paid pursuant to Section 9.01 hereof, and (4) Bonds cancelled 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 this Resolution and its successor or assigns, and any other Person which may at any time be substituted in its place pursuant to this Resolution; provided, however, until such time as a Paying Agent is appointed, the Issuer shall act as Paying Agent.

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

"Pledged Funds" shall mean, (1) the Net Revenues, (2) the Connection Fees, (3) and Special Assessments Proceeds (to the extent the Issuer has included such as Pledged Funds pursuant to a Supplemental Resolution), and (4) until applied in accordance with the provisions of this Resolution, all moneys, including investments thereof, in the funds and accounts established hereunder, except (A) as for the Rebate Fund, (B) to the extent moneys therein shall be required to pay the Operating Expenses of the System in accordance with the terms hereof, and (C) to the extent moneys on deposit in a subaccount of the Reserve Account shall be pledged solely for the payment of the Series of Bonds for which it was established in accordance with the provisions hereof.

"Policy Costs" shall mean, collectively, the repayment of draws, reasonable expenses and interest related to a Reserve Account Insurance Policy and/or Reserve Account Letter of Credit.

"Prerefunded Obligations" shall mean any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (1) which are either (A) not callable prior to maturity, or (B) as to which irrevocable instructions have been given to the fiduciary for such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (2) which are fully secured as to principal, redemption premium, if any, and interest by a fund held by a fiduciary consisting only of cash or Federal Securities, secured in the manner set forth in Section 9.01 hereof, which fund may be applied only to the payment of such principal of, redemption premium, if any, and interest

on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as the case may be, (3) as to which the principal of and interest on the Federal Securities, which have been deposited in such fund along with any cash on deposit in such fund are sufficient, as verified by an independent certified public accountant or other expert in such matters, to pay principal of, redemption premium, if any, and interest on the bonds or other obligations on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (1) above and are not available to satisfy any other claims, including those against the fiduciary holding the same, and (4) which are rated in the highest rating category (without regard to gradations, such as "plus" or "minus" of such categories) of one of the Rating Agencies.

"Principal Account" shall mean the separate account in the Sinking Fund established pursuant to Section 4.04(C) hereof.

"Prior Indebtedness" shall mean the Issuer's Revenue Refunding Note, Series 2010 issued in the principal amount of \$2,520,000, issued to refinance the Issuer's Revenue Refunding Note, Series 2007 which was issued to refinance the Issuer's Revenue Note, Series 2004. The proceeds of the Issuer's Revenue Note, Series 2004 were primarily used to acquire the System and to pay certain capitalized costs associated therewith and to finance capital additions and/or improvements to the System.

"Project" shall mean any structure, property or facility for public use which the Issuer from time to time may determine to construct or acquire as part of the System, together with all equipment, structures and other facilities necessary or appropriate in connection therewith which are financed in whole or in part with the indebtedness secured by this Resolution. This term is to be broadly construed as including any lawful undertaking which will accrue to the benefit of the System, including, without limitation, financing improvements to the Issuer's facilities, joint ventures and acquisition of partial interests or contractual rights, and including modification, disposal, replacement or cancellation of a Project previously authorized, should such modification, disposal, replacement or cancellation be permitted under this Resolution.

"Qualified Hedge Agreement" shall mean a Hedge Agreement with a Counterparty which meets the Initial Rating Requirement.

"Rate Consultant" shall mean any accountant, engineer or consultant or firm of accountants, engineers or consultants chosen by the Issuer with reputation for skill and experience in reviewing and recommending rates for utility systems similar to the System.

"Rate Stabilization Fund" shall mean the "Rate Stabilization Fund" established pursuant to Section 4.04(J) hereof.

"Rating Agencies" means Fitch, Moody's and Standard & Poor's.

"Rebate Fund" shall mean the Rebate Fund established pursuant to Section 4.04(I) 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.

"Refunding Securities" shall mean Federal Securities and Prerefunded Obligations.

"Registrar" shall mean any registrar for the Bonds appointed by or pursuant to this Resolution and its successors and assigns, and any other Person which may at any time be substituted in its place pursuant to this Resolution; provided, however, until such time as a Registrar is appointed, the Issuer shall act as Registrar.

"Renewal and Replacement Fund" shall mean the fund created pursuant to Section 4.04(G) hereof.

"Renewal and Replacement Fund Requirement" shall mean, on the date of calculation, an amount of money equal to (1) five percent of the Gross Revenues received by the Issuer in the immediately preceding Fiscal Year (excluding, solely for purposes of this calculation, amounts attributable to Investment Earnings), or (2) such greater or lesser amount as may be certified to the Issuer by the Consulting Engineers as an amount appropriate for the purposes of this Resolution.

"Reserve Account" shall mean the separate account in the Sinking Fund established pursuant to Section 4.04(C) hereof.

"Reserve Account Insurance Policy" shall mean the insurance policy deposited in the Reserve Account in lieu of or in partial substitution for cash on deposit therein pursuant to Section 4.05(B)(4).

"Reserve Account Letter of Credit" shall mean a letter of credit or line of credit or other credit facility (other than a Reserve Account Insurance Policy) deposited in the Reserve Account in lieu of or in partial substitution for cash on deposit therein pursuant to Section 4.05(B)(4) hereof.

"Reserve Account Requirement" shall mean, as of any date of calculation for the Reserve Account, an amount equal to the lesser of (1) Maximum Annual Debt Service for all Outstanding Bonds secured thereby, (2) 125% of the average Annual Debt Service for all Outstanding Bonds secured thereby, or (3) the maximum amount allowed to be funded from proceeds of tax-exempt obligations and invested at an unrestricted yield pursuant to the Code; provided, however, the Issuer may establish by Supplemental Resolution a different

Reserve Account Requirement for a subaccount of the Reserve Account which secures a Series of Bonds pursuant to Section 4.05(B)(4) hereof. In computing the Reserve Account Requirement in respect of a Series of Bonds that constitutes Variable Rate Bonds, the interest rate on such Bonds shall be assumed to be (A) if such Variable Rate Bonds have been Outstanding for at least 12 months prior to the date of calculation, the highest of (i) the actual rate of interest on the date of calculation, (ii) the average interest rate borne by such Variable Rate Bonds for the 12-month period preceding each date of calculation, and (iii) the Bond Buyer Revenue Bond Index most recently published prior to the time of calculation, and (B) if such Variable Rate Bonds have not been Outstanding for at least 12 months prior to the date of calculation, the higher of (i) the actual rate of interest on the date of calculation, and (ii) the Bond Buyer Revenue Bond Index most recently published prior to the time of calculation. The time of calculation for Variable Rate Bonds shall be each March 1.

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

"Revenue Fund" shall mean the fund created pursuant to Section 4.04(A) hereof.

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

"Series" shall mean all the Bonds delivered on original issuance in a simultaneous transaction and identified pursuant to Sections 2.01 and 2.02 hereof or a Supplemental Resolution authorizing the issuance by the Issuer of such Bonds as a separate Series, regardless of variations in maturity, interest rate, Sinking Fund Installments or other provisions.

"Series 2013 Bond" shall mean the Town of Fort Myers Beach, Florida Utility Revenue Refunding Bond, Series 2013 authorized pursuant to Section 2.02 hereof and a Supplemental Resolution adopted as of the date hereof by the Issuer.

"Sinking Fund" shall mean the fund established pursuant to Section 4.04(C) hereof.

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

"Special Assessments" means any and all other non ad valorem assessments against property benefitted by the System or any part thereof, but special assessments shall be subject to the provisions and lien and pledge of this Resolution only if and to the extent provision for inclusion as part of the Pledged Funds has been made by Supplemental Resolution to be adopted by the Issuer.

"Special Assessments Fund" shall mean the fund created pursuant to Section 4.04(F) hereof.

"Special Assessments Proceeds" means the proceeds of Special Assessments pledged hereunder (principal and interest), whether paid at one time or in installments from time to time.

"Standard and Poor's" or **"S&P"** shall mean Standard and Poor's Ratings Services, and any assigns and successors thereto.

"State" shall mean the State of Florida.

"Subordinated Indebtedness" shall mean that indebtedness of the Issuer, subordinate and junior to the Bonds, issued in accordance with the provisions of Section 6.01 hereof or deemed subordinate and junior to the Bonds in accordance with the provisions hereof.

"Supplemental Resolution" shall mean any resolution of the Issuer amending or supplementing this Resolution enacted and becoming effective in accordance with the terms of Sections 8.01, 8.02 and 8.03 hereof.

"System" shall mean any and all water production, transmission, treatment and disposal facilities of the water utility system serving the Issuer, now owned or hereafter owned by the Issuer, which System shall also include any and all improvements, extensions and additions thereto hereafter constructed or acquired either from the proceeds of Bonds or from any other sources, together with all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therewith, including all contractual rights, rights to capacity and obligations or undertakings associated therewith. "System" shall also include any other utility facilities if and to the extent the Issuer determines by Supplemental Resolution to include such utility or facilities within the System as described herein.

"Taxable Bonds" means 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 taxation 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.

"Term Bonds Redemption Account" shall mean the separate account in the Sinking Fund established pursuant to Section 4.04(C) hereof.

"Town Charter" shall mean the Town of Fort Myers Beach Charter, effective December 31, 1995, as may be amended from time to time.

"Utility Reserve Fund" shall mean the fund created pursuant to Section 4.04(H) hereof.

"Variable Rate Bonds" shall mean Bonds 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.

"Wastewater Connection Fees" shall mean the fees and charges, if any, which relate to acquiring, constructing, equipping or expanding the capacity of the wastewater facilities of the System for the purpose of paying or reimbursing the equitable share of the capital cost relating to such acquisition, construction, expansion or equipping of excess and unused capacity of the System or expansion thereof in order to serve new users of the wastewater facilities of the System, to the extent the same are lawfully levied, collected and pledged.

"Wastewater Connection Fees Fund" shall mean the fund created pursuant to Section 4.04(E) hereof.

"Water Connection Fees" shall mean the fees and charges, if any, which relate to acquiring, constructing, equipping or expanding the capacity of the water facilities of the System for the purpose of paying or reimbursing the equitable share of the capital cost relating to such acquisition, construction, expansion or equipping of excess and unused capacity of the System or expansion thereof in order to serve new users of the water facilities of the System, to the extent the same are lawfully levied, collected and pledged.

"Water Connection Fees Fund" shall mean the fund created pursuant to Section 4.04(D) hereof.

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. The Issuer has ascertained and hereby determined that adoption of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the Issuer in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Issuer herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Issuer.

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, the Holders from time to time of the Bonds and any Insurer or Credit Bank. The pledge made in the 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 any Insurer or Credit Bank, but only in accordance with the terms hereof. 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:

(A) The Issuer is authorized to, among other things, acquire, construct, equip, own, sell, lease, operate and maintain the System in furtherance of preserving the water resources of the Issuer and minimizing costs of water services to residents of the Issuer and to borrow money to finance and refinance the acquisition, construction, equipping and maintenance of such System.

(B) That the obligation of the Issuer is to perform such acts as shall be necessary for the sound planning, acquisition, development, operation and maintenance of the System within the boundaries of the Issuer, including all business facilities necessary and incidental thereto.

(C) That it is necessary and desirable and in the best interests of the Issuer to borrow moneys from time to time to improve and expand the System and to refinance certain indebtedness related to the System.

(D) That for the purposes described above the Issuer is authorized under the Act and hereunder to borrow money by issuing its Bonds from time to time as provided herein.

(E) That the Bonds shall be secured by the Pledged Funds as provided herein and such Pledged Funds have not been pledged or encumbered except as provided for the Prior Indebtedness.

(F) That the estimated Gross Revenues to be derived in each year hereafter from the operation of the System will be sufficient to pay all the Operating Expenses, the principal of and interest on the Bonds to be issued pursuant to this Resolution, as the same become due, and all other payments provided for in this Resolution.

(G) That the principal of and interest on the Bonds to be issued pursuant to this Resolution, and all other payments provided for in this Resolution will be paid solely from the Pledged Funds in accordance with the terms hereof; 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 to be issued pursuant to this Resolution, or to make any other payments provided for in this Resolution, and the Bonds shall not constitute a lien upon the System or upon any other property whatsoever of or in the Issuer.

(H) On August 6, 2010, the Issuer previously issued the Prior Indebtedness to refinance moneys expended to acquire the System and certain capitalized costs associated therewith and to finance the capital additions and/or improvements to the System.

(I) On April 25, 2011, the Issuer received a final judgment with respect to \$18,500,000 of Bonds to be issued hereunder validated pursuant to Chapter 75, Florida Statutes.

(J) The Issuer finds it necessary and in its best interest to refinance the Prior Indebtedness and shall issue its Utility Revenue Refunding Bond, Series 2013, as further described herein, which shall be sold through negotiated sale based upon market conditions to refinance the Prior Indebtedness.

(K) At some future date, the Issuer intends to issue the remaining amount of validated Bonds for purposes of providing moneys for the acquisition, construction and equipping of certain capital improvements to the System when better market conditions exist.

**ARTICLE II
AUTHORIZATION, TERMS, EXECUTION
AND REGISTRATION OF BONDS**

SECTION 2.01. AUTHORIZATION OF BONDS. This Resolution authorizes an issue of Bonds of the Issuer to be designated as "Town of Fort Myers Beach, Florida Utility Revenue Bonds" which may be issued in one or more Series as hereinafter provided. 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.

The Bonds may, if and when authorized by the Issuer pursuant to this Resolution, be issued in one or more Series, with such further appropriate particular designations added to or incorporated in such title for the Bonds of any particular Series as the Issuer may determine and as may be necessary to distinguish such Bonds from the Bonds of any other Series. Each Bond shall bear upon its face the designation so determined hereby or for the Series to which it belongs.

The Bonds shall be issued for such purpose or purposes; 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 by Supplemental Resolution of the Issuer.

The Bonds shall be issued in such denominations and 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 Agents and Registrars; shall mature in such years and amounts; and the proceeds shall be used in such manner; all as determined by Supplemental Resolution of the Issuer. The Issuer may issue Bonds which may be secured by a Credit Facility or by a Bond Insurance Policy of an Insurer all as shall be determined hereby or by Supplemental Resolution of the Issuer. The Governing Body may delegate approval of the terms, details and sale of a Series of Bonds to an Authorized Issuer Officer pursuant to Supplemental Resolution.

SECTION 2.02. AUTHORIZATION AND DESCRIPTION OF SERIES 2013 BOND. A Bond entitled to the benefit, protection and security of this Resolution are hereby authorized in the aggregate principal amount of not exceeding \$1,980,000 for the principal purpose of refinancing the Prior Indebtedness. Such Bond shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, "Town of Fort Myers Beach, Florida Utility Revenue Refunding Bond, Series 2013." The Series 2013 Bond shall be dated the date of delivery, shall be issued as a fully registered Bond, shall be numbered "R-1", shall be in an Authorized Denomination and shall bear interest at a rate not exceeding the maximum rate permitted by law, shall be payable in such manner and on such dates, maturing

in such amounts and in such years within 30 years of the date of issuance, shall be payable in such place or places, shall have such Serial Bonds and Term Bonds, and shall contain such redemption provisions, all as the Issuer shall provide hereafter by or pursuant to the provisions of a Supplemental Resolution.

SECTION 2.03. EXECUTION OF BONDS. The Bonds shall be executed in the name of the Issuer with the manual or facsimile signature of the Mayor attested and countersigned with the manual or facsimile signature of the Clerk. In case any one or more of the officers who shall have signed 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 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 such Bonds had not ceased to hold such office. Any Bond may be signed 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 2.04. AUTHENTICATION. No Bond of any Series shall be secured hereunder or 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 2.08 hereof.

SECTION 2.05. TEMPORARY BONDS. Until the definitive Bonds of any Series are prepared, the Issuer may execute, in the same manner as is provided in Section 2.03 hereof, and deliver, upon authentication by the Registrar pursuant to Section 2.04 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 subsequent 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 Series 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 cancelled by the Registrar.

SECTION 2.06. 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 his 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 shall be cancelled 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 2.06 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 2.07. INTERCHANGEABILITY, NEGOTIABILITY AND 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 his 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 law merchant and the Uniform Commercial Code of the State of Florida, 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 his 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 his 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 his 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 any Series of Bonds, forthwith (A) following the fifteenth day prior to an interest payment date for such Series; (B) following the fifteenth day next preceding the date of first mailing of notice of redemption of any Bonds of such Series; and (C) at any other time as reasonably requested by the Paying Agent of such Series, 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 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 deliver Bonds and the Registrar shall authenticate such Bonds in accordance with the provisions of this Resolution. Execution of Bonds by the Mayor and Clerk for purposes of exchanging, replacing or transferring Bonds may occur at the time of the original delivery of the Series of which such Bonds are a part. All Bonds surrendered in any such exchanges or transfers shall be held by the Registrar in safekeeping until directed by the Issuer to be cancelled 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 of any Series during the 15 days next preceding an Interest Date on the Bonds of such Series (other than Capital Appreciation Bonds and Variable Rate Bonds), or, in the case of any proposed redemption of Bonds of such Series, then, for the Bonds subject to redemption, during the 15 days next preceding the date of the first mailing of notice of such redemption and continuing until such redemption date.

The Issuer may elect to issue any Bonds as uncertificated registered public obligations (not represented by instruments), commonly known as book-entry obligations, provided it shall establish a system of registration therefor by Supplemental Resolution.

SECTION 2.08. FORM OF BONDS. The text of the Bonds, except for Capital Appreciation Bonds and Variable Rate Bonds, 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 Mayor or the Clerk prior to the issuance thereof (which necessity and/or desirability and approval shall be presumed by such officer's execution of the Bonds and the Issuer's delivery of the Bonds to the purchaser or purchasers thereof):

* * * * *

[FORM OF BOND]

No. R- §

**UNITED STATES OF AMERICA
STATE OF FLORIDA
TOWN OF FORT MYERS BEACH, FLORIDA
UTILITY REVENUE BOND,
SERIES _____**

Interest <u>Rate</u>	Maturity <u>Date</u>	Date of <u>Original Issue</u>	<u>CUSIP</u>
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Registered Holder:

Principal Amount:

KNOW ALL MEN BY THESE PRESENTS, that the Town of Fort Myers Beach, Florida, 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 to pay 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 _____ and _____ of each year commencing _____ 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.

Such Principal Amount and interest and the premium, if any, on this Bond are payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. Such Principal Amount and the premium, if any, on this Bond, are payable at the designated corporate trust office of _____, _____, _____ as Paying Agent. Payment of each installment of interest shall be made to the person in whose name this Bond shall be registered on the registration books of the Issuer maintained by _____, _____, _____, as Registrar, at the close of business on the date which shall be the fifteenth day (whether or not a business day) next preceding each interest payment date and shall be paid by a check of such Paying Agent mailed to such Registered Holder at the address appearing on such registration books or, at the request and expense of such Registered Holder, by bank wire transfer for the account of such Holder. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

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 maturity date, interest rate, denomination and number, issued to finance _____, in and for the Issuer, under the authority of and in full compliance with the Constitution and laws of the State of Florida and other applicable provisions of law (the "Act"), and a resolution duly adopted by Town Council of the Issuer, on August 5, 2013 as amended and supplemented (the "Resolution"), and is subject to all the terms and conditions of the Resolution.

This Bond and the interest hereon are payable solely from and secured by a lien upon and a pledge of (1) the Net Revenues (as defined in the Resolution) to be derived from the operation of the Issuer's water system (the "System"), (2) the Connection Fees (as defined in the Resolution), (3) any other Special Assessments Proceeds (to the extent the Issuer has included such as Pledged Funds pursuant to a Supplemental Resolution), and (4) until applied in accordance with the provisions of the Resolution, all moneys, including investments thereof, in the funds and accounts established by the Resolution, except (A) as for the Rebate Fund, (B) to the extent moneys therein shall be required to pay the Operating Expenses (as defined in the Resolution), and (C) to the extent moneys on deposit in a subaccount of the Reserve Account established by the Resolution shall be pledged solely for the payment of the Series of Bonds for which it was established in accordance with the provisions of the Resolution, subject in each case to the application thereof for the purposes and on the conditions permitted by the Resolution (collectively, the "Pledged Funds"). It is expressly agreed by the Registered Holder of this Bond that the full faith and credit of the Issuer are not pledged to the payment of the principal of, 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 to the payment of such principal, premium, if any, and interest. This Bond and the obligation evidenced hereby shall not constitute a lien upon the System or any other property of the Issuer, but shall constitute a lien only on, and shall be payable solely from, the Pledged Funds in accordance with the terms of the Resolution. Neither, the State

of Florida nor Lee County, Florida shall be obligated to pay this Bond and neither the full faith and credit nor the taxing power of the State of Florida or of any political subdivision thereof or Lee County is pledged to the payment of the principal of or the interest on this Bond. The issuance of this Bond shall not directly or indirectly or contingently obligate the State of Florida or Lee County, Florida to levy or to pledge any form of taxation whatever or to make any appropriation for the payment of this 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 his 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 his 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 denomination of \$5,000 and any integral multiple thereof, not exceeding the aggregate principal amount of the Bonds. 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 shall not be obligated to make any exchange or transfer of the Bonds during the 15 days next preceding an interest payment date or, in the case of any proposed redemption of the Bonds, then, for the Bonds subject to such redemption, during the 15 days next preceding the date of the first mailing of notice of such redemption.

[INSERT REDEMPTION PROVISIONS]

Redemption of this Bond under the preceding paragraphs shall be made as provided in the Resolution upon notice given by first class mail sent at least 30 days prior to the redemption date to the Registered Holder hereof at the address shown on the registration books maintained by the Registrar; provided, however, that failure to mail notice to the Registered Holder hereof, or any defect therein, shall not affect the validity of the proceedings for redemption of other Bonds as to which no such failure or defect has occurred. In the event that less than the full principal amount hereof shall have been called for redemption, the Registered Holder hereof shall surrender this Bond in exchange for one or more Bonds in an aggregate principal amount equal to the unredeemed portion of principal, as provided in the Resolution.

The Issuer shall have the option to cause the Bonds to be purchased in lieu of redemption on the applicable redemption date at a price equal to the then applicable Redemption Price, plus accrued interest thereon to, but not including, the date of such purchase. Such option may be exercised by delivery to the Paying Agent (if the Registrar is not the Paying Agent for such Bonds) on or prior to the Business Day preceding the redemption date of a written notice of the Issuer specifying that the Bonds shall not be

redeemed, but instead shall be subject to purchase pursuant to Section 3.06 of the Resolution with the moneys provided or to be provided by the Issuer or on behalf of the Issuer. Upon delivery of such notice, the Bonds shall not be redeemed but shall instead be subject to mandatory tender at the Redemption Price on the date that would have been the redemption date.

Notwithstanding any provision to the contrary herein or in the Resolution, if, on any day prior to the third (3rd) Business Day preceding any date fixed for redemption or purchase of Bonds, the Issuer notifies the Registrar in writing that the Issuer has elected to revoke its election to redeem or purchase such Bonds, such Bonds shall not be redeemed or purchased on such date and any notice of redemption mailed to the Holders of such Bonds pursuant to Section 3.03 of the Resolution shall be null and void. In such event, within three (3) Business Days after the date on which the Registrar receives notice of such revocation, the Registrar shall cause a notice of such revocation on behalf of the Issuer to be (A) filed with the Paying Agent (if the Register is not the Paying Agent for such Bonds); and (B) mailed first class, postage prepaid to all Holders owning such Bonds.

Reference to the Resolution and any and all resolutions supplemental thereto and modifications and amendments thereof and to the Act is made for a description of the pledge and covenants securing this Bond, the nature, manner and extent of enforcement of such pledge and covenants, and the rights, duties, immunities and obligations of the Issuer.

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 connection with 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 the Act, and that the issuance of the Bonds does not violate any constitutional or statutory limitations or provisions.

Neither the members of the Town 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.

[This Bond is one of a series of Bonds which were validated by judgment of the Circuit Court of the Twentieth Judicial Circuit of Florida in and for Lee County, Florida, rendered on _____, _____.]

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, the Town Council of the Town of Fort Myers Beach, Florida has issued this Bond and has caused the same to be executed by the manual or facsimile signature of the Mayor, and to be countersigned and attested by the manual or

facsimile signature of the Clerk of the Town of Fort Myers Beach, Florida all on the Date of Original Issue.

TOWN OF FORT MYERS BEACH, FLORIDA

ATTEST:

By: _____
Mayor

By: _____
Town Clerk

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 must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

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 Transfers to Minors Act of _____
(State)

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

CERTIFICATE OF AUTHENTICATION

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

DATE OF AUTHENTICATION:

Registrar

By: _____
Authorized Officer

[END OF FORM OF BOND]

* * * * *

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 Capital Appreciation Bonds, Variable Rate Bonds, or as 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 45 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 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 principal amounts of \$5,000 and integral multiples thereof.

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. Notice of such redemption, which shall specify the Bond or Bonds (or portions thereof) to be redeemed and the date and place for redemption, shall be given by the Registrar on behalf of the Issuer, and (A) shall be filed with the Paying Agents of such Bonds, (B) shall be mailed first class, postage prepaid, not less than 30 days nor more than 45 days prior to the redemption date to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books kept by the Registrar as of the date of mailing of such notice, and (C) shall be mailed, certified mail, postage prepaid, at least 35 days prior to the redemption date to the registered securities depositories and two or more nationally recognized municipal bond information services as hereinafter provided in this Section 3.03. Failure to mail such notice to such depositories or services or the Holders of the Bonds to be redeemed, or any defect therein, shall not affect the proceedings for redemption of Bonds as to which no such failure or defect has occurred. Such notice shall also be mailed to the Insurer, if any, of such redeemed Bonds.

Each notice of redemption shall state: (1) the CUSIP numbers and any other distinguishing number or letter of all Bonds being redeemed, (2) the original issue date of such Bonds, (3) the maturity date and rate of interest borne by each Bond being redeemed,

(4) the redemption date, (5) the Redemption Price, (6) the date on which such notice is mailed, (7) if less than all Outstanding Bonds are to be redeemed, the certificate number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed, (8) that on such redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable, (9) that the 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 at an address specified, (10) the name and telephone number of a person designated by the Registrar to be responsible for such redemption, (11) the condition for redemption, if any, and (12) the ability of the Issuer to revoke the notice of redemption on any day prior to the third (3rd) Business Day preceding any date set forth for redemption of Bonds.

In addition to the mailing of the notice described above, each notice of redemption and payment of the Redemption Price shall meet the following requirements; provided, however, the failure to provide such further notice of redemption or to comply with the terms of this paragraph shall not in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed above:

(A) Each further notice of redemption shall be sent by certified mail or overnight delivery service or telecopy to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds (such depositories now being The Depository Trust Company, New York, New York, Midwest Securities Trust Company, Chicago, Illinois and Philadelphia Depository Trust Company, Philadelphia, Pennsylvania) and to two or more national information services which disseminate notices of prepayment or redemption of obligations such as the Bonds (such information services now being called Financial Information, Inc.'s "Daily Called Bond Service," Jersey City, New Jersey, Kenny Information Service's "Called Bond Service," New York, New York, Moody's "Municipal and Government," New York, New York and Standard & Poor's "Called Bond Record," New York, New York).

(B) Each further notice of redemption shall be sent to such other Person, if any, as shall be required by applicable law or regulation.

The Issuer may provide that a notice of redemption may be contingent upon the occurrence of certain condition(s) and that if such condition(s) do not occur the notice will be rescinded, provided notice of rescission shall be mailed in the manner described above to all affected Bondholders not later than three business days prior to the date of redemption.

Notwithstanding any provision to the contrary herein, the Issuer may elect to revoke its notice to redeem Bonds pursuant to the provisions of Section 3.07 herein.

SECTION 3.04. REDEMPTION OF PORTIONS OF BONDS. Except as otherwise provided by Supplemental Resolution, 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 his 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 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 cancelled and destroyed by the Registrar and shall not be reissued.

SECTION 3.06. PURCHASE IN LIEU OF REDEMPTION. The Issuer shall have the option to cause the Bonds to be purchased in lieu of redemption on the applicable redemption date at a price equal to the then applicable Redemption Price, plus accrued interest thereon to, but not including, the date of such purchase. Such option may be exercised by delivery to the Paying Agent (if the Registrar is not the Paying Agent for such Bonds) on or prior to the business day preceding the redemption date of a written notice of the Issuer specifying that the Bonds shall not be redeemed, but instead shall be subject to purchase pursuant to this Section 3.06 with the moneys provided or to be provided by the Issuer or on behalf of the Issuer. Upon delivery of such notice, the Bonds shall not be redeemed but shall instead be subject to mandatory tender at the Redemption Price on the date that would have been the redemption date.

SECTION 3.07. REVOCATION OF NOTICE. Notwithstanding any provision to the contrary herein, if, on any day prior to the third (3rd) business day preceding any date fixed for redemption or purchase of Bonds, the Issuer notifies the Registrar in writing that the Issuer has elected to revoke its election to redeem or purchase such Bonds, such Bonds shall not be redeemed or purchased on such date and any notice of redemption mailed to the Holders of such Bonds pursuant to Section 3.03 hereof shall be null and void. In such event, within three (3) business days after the date on which the Registrar receives notice of such revocation, the Registrar shall cause a notice of such revocation on behalf of the Issuer to be (A) filed with the Paying Agent (if the Register is not the Paying Agent for such Bonds); and (B) mailed first class, postage prepaid to all Holders owning such Bonds.

**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, in the manner and to the extent provided in this Resolution. 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 and to the extent provided herein.

SECTION 4.02. SECURITY FOR BONDS. The payment of the principal of or Redemption Price, if applicable, and interest on the Bonds shall be secured forthwith equally and ratably by a pledge of and lien upon the Pledged Funds; provided, however, a Series of Bonds may be further secured by a Credit Facility or Bond Insurance Policy in addition to the security provided herein; and provided further that a Series of Bonds may be secured independently of any other Series of Bonds by the establishment of a separate subaccount in the Reserve Account for such Series of Bonds. Issuers of a Reserve Account Insurance Policy and Reserve Account Letter of Credit shall be secured in accordance with the provisions hereof. In addition, the Issuer does hereby irrevocably pledge and grant a lien upon the Pledged Funds to the payment of the Policy Costs in accordance with the provisions hereof; provided, however, such pledge and lien shall be junior and subordinate in all respects to the pledge of and lien upon such Pledged Funds granted hereby to the Bondholders. The Issuer does hereby irrevocably pledge the Pledged Funds to the payment of the principal of or Redemption Price, if applicable, and interest on the Bonds in accordance with the provisions hereof. Except as otherwise provided by Supplemental Resolution, the obligation of the Issuer to make Hedge Payments to a Counterparty pursuant to a Qualified Hedge Agreement shall be on parity with the Bonds as to lien on and pledge of the Pledged Funds in accordance with the terms hereof (any other payments related to a Qualified Hedge Agreement, including fees, penalties, termination payments and the obligation to collateralize, shall be Subordinated Indebtedness of the Issuer).

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.

SECTION 4.03. CONSTRUCTION FUND. The Issuer covenants and agrees to establish, a special fund in a bank, trust company or such other entity in the State, which is eligible under the laws of the State to be a depository for governmental funds, to be known as the "Town of Fort Myers Beach, Florida Utility Construction Fund," which shall be used only

for payment of the Cost of a Project. Moneys in the Construction Fund, until applied in payment of any item of the Cost of a Project in the manner hereinafter provided, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

There shall be paid into the Construction Fund the amounts required to be so paid by the provisions of this Resolution, and there may be paid into the Construction Fund, at the option of the Issuer, any moneys received for or in connection with a Project by the Issuer from any other source. The Issuer shall establish within the Construction Fund a separate account for each Project, the Cost of which is to be paid in whole or in part out of the Construction Fund. If required by any particular Series of Bonds, a separate account within the Construction Fund may be established with a particular depository pursuant to a Supplemental Resolution and provision made therein for withdrawals from such account.

The proceeds of insurance maintained pursuant to this Resolution against physical loss of or damage to a Project, or of contractors' performance bonds with respect thereto pertaining to the period of construction thereof, shall be deposited into the appropriate account of the Construction Fund.

Any moneys received by the Issuer from the State or from the United States of America or any agencies thereof for the purpose of financing part of the Cost of a Project shall be deposited into the appropriate account of the Construction Fund and used in the same manner as other Bond proceeds are used therein; provided that separate accounts or subaccounts may be established in the Construction Fund for moneys received pursuant to the provisions of this paragraph whenever required by federal or State law.

The Issuer covenants that the acquisition, construction and installation of each Project will be completed without delay and in accordance with sound engineering practices. The Issuer shall make disbursements or payments from the Construction Fund to pay the Cost of a Project upon the filing with the Clerk of certificates and/or documents signed by an Authorized Issuer Officer, stating with respect to each disbursement or payment to be made: (A) the item number of the payment, (B) the name and address of the Person to whom payment is due, (C) the amount to be paid, (D) the Construction Fund account from which payment is to be made, (E) the purpose, by general classification, for which payment is to be made, and (F) that (i) each obligation, item of cost or expense mentioned therein has been properly incurred, is in payment of a part of the Cost of a Project and is a proper charge against the account of the Construction Fund from which payment is to be made and has not been the basis of any previous disbursement or payment, or (ii) each obligation, item of cost or expense mentioned therein has been paid by the Issuer, is a reimbursement of a part of the Cost of a Project, is a proper charge against the account of the Construction Fund from which payment is to be made, has not been theretofore reimbursed to the Issuer or otherwise been the basis of any previous disbursement or payment and the Issuer is entitled to reimbursement thereof. The Clerk shall retain all such certificates and/or documents of the Authorized Issuer Officers for such period of time as required by applicable law. The Clerk shall make

available the certificates and/or documents at all reasonable times for inspection by any Holder of any of the Bonds or the agent or representative of any Holder of any of the Bonds.

Notwithstanding any of the other provisions of this Section 4.03, to the extent that other moneys are not available therefor, amounts in the Construction Fund shall be applied to the payment of principal and interest on Bonds when due.

The date of completion of the acquisition and construction of a Project shall be determined by an Authorized Issuer Officer which shall certify such fact in writing to the Governing Body. An Authorized Issuer Officer may perform such tests relating to a Project as they deem necessary in order to make such certification. Promptly after the date of the completion of a Project, and after paying or making provision for the payment of all unpaid items of the Cost of such Project, the Issuer shall deposit in the following order of priority any balance of moneys remaining in the Construction Fund in (A) another account of the Construction Fund for which an Authorized Issuer Officer has stated that there are insufficient moneys present to pay the Cost of the related Project, (B) the Reserve Account, to the extent of a deficiency therein, and (C) such other fund or account established hereunder as shall be determined by the Governing Body, provided the Issuer has received an opinion of Bond Counsel to the effect that such transfer shall not adversely affect the exclusion, if any, of interest on the Bonds from gross income for purposes of federal income taxation.

SECTION 4.04. CREATION OF FUNDS AND ACCOUNTS. The Issuer covenants and agrees to establish with a bank, trust company or such other entity in the State, which is eligible under the laws of the State to be a depository for governmental funds the following funds and accounts:

- (A) The "Town of Fort Myers Beach, Florida Utility Revenue Fund."
- (B) The "Town of Fort Myers Beach, Florida Operation and Maintenance Fund."
- (C) The "Town of Fort Myers Beach, Florida Sinking Fund." The Issuer shall maintain four separate accounts in the Sinking Fund: the "Interest Account," the "Principal Account," the "Term Bonds Redemption Account" and the "Reserve Account."
- (D) The "Town of Fort Myers Beach, Florida Water Connection Fees Fund."
- (E) The "Town of Fort Myers Beach, Florida Wastewater Connection Fees Fund."
- (F) The "Town of Fort Myers Beach, Florida Special Assessments Fund."
- (G) The "Town of Fort Myers Beach, Florida Renewal and Replacement Fund."
- (H) The "Town of Fort Myers Beach, Florida Utility Reserve Fund."
- (I) The "Town of Fort Myers Beach, Florida Rebate Fund."

(J) The "Town of Fort Myers Beach, Florida Rate Stabilization Fund."

Moneys in the aforementioned funds and accounts (except for moneys in the Rebate Fund), until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

The Issuer shall at any time and from time to time appoint one or more depositaries to hold, for the benefit of the Bondholders, any one or more of the funds and accounts established hereby. Such depositary or depositaries shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from each of such funds or accounts as herein set forth, and all records of such depositary in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agents and employees. Any such depositary shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and be qualified under applicable State law.

SECTION 4.05. DISPOSITION OF GOVERNMENT GRANTS, REVENUES AND SPECIAL ASSESSMENTS.

(A) (1) In the event the Issuer receives a Government Grant, the use and withdrawal of moneys from such Government Grant shall be governed by the terms of the Government Grant and applicable law.

(2) Into the Revenue Fund, the Issuer shall deposit promptly, as received, all Gross Revenues (other than Special Assessments Proceeds).

Operation and Maintenance Fund. Moneys in Revenue Fund shall first be used each month to deposit in the Operation and Maintenance Fund such sums as are necessary to pay Operating Expenses for the ensuing month; provided the Issuer may transfer moneys from the Revenue Fund to the Operation and Maintenance Fund at any time to pay Operating Expenses to the extent there is a deficiency in the Operation and Maintenance Fund for such purpose. Amounts in the Operation and Maintenance Fund shall be paid out from time to time by the Issuer for Operating Expenses, including any expenses relating to the purchase or redemption of Term Bonds as provided in Section 4.05(B)(3) hereof.

(3) Into the Special Assessments Fund, the Issuer shall deposit promptly as received any Special Assessments Proceeds that are made a part of the Pledged Funds by Supplemental Resolution.

Redemptions from Special Assessments Proceeds. In the event the Issuer by Supplemental Resolution provides for the pledge of all or a portion of any Special Assessments Proceeds to the payment of all or a portion of a particular Series of Bonds, the Issuer may establish separate accounts or subaccounts for the deposit of

such Special Assessments if necessary to provide for the earlier redemption of such Bonds from such Special Assessments Proceeds.

(B) All moneys at any time on deposit in the Special Assessments Fund and any deposits remaining in the Revenue Fund after the aforementioned transfers to the Operation and Maintenance Fund shall be disposed of by the Issuer on or before the 25th day of each month, commencing in the month immediately following the delivery of any of the Bonds to the purchasers thereof, or such later date as hereinafter provided, first from the Special Assessments Fund and then from the Revenue Fund in the following manner and in the following order of priority:

(1) Interest Account. The Issuer shall deposit or credit to the Interest Account the sum which, together with the balance in said Account, shall equal the interest on all Bonds Outstanding (except as to Capital Appreciation Bonds) accrued and unpaid and to accrue to the end of the then current calendar month. All Hedge Receipts shall be deposited directly to the Interest Account upon receipt. With respect to interest on Bonds which are subject to a Hedge Payment, interest on such Bonds during the term of the Qualified Hedge Agreement shall be deemed to include the corresponding Hedge Payments. Moneys in the Interest Account shall be applied by the Issuer (a) for deposit with the Paying Agents to pay the interest on the Bonds on or prior to the date the same shall become due, and (b) for Hedge Payments. The Issuer shall adjust the amount of the deposit to the Interest Account not later than a month immediately preceding any Interest Date so as to provide sufficient moneys in the Interest Account to pay the interest on the Bonds coming due on such Interest Date. No further deposit need be made to the Interest Account when the moneys therein are equal to the interest coming due on the Outstanding Bonds on the next succeeding Interest Date. With respect to debt service on any Bonds which are subject to a Qualified Hedge Agreement, any Hedge Payments due to the Qualified Hedge Agreement Counterparty relating to such Bonds shall be paid to the Qualified Hedge Agreement Counterparty on a parity basis with the aforesaid required payments into the Sinking Fund. In computing the interest on Variable Rate Bonds which shall accrue during a calendar month, the interest rate on such Variable Rate Bonds shall be assumed to be (i) if such Variable Rate Bonds have been Outstanding for at least 24 months prior to the commencement of such calendar month, the highest average interest rate borne by such Variable Rate Bonds for any 30-day period, and (ii) if such Variable Rate Bonds have not been Outstanding for at least 24 months prior to the date of calculation, the Bond Buyer Revenue Bond Index most recently published prior to the commencement of such calendar month.

(2) Principal Account. The Issuer shall next deposit into the Principal Account the sum which, together with the balance in said Account, shall equal the principal amounts on all Bonds Outstanding due and unpaid and that portion of the principal next due which would have accrued on such Bonds during the then current calendar month if such principal amounts were deemed to accrue monthly (assuming

that a year consists of 12 equivalent calendar months having 30 days each) except for the Sinking Fund Installments to be deposited pursuant to Section 4.05(B)(3) hereof in equal amounts from the next preceding principal payment due date, or, if there be no such preceding payment due date from a date one year preceding the due date of such principal amount. Moneys in the Principal Account shall be applied by the Issuer for deposit with the Paying Agents to pay the principal of the Bonds on or prior to the date the same shall mature, and for no other purpose. Serial Capital Appreciation Bonds shall be payable from the Principal Account in the years in which such Bonds mature and monthly payments into the Principal Account on account of such Bonds shall commence in the month of the respective Bond Years in which such Bonds mature. The Issuer shall adjust the amount of the deposit to the Principal Account not later than the month immediately preceding any principal payment date so as to provide sufficient moneys in the Principal Account to pay the principal on Bonds becoming due on such principal payment date. No further deposit need be made to the Principal Account when the moneys therein are equal to the principal coming due on the Outstanding Bonds on the next succeeding principal payment date.

(3) Term Bonds Redemption Account. Commencing in the month which is one year prior to the first Sinking Fund Installment due date, there shall be deposited to the Term Bonds Redemption Account the sum which, together with the balance in such Account, shall equal the Sinking Fund Installments on all Bonds Outstanding due and unpaid and that portion of the Sinking Fund Installments of all Bonds Outstanding next due which would have accrued on such Bonds during the then current calendar month if such Sinking Fund Installments were deemed to accrue monthly (assuming that a year consists of 12 equivalent calendar months having 30 days each) in equal amounts from the next preceding Sinking Fund Installment due date, or, if there is no such preceding Sinking Fund Installment due date, from a date one year preceding the due date of such Sinking Fund Installment. Moneys in the Term Bonds Redemption Account shall be used to purchase or redeem Term Bonds in the manner herein provided, and for no other purpose. The Issuer shall adjust the amount of the deposit to the Term Bonds Redemption Account on the month immediately preceding any Sinking Fund Installment Date so as to provide sufficient moneys in the Term Bonds Redemption Account to pay the Sinking Fund Installments becoming due on such date. Payments to the Term Bonds Redemption Account shall be on parity with payments to the Principal Account.

Amounts accumulated in the Term Bonds Redemption Account with respect to any Sinking Fund Installment (together with amounts accumulated in the Interest Account with respect to interest, if any, on the Term Bonds for which such Sinking Fund Installment was established) may be applied by the Issuer, on or prior to the 60th day preceding the due date of such Sinking Fund Installment, (a) to the purchase of Term Bonds of the Series and maturity for which such Sinking Fund Installment was established, or (b) to the redemption at the applicable Redemption Prices of such

Term Bonds, if then redeemable by their terms. Except as otherwise provided by Supplemental Resolution, amounts in the Term Bonds Redemption Account which are used to redeem Term Bonds shall be credited against the next succeeding Sinking Fund Installment which shall become due on such Term Bonds. The applicable Redemption Price (or principal amount of maturing Term Bonds) of any Term Bonds so purchased or redeemed shall be deemed to constitute part of the Term Bonds Redemption Account until such Sinking Fund Installment date, for the purposes of calculating the amount of such Account. As soon as practicable after the 60th day preceding the due date of any such Sinking Fund Installment, the Issuer shall proceed to call for redemption on such due date, by causing notice to be given as provided in Section 3.03 hereof, Term Bonds of the Series and maturity for which such Sinking Fund Installment was established (except in the case of Term Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment. The Issuer shall pay out of the Term Bonds Redemption Account and the Interest Account to the appropriate Paying Agents, on or before the day preceding such redemption date (or maturity date), the amount required for the redemption (or for the payment of such Term Bonds then maturing), and such amount shall be applied by such Paying Agents to such redemption (or payment). All expenses in connection with the purchase or redemption of Term Bonds shall be paid by the Issuer from the Operation and Maintenance Fund.

(4) Reserve Account. There shall be deposited to the Reserve Account an amount which would enable the Issuer to restore the funds on deposit in the Reserve Account to an amount equal to the Reserve Account Requirement applicable thereto. All deficiencies in the Reserve Account must be made up no later than 12 months from the date such deficiency first occurred, whether such shortfall was caused by decreased market value or withdrawal (whether from cash or a Reserve Account Insurance Policy or Reserve Account Letter of Credit). On or prior to each principal payment date and Interest Date for the Bonds (in no event earlier than the 25th day of the month next preceding such payment date), moneys in the Reserve Account shall be applied by the Issuer to the payment of the principal of or Redemption Price, if applicable, and interest on the Bonds to the extent moneys in the Interest Account, the Principal Account and the Term Bonds Redemption Account shall be insufficient for such purpose, but only to the extent the moneys transferred from the Utility Reserve Fund for such purposes pursuant to Section 4.05(B)(8) hereof shall be inadequate to fully provide for such insufficiency. Whenever there shall be surplus moneys in the Reserve Account by reason of a decrease in the Reserve Account Requirement or as a result of a deposit in the Reserve Account of a Reserve Account Letter of Credit or a Reserve Account Insurance Policy, such surplus moneys, to the extent practicable, shall be deposited by the Issuer into the Utility Reserve Fund. The Issuer shall promptly inform each Insurer of any draw upon the Reserve Account for purposes of paying the principal of and interest on the Bonds.

Except as otherwise provided in the penultimate paragraph of this Section 4.05(B)(4), upon the issuance of any Series of Bonds under the terms, limitations and conditions as herein provided, the Issuer shall fund the Reserve Account in an amount at least equal to the Reserve Account Requirement. Such required amount, if any, shall be paid in full or in part from the proceeds of such Series of Bonds or may be accumulated in equal monthly payments to the Reserve Account over a period of months from the date of issuance of such Series of Bonds, which shall not exceed 36 months. In the event moneys in the Reserve Account are accumulated as provided above, (a) the amount in said Reserve Account on the date of delivery of the Additional Bonds shall not be less than the Reserve Account Requirement on all Bonds Outstanding (excluding the Additional Bonds) on such date, and (b) the incremental difference between the Reserve Account Requirement on all Bonds Outstanding (excluding the Additional Bonds) on the date of delivery of the Additional Bonds and the Reserve Account Requirement on all such Bonds and the Additional Bonds shall be 50% funded upon delivery of the Additional Bonds.

Notwithstanding the foregoing provisions, in lieu of or in substitution of the required deposits into the Reserve Account, the Issuer may cause to be deposited into the Reserve Account a Reserve Account Insurance Policy and/or Reserve Account Letter of Credit for the benefit of the Bondholders in an amount equal to the difference between the Reserve Account Requirement applicable thereto and the sums then on deposit in the Reserve Account, if any. The Issuer may also substitute a Reserve Account Insurance Policy and/or Reserve Account Letter of Credit for cash on deposit in the Reserve Account upon compliance with the terms of this Section 4.05(B)(4). Such Reserve Account Insurance Policy and/or Reserve Account Letter of Credit shall be payable to the Paying Agent (upon the giving of notice as required thereunder) on any Interest Date or redemption date on which a deficiency exists which cannot be cured by moneys in any other fund or account held pursuant to this Resolution and available for such purpose. The provider providing such Reserve Account Insurance Policy and/or Reserve Account Letter of Credit shall be either (a) an insurer whose municipal bond insurance policies insuring the payment, when due, or the principal of and interest on municipal bond issues results in such issues being rated "AA" by S&P or Fitch or "Aa" by Moody's, or (b) a commercial bank, insurance company or other financial institution which has been assigned a rating by S&P of "AA." Any Reserve Account Insurance Policy and/or Reserve Account Letter of Credit shall equally secure all Bonds except to the extent a Series of Bonds is secured by a subaccount in the Reserve Account which is pledged solely for the payment of such Series of Bonds as provided in the penultimate paragraph of this Section 4.05(B)(4).

Each Reserve Account Insurance Policy and Reserve Account Letter of Credit shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the

revolving feature is suspended or terminated for any reason, the right of the provider of the Reserve Account Insurance Policy or Reserve Account Letter of Credit to reimbursement will be further subordinated to cash replenishment of the Reserve Account to an amount equal to the difference between the full original amount available under the Reserve Account Insurance Policy or Reserve Account Letter of Credit and the amount then available for further draws or claims. If (a) the provider of a Reserve Account Insurance Policy or Reserve Account Letter of Credit becomes insolvent, or (b) the provider of a Reserve Account Insurance Policy or Reserve Account Letter of Credit defaults in its payment obligations thereunder, or (c) the claims-paying ability of the provider of a Reserve Account Insurance Policy falls below a S&P or Fitch "AA" or a Moody's "Aa," or (d) the rating of the provider of a Reserve Account Letter of Credit falls below a S&P "AA," the obligation to reimburse the provider of the Reserve Account Insurance Policy or Reserve Account Letter of Credit shall be subordinate to the cash replenishment of the Reserve Account. Where applicable, the amount available for draws or claims under a Reserve Account Insurance Policy or Reserve Account Letter of Credit may be reduced by the amount of cash or investments deposited in the Reserve Account pursuant to the provisions hereof.

If three days prior to an interest or principal payment date, or such other period of time as shall be required by the terms of the Reserve Account Insurance Policy or Reserve Account Letter of Credit, the Issuer shall determine that a deficiency exists in the amount of moneys available to pay in accordance with the terms hereof interest and/or principal due on the Bonds on such date, the Issuer shall immediately notify (a) the issuer of the applicable Reserve Account Insurance Policy and/or the issuer of the Reserve Account Letter of Credit and submit a demand for payment pursuant to the provisions of such Reserve Account Insurance Policy and/or the Reserve Account Letter of Credit, (b) the Paying Agent, and (c) the Insurer, if any, of the amount of such deficiency and the date on which such payment is due.

In the event the Reserve Account contains both a Reserve Account Insurance Policy or Reserve Account Letter of Credit and cash and separate subaccounts have not been established in the Reserve Account, the cash shall be drawn down completely prior to any draw on the Reserve Account Insurance Policy or Reserve Account Letter of Credit. In the event more than one Reserve Account Insurance Policy or Reserve Account Letter of Credit is on deposit in the Reserve Account, amounts required to be drawn thereon shall be done on a pro-rata basis. The Issuer agrees to pay all amounts owing in regard to any Reserve Account Insurance Policy or Reserve Account Letter of Credit from the Pledged Funds. Pledged Funds shall be applied in accordance with this Section 4.05(B)(4), first, to reimburse the issuer of the Reserve Account Insurance Policy or Reserve Account Letter of Credit for amounts advanced under such instruments, second, replenish any cash deficiencies in the Reserve Account, and, third, to pay the issuer of the Reserve Account Insurance

Policy or Reserve Account Letter of Credit interest on amounts advanced under such instruments. This Resolution shall not be discharged or defeased while any obligations are owing in regard to a Reserve Account Insurance Policy or Reserve Account Letter of Credit on deposit in the Reserve Account. The Issuer agrees not to optionally redeem Bonds unless all amounts owing in regard to a Reserve Account Insurance Policy or Reserve Account Letter of Credit on deposit in the Reserve Account have been paid in full.

The Issuer may evidence its obligation to reimburse the issuer of any Reserve Account Letter of Credit or Reserve Account Insurance Policy by executing and delivering to such issuer a promissory note therefor; provided, however, any such note (a) shall not be a general obligation of the Issuer the payment of which is secured by the full faith and credit or taxing power of the Issuer, and (b) shall be payable solely from the Pledged Funds in the manner provided herein. The obligation to reimburse the provider of a Reserve Account Insurance Policy or Reserve Account Letter of Credit for any fees, expenses, claims or draws upon such instruments shall be subordinate to the payment of debt service on the Bonds.

Any consent or approval of any Insurer described in this Section 4.05(B)(4) shall be required only so long as there are Outstanding Bonds secured by a Bond Insurance Policy issued by such Insurer which is in full force and effect and the commitments of which have been honored by such Insurer. The term "Paying Agent" as used in this Section 4.05(B)(4) may include one or more Paying Agents for the Outstanding Bonds.

Whenever the amount of cash in the Reserve Account, together with the other amounts in the Sinking 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 Sinking Fund for the payment of the Bonds.

The Issuer may also establish a separate subaccount in the Reserve Account for any Series of Bonds and provide a pledge of such subaccount to the payment of such Series of Bonds apart from the pledge provided herein. To the extent a Series of Bonds is secured separately by a subaccount of the Reserve Account, the Holders of such Bonds shall not be secured by any other moneys in the Reserve Account. Moneys in a separate subaccount of the Reserve Account shall be maintained at the Reserve Account Requirement applicable to such Series of Bonds secured by the subaccount; provided the Supplemental Resolution authorizing such Series of Bonds may establish the Reserve Account Requirement relating to such separate subaccount of the Reserve Account at such level as the Issuer deems appropriate including, but not limited to, a Reserve Account Requirement of \$0. Moneys shall be deposited in the separate subaccounts in the Reserve Account on a pro-rata basis. In the event the Issuer shall maintain a Reserve Account Insurance Policy or Reserve Account Letter

of Credit and moneys in such subaccount, the moneys shall be used prior to making any disbursements under such Reserve Account Insurance Policy or Reserve Account Letter of Credit.

The provisions of the agreements relating to any Reserve Account Insurance Policy or Reserve Account Letter of Credit, when executed and delivered, shall be incorporated herein by reference, and the provisions of such agreements shall supersede the provisions hereof to the extent of any conflict herewith.

(5) Renewal and Replacement Fund. There shall be deposited to the Renewal and Replacement Fund monthly such sums as shall be sufficient to pay 1/12 of five percent of the Gross Revenues (excluding amounts attributable to Investment Earnings and any Issuer Bond Subsidy Payments) derived from the System during the preceding Fiscal Year until the amount accumulated in such Fund is equal to the Renewal and Replacement Fund Requirement, taking into account the market value of investments in such Fund; provided, however, that (a) such Renewal and Replacement Fund Requirement may be increased or decreased as the Consulting Engineers shall certify to the Issuer is necessary for the purposes of the Renewal and Replacement Fund, and (b) in the event that the Consulting Engineers shall certify that the Renewal and Replacement Fund Requirement is excessive for the purposes of the Renewal and Replacement Fund such excess amount as may be on deposit therein may be transferred by the Issuer from the Renewal and Replacement Fund for deposit into the Utility Reserve Fund. The moneys in the Renewal and Replacement Fund shall be applied by the Issuer for the purpose of paying the cost of major extensions, improvements or additions to, or the replacement or renewal of capital assets of, the System, or extraordinary repairs of the System; provided, however, that on or prior to each principal and interest payment date for the Bonds (in no event earlier than the 25th day of the month next preceding such payment date), moneys in the Renewal and Replacement Fund shall be applied for the payment into the Interest Account, the Principal Account, and the Term Bonds Redemption Account when the moneys therein are insufficient to pay the principal of and interest on the Bonds coming due, but only to the extent moneys transferred from the Utility Reserve Fund for such purpose pursuant to Sections 4.05(B)(8) hereof, together with moneys available in the Reserve Account for such purpose pursuant to Section 4.05(B)(4) hereof, shall be inadequate to fully provide for such insufficiency. Moneys in the Renewal and Replacement Fund may also be transferred to the Operation and Maintenance Fund to fund Operating Expenses to the extent Gross Revenues shall be insufficient for such purpose; provided, however, such transfer shall be treated as an interfund loan and shall be repaid from Gross Revenues as described in this Section 4.05(B)(5) within one year from the date of such transfer.

(6) Subordinated Indebtedness. Gross Revenues in the Revenue Fund shall next be applied by the Issuer for the payment of any accrued debt service on

Subordinated Indebtedness incurred by the Issuer in connection with the System and in accordance with the proceedings authorizing such Subordinated Indebtedness.

(7) Sinking Fund. There shall be deposited to the Interest Account, the Principal Account and the Term Bonds Redemption Account, in that order, sufficient moneys such that the amounts on deposit therein shall equal, respectively, the interest, principal and Sinking Fund Installment next coming due on the Bonds Outstanding; provided, however, no deposit need be made to the Principal Account or Term Bonds Redemption Account until a date one year preceding the due date of such principal amount or Sinking Fund Installment.

(8) Utility Reserve Fund. The balance of any Gross Revenues remaining in said Revenue Fund shall be deposited in the Utility Reserve Fund and applied to the payment, on or prior to each principal and interest payment date for the Bonds (in no event earlier than the 25th day of the month next preceding such payment date), into the Interest Account, the Principal Account and the Term Bonds Redemption Account when the moneys therein shall be insufficient to pay the principal of and interest on the Bonds coming due. Moneys not required to meet such a deficiency shall be deposited to the Water Connection Fees Fund and Wastewater Connection Fees Fund to make up any withdrawal from such Fund pursuant to Section 4.06(A) and 4.07(A) hereof (to the extent required by such Sections), then to the Reserve Account to make up any deficiency therein, and thereafter to the Rebate Fund to the extent moneys are required to be deposited therein. Thereafter, moneys in the Utility Reserve Fund may be applied for any lawful purpose relating to the System, including, but not limited to, purchase or redemption of Bonds, payment of Subordinated Indebtedness, deposit to the Rate Stabilization Fund and improvements, renewals and replacements to the System; provided, however, that none of such revenues shall ever be used for the purposes provided in this Section 4.05(B)(8) unless all payments required in Sections 4.05(B)(1) through 4.05(B)(6) hereof, including any deficiencies for prior payments, have been made in full to the date of such use.

(C) Whenever moneys on deposit in the Sinking Fund are sufficient to fully pay all Outstanding Bonds in accordance with their terms (including principal or applicable Redemption Price and interest thereon), no further deposits to the Sinking Fund need be made. If on any payment date the Gross Revenues are insufficient to deposit the required amount in any of the funds or accounts or for any of the purposes provided above, the deficiency shall be made up on the subsequent payment dates.

The Issuer, in its discretion, may use moneys in the Principal Account and the Interest Account to purchase or redeem Bonds coming due on the next principal payment date, provided such purchase or redemption does not adversely affect the Issuer's ability to pay the principal or interest coming due on such principal payment date on the Bonds not so purchased or redeemed.

(D) In the event the Issuer shall issue a Series of Bonds secured by a Credit Facility, the Issuer may establish separate subaccounts in the Interest Account, the Principal Account and the Term Bonds Redemption Account to provide for payment of the principal of and interest on such Series; provided payment from the Pledged Funds of one Series of Bonds shall not have preference over payment of any other Series of Bonds. The Issuer may also deposit moneys in such subaccounts at such other times and in such other amounts from those provided in Section 4.05(B) as shall be necessary to pay the principal of and interest on such Bonds as the same shall become due, all as provided by the Supplemental Resolution authorizing such Bonds.

In the case of Bonds secured by a Credit Facility, amounts on deposit in the Sinking Fund may be applied as provided in the applicable Supplemental Resolution to reimburse the Credit Bank for amounts drawn under such Credit Facility to pay the principal of, premium, if any, and interest on such Bonds or to pay the purchase price of any such Bonds which are tendered by the holders thereof for payment; provided such Credit Facility shall have no priority over Bondholders or an Insurer to amounts on deposit in the Sinking Fund. Other payments due to a Credit Bank in relation to obligations arising under its Credit Facility may be on parity with the Bonds as to source of and security for payment to the extent provided in the Supplemental Resolution relating thereto.

SECTION 4.06. WATER CONNECTION FEES FUND. The Issuer shall deposit into the Water Connection Fees Fund all Water Connection Fees as received, together with moneys transferred to such Fund pursuant to Section 4.05(B)(8) hereof and such Water Connection Fees shall be accumulated in the Water Connection Fees Fund and applied by the Issuer in the following manner and order of priority:

(A) For the payments on or prior to each principal and interest payment date (in no event earlier than the 25th day of the month next preceding such payment Date) into the Interest Account, the Principal Account and the Term Bonds Redemption Account, when the moneys therein are insufficient to pay the principal of and interest on the Bonds coming due, but only to the extent moneys transferred from the Utility Reserve Fund, the Renewal and Replacement Fund and the Rate Stabilization Fund for such purpose pursuant to Sections 4.05(B)(8), 4.05(B)(5) and 4.09, respectively, hereof, together with moneys available in the Reserve Account for such purpose pursuant to Section 4.05(B)(4) hereof, shall be inadequate to fully provide for such insufficiency; provided moneys shall be transferred to the aforementioned Accounts from the Water Connection Fees Fund and the Wastewater Connection Fees Fund on a pro-rata basis or such other basis as the Issuer deems appropriate in relation to the amount of moneys in each Fund at the time of transfer. Any moneys transferred to the aforementioned Accounts described above shall be treated as an interfund loan and shall be repaid, together with reasonable interest thereon, from Gross Revenues as described in Section 4.05(B)(8) hereof on or prior to the date such amounts are needed for the purposes described in Sections 4.06(B) and (C) hereof, but in no event later than one year from the date of such transfer, unless the Issuer shall determine that such transfer constitutes a lawful use of such Water Connection Fees.

(B) To the extent permitted by law, to pay or reimburse the capital cost of acquiring and/or constructing such improvements or additions to the water facilities of the System for which the Water Connection Fees were imposed in accordance with the requisitions for disbursement of moneys provided by the Issuer.

(C) To be used for any other lawful purpose relating to the System.

SECTION 4.07. WASTEWATER CONNECTION FEES FUND. The Issuer shall deposit into the Wastewater Connection Fees Fund all Wastewater Connection Fees as received, together with moneys transferred to such Fund pursuant to Section 4.05(B)(8) hereof and such Wastewater Connection Fees shall be accumulated in the Wastewater Connection Fees Fund and applied by the Issuer in the following manner and order of priority:

(A) For the payments on or prior to each principal and interest payment date (in no event earlier than the 25th day of the month next preceding such payment Date) into the Interest Account, the Principal Account and the Term Bonds Redemption Account, when the moneys therein are insufficient to pay the principal of and interest on the Bonds coming due, but only to the extent moneys transferred from the Utility Reserve Fund, the Renewal and Replacement Fund and the Rate Stabilization Fund for such purpose pursuant to Sections 4.05(B)(8), 4.05(B)(5) and 4.09, respectively, hereof, together with moneys available in the Reserve Account for such purpose pursuant to Section 4.05(B)(4) hereof, shall be inadequate to fully provide for such insufficiency; provided moneys shall be transferred to the aforementioned Accounts from the Wastewater Connection Fees Fund and the Water Connection Fees Fund on a pro-rata basis or such other basis as the Issuer deems appropriate in relation to the amount of moneys in each Fund at the time of transfer. Any moneys transferred to the aforementioned Accounts described above shall be treated as an interfund loan and shall be repaid, together with reasonable interest thereon, from Gross Revenues as described in Section 4.05(B)(8) hereof on or prior to the date such amounts are needed for the purposes described in Sections 4.07(B) and (C) hereof, but in no event later than one year from the date of such transfer, unless the Issuer shall determine that such transfer constitutes a lawful use of such Wastewater Connection Fees.

(B) To the extent permitted by law, to pay or reimburse the capital cost of acquiring and/or constructing such improvements or additions to the sewer facilities of the System for which the Wastewater Connection Fees were imposed in accordance with the requisitions for disbursement of moneys provided by the Issuer.

(C) To be used for any other lawful purpose relating to the System.

SECTION 4.08. REBATE FUND. Amounts on deposit in the Rebate Fund shall be held in trust by the Issuer and used solely to make required rebates to the United States (except to the extent the same may be transferred to the Revenue Fund) and the Bondholders

shall have no right to have the same applied for debt service on the Bonds. For any Series of Bonds for which the rebate requirements of Section 148(f) of the Code are applicable, the Issuer agrees to undertake all actions required of it in its arbitrage certificate relating to such Series of Bonds, including, but not limited to:

(A) making a determination in accordance with the Code of the amount required to be deposited in the Rebate Fund;

(B) depositing the amount determined in clause (A) above into the Rebate Fund;

(C) paying on the dates and in the manner required by the Code to the United States Treasury from the Rebate Fund and any other legally available moneys of the Issuer such amounts as shall be required by the Code to be rebated to the United States Treasury; and

(D) keeping such records of the determinations made pursuant to this Section 4.08 as shall be required by the Code, as well as evidence of the fair market value of any investments purchased with proceeds of the Bonds.

The provisions of the above-described arbitrage certificates may be amended without the consent of any Holder, Credit Bank or Insurer from time to time as shall be necessary, in the opinion of Bond Counsel, to comply with the provisions of the Code.

SECTION 4.09. RATE STABILIZATION FUND. The Issuer may transfer into the Rate Stabilization Fund such moneys which are on deposit in the Utility Reserve Fund as it deems appropriate. The Issuer may transfer such amount of moneys from the Rate Stabilization Fund to the Revenue Fund as it deems appropriate; provided, however, that on or prior to each principal and interest payment date for the Bonds (in no event earlier than the 25th day of the month next preceding such payment date), moneys in the Rate Stabilization Fund shall be applied for the payment into the Interest Account, the Principal Account and the Term Bonds Redemption Account when the moneys therein are insufficient to pay the principal of and interest on the Bonds coming due, but only to the extent moneys transferred from the Utility Reserve Fund and Renewal and Replacement Fund for such purposes pursuant to Sections 4.05(B)(8) and 4.05(B)(5) hereof, together with moneys available in the Reserve Account for such purpose pursuant to Section 4.05(B)(4) hereof, shall be inadequate to fully provide for such insufficiency.

SECTION 4.10. INVESTMENTS. Moneys on deposit in the Revenue Fund, the Construction Fund, the Sinking Fund, the Water Connection Fees Fund, the Wastewater Connection Fees Fund, the Operation and Maintenance Fund, the Special Assessments Fund, the Utility Reserve Fund, the Rate Stabilization Fund and the Renewal and Replacement 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, the Revenue Fund, the Operation and Maintenance Fund, the Special Assessments Fund, the Principal Account, the Interest Account, the Term Bonds Redemption Account, the Renewal and Replacement Fund, the Water Connection Fees Fund, the Wastewater

Connection Fees Fund, the Rate Stabilization Fund and the Utility Reserve Fund shall be invested and reinvested by the Issuer in Authorized Investments, maturing not later than the dates on which such moneys will be needed for the purposes of such fund or account. Moneys on deposit in the Reserve Account shall be invested in Authorized Investments, maturing no later than ten years from the date of investment. All investments shall be valued at cost; provided, that the amounts on deposit in the Reserve Account shall be valued at the market price thereof. Investments in the Reserve Account shall be valued by the Issuer on an annual basis on March 1 of each year.

Any and all income received from the investment of moneys in each separate account of the Revenue Fund, the Construction Fund, the Interest Account, the Principal Account, the Term Bonds Redemption Account, the Utility Reserve Fund, the Renewal and Replacement Fund (to the extent such income and other amounts in such Fund do not exceed the Renewal and Replacement Fund Requirement), the Water Connection Fees Fund, the Wastewater Connection Fees Fund, the Utility Reserve Fund, the Rate Stabilization Fund and the Reserve Account (to the extent such income and the other amounts in the Reserve Account does not exceed the Reserve Account Requirement), shall be retained in such respective Fund or Account.

Any and all income received from the investment of moneys in the Renewal and Replacement Fund (only to the extent such income and the other amounts in such Fund exceed the Renewal and Replacement Fund Requirement) and the Reserve Account (only to the extent such income and the other amounts in the Reserve Account exceeds the Reserve Account Requirement), shall be deposited upon receipt thereof in the Revenue Fund. Any and all income received from the investment of moneys in the Special Assessments Fund shall be deposited upon receipt thereof into the Interest Account.

Nothing in this Resolution shall prevent any Authorized 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 4.11. SEPARATE ACCOUNTS. The moneys required to be accounted for in each of the foregoing funds, accounts and subaccounts established herein may be deposited in a single bank account, and funds allocated to the various funds, accounts and subaccounts 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, accounts and subaccounts as herein provided.

The designation and establishment of the various funds, accounts and subaccounts 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 COVENANTS

SECTION 5.01. GENERAL. The Issuer hereby makes the following covenants, in addition to all other covenants in this Resolution, with each and every successive Holder of any of the Bonds so long as any of said Bonds remain Outstanding.

SECTION 5.02. OPERATION AND MAINTENANCE. The Issuer will maintain or cause to be maintained the System and all portions thereof in good condition and will operate or cause to be operated the same in an efficient and economical manner, making or causing to be made such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation and maintenance thereof. The Issuer may contract with a responsible Person which has experience in the operation of utility systems similar to the System for the operation and maintenance of the System.

SECTION 5.03. ANNUAL BUDGET. The Issuer shall annually prepare and adopt, prior to the beginning of each Fiscal Year, an Annual Budget in accordance with applicable law. No expenditure for Operating Expenses shall be made in any Fiscal Year in excess of the aggregate amount provided for Operating Expenses in the Annual Budget, (A) without a written finding and recommendation by an Authorized Issuer Officer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures, and (B) until the Governing Body shall have approved such finding and recommendation by resolution.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any Fiscal Year, other than the first Fiscal Year, the preliminary budget for such year, if it be approved by the Consulting Engineers or Rate Consultant, or otherwise the Annual Budget for the preceding Fiscal Year, shall be deemed to be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year is adopted.

The Issuer shall mail copies of such Annual Budgets and amended Annual Budgets and all resolutions authorizing increased expenditures for operation and maintenance to any Credit Bank or Insurer of Bonds who shall file his address with the Clerk and request in writing that copies of all such Annual Budgets and resolutions be furnished to him and shall make available all such Annual Budgets and resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder or Holders of Bonds or to anyone acting for and on behalf of such Holder or Holders.

SECTION 5.04 RATES. The Issuer shall fix, establish, maintain and collect such rates, fees and charges for the product, services and facilities of its System, and revise the same from time to time, whenever necessary, so as always to provide in each Fiscal Year:

(A) Net Revenues, Water Connection Fees and Wastewater Connection Fees, together with the Fund Balance, equal to at least 110% of the Annual Debt Service becoming due in such Fiscal Year; provided

(B) such Net Revenues shall be adequate at all times to pay in each Fiscal Year at least 100% of (1) the Annual Debt Service becoming due in such Fiscal Year, (2) any amounts required by the terms hereof to be deposited in the Reserve Account or with any issuer of a Reserve Account Letter of Credit or Reserve Account Insurance Policy in such Fiscal Year or required to pay Policy Costs, (3) any amounts required by the terms of Section 4.06(A) and 4.07(A) hereof to be repaid to the Water Connection Fees Fund and the Wastewater Connection Fees Fund in such Fiscal Year, and (4) any amounts required to be deposited in the Renewal and Replacement Fund in each Fiscal Year.

Such rates, fees or other charges shall not be so reduced so as to be insufficient to provide adequate Net Revenues and Water Connection Fees and Wastewater Connection Fees for the purposes provided therefor by this Resolution.

If, in any Fiscal Year, the Issuer shall fail to comply with the requirements contained in this Section 5.04, it shall cause the Rate Consultant to review its rates, fees, charges, income, Gross Revenues, Operating Expenses and methods of operation and to make written recommendations as to the methods by which the Issuer may promptly seek to comply with the requirements set forth in this Section 5.04. The Issuer shall forthwith commence to implement such recommendations to the extent required so as to cause it to thereafter comply with said requirements.

SECTION 5.05. BOOKS AND RECORDS. The Issuer shall keep books, records and accounts of the revenues and operations of the System, and the Holders of any Bonds Outstanding or the duly authorized representatives thereof shall have the right at all reasonable times to inspect all books, records and accounts of the Issuer relating thereto.

SECTION 5.06. ANNUAL AUDIT. The Issuer shall, immediately after the close of each Fiscal Year, cause the books, records and accounts relating to the System to be properly audited by a recognized independent firm of certified public accountants, and shall require such accountants to complete their report of such Annual Audit in accordance with applicable law. Such Annual Audits shall contain, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, statement of changes in retained earnings, a statement of the number and classification of users and services of the System and rates associated with such services, a statement of insurance coverage, and any other statements as required by law or accounting convention. Each Annual Audit shall be in conformity with generally accepted accounting principles. A copy of each Annual Audit shall regularly be furnished to any Credit Bank or Insurer who shall have furnished his address to the Clerk and requested in writing that the same be furnished to him.

SECTION 5.07. NO MORTGAGE OR SALE OF THE SYSTEM. The Issuer irrevocably covenants, binds and obligates itself not to sell, lease, encumber or in any manner dispose of the System as a whole or any substantial part thereof (except as provided below) until all of the Bonds and all interest thereon shall have been paid in full or provision for payment has been made in accordance with Section 9.01 hereof.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System in the following manner, if any one of the following conditions exist: (A) such property is not necessary for the operation of the System, (B) such property is not useful in the operation of the System, (C) such property is not profitable in the operation of the System, or (D) in the case of a lease of such property, will be advantageous to the System and will not materially adversely affect the security for the Bondholders.

Prior to any such sale, lease or other disposition of said property: (1) if the amount to be received therefor is not in excess of five percent of the book value of the gross plant of the System at original cost, an Authorized Issuer Officer shall make a finding in writing determining that one or more of the conditions for sale, lease or disposition of property provided for in the second paragraph of this Section 5.07 have been met; or (2) if the amount to be received from such sale, lease or other disposition of said property shall be in excess of five percent of the book value of the gross plant of the System at original cost, (a) an Authorized Issuer Officer and the Consulting Engineers shall each first make a finding in writing determining that one or more of the conditions for sale, lease or other disposition of property provided for in the second paragraph of this Section 5.07 have been met, (b) the Governing Body shall, by resolution, duly adopt, approve and concur in the finding of the an Authorized Issuer Officer and the Consulting Engineers, and (c) the Issuer shall obtain an opinion of Bond Counsel to the effect that such sale, lease or other disposition is not in violation of the Act and will not adversely affect the federal tax exempt status of interest on the Bonds (other than Taxable Bonds).

The proceeds from any such sale or other disposition shall be deposited, first, into the Renewal and Replacement Fund to the extent necessary to make the amount therein equal to the Renewal and Replacement Fund Requirement, and, second, into the Utility Reserve Fund. Proceeds from any such lease shall constitute Gross Revenues and shall be deposited in the Revenue Fund.

The transfer of the System as a whole from the control of the Governing Body to some other board or authority which may hereafter be created for such purpose and which constitutes a governmental entity, interest on obligations issued by which are excluded from gross income for purposes of Federal income taxation, shall not be deemed prohibited by this Section 5.07 and such successor board or authority shall fall within the definition of "Issuer" in Section 1.01 hereof.

Notwithstanding the foregoing provisions of this Section 5.07, the Issuer shall have the authority to sell for fair and reasonable consideration any land comprising a part of the System which is no longer necessary or useful in the operation of the System and the proceeds derived from the sale of such land shall be disposed of in accordance with the provisions of the fourth paragraph of this Section 5.07.

The Issuer may make contracts or grant licenses for the operation of, or grant easements or other rights with respect to, any part of the System if such contract, license, easement or right does not, in the opinion of the Consulting Engineers, as evidenced by a certificate to that effect filed with the Issuer, impede or restrict the operation by the Issuer of the System, but any payments to the Issuer under or in connection with any such contract, license, easement or right in respect of the System or any part thereof shall constitute Gross Revenues and shall be deposited in the Revenue Fund.

SECTION 5.08. INSURANCE. The Issuer will carry such insurance as is ordinarily carried by private or public corporations owning and operating utilities similar to the System with a reputable insurance carrier or carriers, in such amounts as the Issuer shall determine to be sufficient and such other insurance against loss or damage by fire, explosion, hurricane, tornado or other hazards and risks, and said property loss or damage insurance shall at all times be in an amount or amounts equal to the fair appraisal value of the buildings, properties, furniture, fixtures and equipment of the System, or such other amount or amounts as the Consulting Engineers shall approve as sufficient.

The Issuer may establish certain minimum levels of insurance for which the Issuer may self-insure. Such minimum levels of insurance shall be in amounts as recommended in writing by an insurance consultant who has a favorable reputation and experience and is qualified to survey risks and to recommend insurance coverage for Persons engaged in operations similar to the System.

The proceeds from property loss and casualty insurance shall be deposited in the Renewal and Replacement Fund and, together with other available funds of the Issuer, shall be used to repair or replace the damaged portion of the System; provided, however, if the Issuer makes a determination in accordance with Section 5.07 hereof that such portion of the System is no longer necessary or useful in the operation of the System, such proceeds shall (1) if such proceeds equal or exceed \$50,000, (a) be applied to the redemption or purchase of Bonds, or (b) be deposited in irrevocable trust for the payment of Bonds in the manner set forth in Section 9.01 hereof, provided the Issuer has received an opinion of Bond Counsel to the effect that such deposit shall not adversely affect the exclusion, if any, from gross income of interest on the Bonds for purposes of federal income taxation, or (2) if such proceeds are less than \$50,000, be deposited in the Revenue Fund.

SECTION 5.09. NO FREE SERVICE. The Issuer will not render or cause to be rendered any free services of any nature by its System, nor will any preferential rates be established for users of the same class. Whenever the Issuer, including its departments,

agencies and instrumentalities, shall avail itself of the product, facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to the Issuer and any such department, agency or instrumentality. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds to the Revenue Fund sufficient sums to pay such charges. The revenues so received shall be deemed to be Gross Revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other Gross Revenues derived from such operation of the System.

SECTION 5.10. NO IMPAIRMENT OF RIGHTS. The Issuer will not enter into any contract or contracts, nor take any action, the results of which might impair the rights of the Holders of the Bonds and will not permit the operation of any competing water service facilities or wastewater service facility in the boundaries of the Issuer; provided, however, the Issuer reserves the right to permit the ownership and operation of water service facilities and wastewater service facilities by itself or by others in any territory which is not in any service area now or hereafter served by the System.

SECTION 5.11. COMPULSORY WATER AND WASTEWATER CONNECTIONS. In order to better secure the prompt payment of principal and interest on the Bonds, as well as for the purpose of protecting the health and welfare of the inhabitants of Lee County, Florida and acting under authority of the general laws of Florida, the Issuer, to the extent permitted by law, will require, where service by the System is available, the owner of every lot or parcel of land within the jurisdiction of the Issuer to connect to the System. The Issuer may establish reasonable rules and regulations regarding such connections and may provide for reasonable exemptions from such connection policy.

SECTION 5.12. ENFORCEMENT OF CHARGES. The Issuer shall compel the prompt payment of rates, fees and charges imposed in connection with the System, and to that end will vigorously enforce all of the provisions of any ordinance or resolution of the Issuer having to do with water and wastewater connections and charges and all of the rights and remedies permitted the Issuer under law, including the requirement for the making of a reasonable deposit by each user, the requirement for disconnection of all premises delinquent in the payment, and the securing of injunction against the disposition of sewage or industrial waste into the wastewater facilities of the System by any premises delinquent in the payment of such charges.

SECTION 5.13. COVENANTS WITH CREDIT BANKS AND INSURERS. The Issuer may make such covenants as it may in its sole discretion determine to be appropriate with any Insurer, Credit Bank or other financial institution that shall agree to insure or to provide for Bonds of any one or more Series credit or liquidity support that shall enhance the security or the value of such Bonds. Such covenants may be set forth in the applicable Supplemental Resolution and shall be binding on the Issuer, the Registrar, the Paying Agent and all the Holders of Bonds the same as if such covenants were set forth in full in this Resolution and shall not diminish the security for any of the Bonds Outstanding.

SECTION 5.14. COLLECTION OF SPECIAL ASSESSMENTS. To the extent Special Assessments Proceeds are part of the Pledged Funds, the Issuer shall proceed diligently to perform legally and effectively or pursue all legally available remedies to influence such entity which implemented the Special Assessments to perform legally and effectively all steps required in the imposition and collection of the Special Assessments. The Issuer shall diligently proceed to collect such Special Assessments and shall exercise all legally available remedies now or hereafter available under State law to enforce such collections.

SECTION 5.15. RE-ASSESSMENTS. To the extent Special Assessments Proceeds are part of the Pledged Funds, if any Special Assessment shall be either in whole or in part challenged in any court or annulled, vacated or set aside by the judgment of any court, or if the Governing Body shall be satisfied that any such Special Assessment is so irregular or defective that the same cannot be enforced or collected, or if the Governing Body shall have omitted to make such Special Assessment when it might have done so, the Governing Body shall take all necessary steps to cause a new Special Assessment to be made for the whole or any part of said improvement or against any property benefitted by said improvement, and in case such second Special Assessment shall be challenged in any court or annulled, said Governing Body shall obtain and make other Special Assessments until a valid Special Assessment shall be made.

SECTION 5.16. COLLECTION OF CONNECTION FEES. The Issuer shall proceed diligently to perform legally and effectively all steps required in the collection of the Connection Fees, if and only to the extent such Connection Fees are levied by the Issuer. Upon the due date of any such Connection Fees, the Issuer shall diligently proceed to collect the same and shall exercise all legally available remedies to enforce such collections now or hereafter available under State law. Notwithstanding any provision of this Section 5.17 to the contrary, the Issuer may waive the levy or collection of a Connection Fee provided such waiver is in accordance with applicable law.

SECTION 5.17. CONSULTING ENGINEERS. The Issuer shall at all times employ Consulting Engineers, whose duties shall be to make any certificates and perform any other acts required or permitted of the Consulting Engineers under this Resolution, and also to review the construction and operation of the System, to make an inspection of the System at least once every three years, and to submit to the Issuer a report with recommendations as to the proper maintenance, repair and operation of the System, including recommendations for expansion and additions to the System to meet anticipated service demands, and an estimate of the amount of money necessary for such purposes. The Consulting Engineers shall annually recommend the amount of the Renewal and Replacement Fund Requirement. Copies of such reports, recommendations and estimates made as hereinabove provided shall be filed with the Issuer for inspection by Bondholders, if such inspection is requested.

SECTION 5.18. FEDERAL INCOME TAXATION COVENANTS; TAXABLE BONDS. The Issuer covenants with the Holders of each Series of Bonds (other

than Taxable Bonds) that it shall not use the proceeds of such Series of Bonds in any manner which would cause the interest on such Series of Bonds to be or become included in gross income for purposes of federal income taxation.

The Issuer covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that neither the Issuer nor any Person under its control or direction will make any use of the proceeds of such Series of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series of Bonds to be "arbitrage bonds" within the meaning of the Code and neither the Issuer nor any other Person shall do any act or fail to do any act which would cause the interest on such Series of Bonds to become subject to inclusion within gross income for purposes of federal income taxation.

The Issuer hereby covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that it will comply with all provisions of the Code necessary to maintain the exclusion from gross income of interest on the Bonds for purposes of federal income taxation, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

The Issuer may, if it so elects, issue one or more Series of Taxable Bonds the interest on which is (or may be) includable in the gross income of the Holder thereof for federal income taxation purposes, so long as each Bond of such Series states in the body thereof that interest payable thereon is (or may be) subject to federal income taxation and provided that the issuance thereof will not cause interest on any other Bonds theretofore issued hereunder to be or become subject to federal income taxation. The covenants set forth in this Section 5.18 shall not apply to any Taxable Bonds.

SECTION 5.19. SUBSIDY BONDS. (A) Notwithstanding any provision to the contrary herein, the Issuer covenants with the Holders of each Series of Issuer Subsidy Bonds that so long as any Issuer Subsidy Bonds remain Outstanding, it will comply with procedures and requirements set forth in the Code and any applicable regulations promulgated from time to time thereunder and any applicable guidance relating to Issuer Subsidy Bonds promulgated by the United States Department of the Treasury or Internal Revenue Service.

(B) Notwithstanding any provision to the contrary herein, the Issuer covenants with the Holders of each Series of Bondholder Subsidy Bonds that so long as any Bondholder Subsidy Bonds remain Outstanding, it will comply with procedures and requirements set forth in the Code and any applicable regulations promulgated from time to time thereunder and any applicable guidance relating to Bondholder Subsidy Bonds promulgated by the United States Department of the Treasury or Internal Revenue Service.

SECTION 5.20. HEDGE AGREEMENTS. Each Counterparty to a Qualified Hedge Agreement shall meet the Initial Rating Requirement. For the period the Counterparty does not fall below "Baa2" by Moody's or "BBB" by Standard & Poor's (the "Minimum Rating Requirement"), interest on Bonds subject to a Qualified Hedge Agreement with such

Counterparty shall be deemed to be the Hedge Payments for purposes of the definition of "Debt Service." For any period the Counterparty does not satisfy the Minimum Rating Requirement and is not replaced by a Counterparty that meets the Initial Rating Requirement, interest on Bonds subject to a Qualified Hedge Agreement with such Counterparty shall be the actual interest on such Bonds (not taking into account the Hedge Payments) for purposes of the definition of "Debt Service."

ARTICLE VI
SUBORDINATED INDEBTEDNESS AND
ADDITIONAL BONDS

SECTION 6.01. SUBORDINATED INDEBTEDNESS. The Issuer will not issue any other obligations, except under the conditions and in the manner provided herein, payable from the Pledged Funds or the Gross Revenues or voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien thereon in favor of the Bonds and the interest thereon. The Issuer may at any time or from time to time issue evidences of indebtedness payable in whole or in part out of Pledged Funds and which may be secured by a pledge of Pledged Funds; provided, however, that such pledge shall be, and shall be expressed to be, subordinated in all respects to the pledge of the Pledged Funds created by this Resolution and provided further that the issuance of such Subordinated Indebtedness shall be subject to any provisions contained in financing documents securing outstanding Subordinated Indebtedness to the extent such provisions impact on the ability of the Issuer to issue Subordinated Indebtedness. The Issuer shall have the right to covenant with the holders from time to time of any Subordinated Indebtedness to add to the conditions, limitations and restrictions under which any Additional Bonds may be issued under the provisions of Section 6.02 hereof. The Issuer agrees to pay promptly any Subordinated Indebtedness as the same shall become due in accordance with Section 4.05(B)(6) hereof.

SECTION 6.02. ISSUANCE OF ADDITIONAL BONDS. No Additional Bonds, payable on a parity with the Bonds then Outstanding pursuant to this Resolution, shall be issued except upon the conditions and in the manner herein provided. The Issuer may issue one or more Series of Additional Bonds for any one or more of the following purposes: (i) financing the Cost of a Project, or the completion thereof, or (ii) refunding any or all Outstanding Bonds or of any Subordinated Indebtedness of the Issuer.

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

(A) The Issuer shall certify that it is current in all deposits into the various funds and accounts established hereby and all payments theretofore required to have been deposited or made by it under the provisions of this Resolution, including all Policy Costs, and have complied with the covenants and agreements of this Resolution.

(B) An independent certified public accountant or the Rate Consultant shall certify to the Issuer that the amount of the Net Revenues (which shall exclude any Investment Earnings from the Construction Fund) and Connection Fees, together with the Fund Balance (for the immediately preceding Fiscal Year) received by the Issuer during the immediate preceding Fiscal Year or any 12 consecutive months selected by the Issuer of the 24 months immediately preceding the issuance of said Additional Bonds, adjusted as hereinafter

provided, were equal to at least 110% of the Maximum Annual Debt Service of the Outstanding Bonds and the Additional Bonds then proposed to be issued, provided the amount of the Net Revenues, adjusted as hereinafter provided, received by the Issuer during such 12-month period, will be equal to (1) at least 100% of the Maximum Annual Debt Service of the Outstanding Bonds and the Additional Bonds then proposed to be issued, and (2) 100% of (a) any amounts required by the terms hereof to be deposited in the Reserve Account or with any issuer of a Reserve Account Letter of Credit or Reserve Account Insurance Policy or to pay any Policy Costs, (b) any amounts required by the terms of Section 4.06(A) hereof to be repaid to the Water Connection Fees Fund and the Wastewater Connection Fees Fund, and (c) any amounts required to be deposited in the Renewal and Replacement Fund, in each case during such 12-month period.

(C) For the purpose of determining the Debt Service under this Section 6.02, the interest rate on additional parity Variable Rate Bonds then proposed to be issued shall be deemed to be the Bond Buyer Revenue Bond Index most recently published prior to the sale of such Additional Bonds.

(D) For the purpose of determining the Debt Service under this Section 6.02, the interest rate on Outstanding Variable Rate Bonds shall be deemed to be (1) if such Variable Rate Bonds have been Outstanding for at least 12 months prior to the date of sale of such Additional Bonds, the highest of (a) the actual rate of interest borne by such Variable Rate Bonds on the date of sale, (b) the average interest rate borne by such Variable Rate Bonds during the 12-month period preceding the date of sale, and (c) the Bond Buyer Revenue Bond Index most recently published prior to the date of sale of the Additional Bonds, or (2) if such Variable Rate Bonds have not been Outstanding for at least 12 months prior to the date of sale of such Additional Bonds, the higher of (a) the actual rate of interest borne by the Variable Rate Bonds on the date of sale, and (b) the Bond Buyer Revenue Bond Index most recently published prior to the sale of such Additional Bonds.

(E) For the purpose of this Section 6.02, the phrase "immediately preceding Fiscal Year or the 12 consecutive months of the 24 months immediately preceding the issuance of said Additional Bonds" shall be sometimes referred to as "12 consecutive months."

(F) The Net Revenues and the Connection Fees calculated pursuant to the foregoing Section 6.02(B) may be adjusted upon the written advice of the Rate Consultant, at the option of the Issuer, as follows:

(1) If the Issuer, prior to the issuance of the proposed Additional Bonds, shall have increased the rates, fees or other charges for the product, services or facilities of the System, the Net Revenues and the Connection Fees for the 12 consecutive months immediately preceding the issuance of said Additional Bonds shall be adjusted to show the Net Revenues and the Connection Fees which would have been derived from the System in such 12 consecutive months as if such

increased rates, fees or other charges for the product, services or facilities of the System had been in effect during all of such 12 consecutive months.

(2) If the Issuer shall have acquired or has contracted to acquire any privately or publicly owned existing water system and/or wastewater system, the cost of which shall be paid from all or part of the proceeds of the issuance of the proposed Additional Bonds, then the Net Revenues derived from the System during the 12 consecutive months immediately preceding the issuance of said Additional Bonds shall be increased by adding to the Net Revenues for said 12 consecutive months the Net Revenues which would have been derived from said existing water system and/or wastewater system as if such existing water system and/or wastewater system had been a part of the System during such 12 consecutive months. For the purposes of this paragraph, the Net Revenues derived from said existing water system and/or wastewater system during such 12 consecutive months shall be adjusted to determine such Net Revenues by deducting the cost of operation and maintenance of said existing water system and/or wastewater system from the gross revenues of said system. Such Net Revenues shall take into account any increase in rates imposed on customers of such water system and/or wastewater system on or prior to the acquisition thereof by the Issuer.

(3) If the Issuer, in connection with the issuance of Additional Bonds, shall enter into a contract (with a duration not less than the final maturity of such Additional Bonds) with any public or private entity whereby the Issuer agrees to furnish services in connection with any water system and/or wastewater system, then the Net Revenues of the System during the 12 consecutive months immediately preceding the issuance of said Additional Bonds shall be increased by the least amount which said public or private entity shall guarantee to pay in any one year for the furnishing of said services by the Issuer, after deducting therefrom the proportion of operating expenses and repair, renewal and replacement cost attributable in such year to such services.

(4) If the Issuer covenants to levy Special Assessments against property to be benefitted by the improvements, the cost of which shall be paid from the proceeds of the proposed Additional Bonds, then the Special Assessments Proceeds derived from the System during the 12 consecutive months shall be increased by an amount equal to the least amount which the Rate Consultant estimates will be received in any one year subsequent to completion of such improvements from the levy of said Special Assessments, said amount to be the total received, assuming no prepayments, from the installment payments on the Special Assessments plus the interest paid on the unpaid portion of the Special Assessments. The estimate of the Rate Consultant shall be based upon the preliminary assessment roll filed with the Issuer prior to the construction of such improvements.

(5) In the event the Issuer shall be constructing or acquiring additions, extensions or improvements to the System from the proceeds of such Additional Bonds and shall have established fees, rates or charges to be charged and collected from users of such facilities when service is rendered, such Net Revenues and Connection Fees may be adjusted by adding thereto 100% of the Net Revenues and Connection Fees estimated by the Rate Consultant to be derived during the first 12 months of operation after completion of the construction or acquisition of said additions, extensions and improvements from the customers of the facilities to be financed by Additional Bonds together with other funds on hand or lawfully obtained for such purpose; provided such customers must represent existing occupied structures that will be added to the System upon completion of the proposed additions, extensions or improvements.

(6) If the Issuer shall add new customers subsequent to the commencement of the 12 consecutive month period, the Rate Consultant may adjust the Net Revenues and Connection Fees to reflect the Net Revenues and Connection Fees that would have been received by the Issuer if such customers had been in place for the entire 12 consecutive months.

(7) The Net Revenues and Connection Fees shall be adjusted for any period the System or any portion thereof was not owned by the Issuer to reflect government ownership of the System or such portion.

(G) Additional Bonds shall be deemed to have been issued pursuant to this Resolution the same as the Outstanding Bonds, and all of the other covenants and other provisions of this Resolution (except as to details of such Additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Holders of all Bonds issued pursuant to this Resolution. Except as provided in Sections 4.02 and 4.05 hereof, all Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Pledged Funds and their sources and security for payment therefrom without preference of any Bonds over any other.

(H) In the event any Additional Bonds are issued for the purpose of refunding any Bonds then Outstanding, the conditions of Section 6.02(B) shall not apply, provided that the issuance of such Additional Bonds shall result in a reduction of the aggregate debt service. The conditions of Section 6.02(B) shall apply to Additional Bonds issued to refund Subordinated Indebtedness and to Additional Bonds issued for refunding purposes which cannot meet the conditions of this paragraph.

SECTION 6.03. BOND ANTICIPATION NOTES. The Issuer may issue notes in anticipation of the issuance of Bonds which shall have such terms and details and be secured in such manner, not inconsistent with this Resolution, as shall be provided by Supplemental Resolution of the Issuer.

SECTION 6.04. ACCESSION OF SUBORDINATED INDEBTEDNESS TO PARITY STATUS WITH BONDS. The Issuer may provide for the accession of Subordinated Indebtedness to the status of complete parity with the Bonds, if (A) the Issuer shall meet all the requirements imposed upon the issuance of Additional Bonds by Sections 6.02(A) and (B) hereof, assuming for purposes of said requirements, that such Subordinated Indebtedness shall be Additional Bonds, (B) the facilities financed by such Subordinated Indebtedness shall be, or become part of, the System, and (C) the Reserve Account, upon such accession, shall contain an amount equal to the Reserve Account Requirement in accordance with Section 4.05(B)(4) hereof. If the aforementioned conditions are satisfied, the Subordinated Indebtedness shall be deemed to have been issued pursuant to this Resolution the same as the Outstanding Bonds, and such Subordinated Indebtedness shall be considered Bonds for all purposes provided in this Resolution.

**ARTICLE VII
DEFAULTS AND REMEDIES**

SECTION 7.01. EVENTS OF DEFAULT. The following events shall each constitute an "Event of Default":

(A) Default shall be made in the payment of the principal of, Sinking Fund Installment, redemption premium or interest on any Bond when due. In determining whether a payment default has occurred, no effect shall be given to payment made under a Bond Insurance Policy.

(B) 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.

(C) 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 90 days after written notice of such default shall have been received from the Holders of not less than 25% of the aggregate principal amount of Bonds Outstanding. Notwithstanding the foregoing, the Issuer shall not be deemed to be in default hereunder if such default can be cured within a reasonable period of time and if the Issuer in good faith institutes appropriate curative action and diligently pursues such action until default has been corrected; provided, however, no such curative action shall exceed 90 days without the prior written consent of the Insurers.

SECTION 7.02. 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 of Florida, 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; provided, however, that no Holder, trustee or receiver shall have the right to declare the Bonds immediately due and payable without the consent of any affected Insurers except to the extent the acceleration of any Bonds that bear interest at a variable rate is provided for in a Supplemental Resolution the provisions of which are approved by the Insurers.

The Holder or Holders of Bonds in an aggregate principal amount of not less than 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 Clerk. Notice of such appointment, together with evidence of the requisite signatures of the Holders of not less than 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 such 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 trustee 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 7.03. DIRECTIONS TO TRUSTEE AS TO REMEDIAL PROCEEDINGS. The Holders of a majority in principal amount of the Bonds then Outstanding (or any Insurer insuring any then Outstanding Bonds) 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 with respect to the Series of Bonds owned by such Holders or insured by such Insurer, 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 direction which in the opinion of the trustee would be unjustly prejudicial to Holders of Bonds not parties to such direction.

SECTION 7.04. 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 7.05. 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 7.02 hereof to the Bondholders may be exercised from time to time, and as often as may be deemed expedient.

SECTION 7.06. 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 (except as for amounts in the subaccounts of the Reserve Account which shall be applied to the payment of the Series of Bonds for which they were established) as follows and in the following order:

A. To the payment of the reasonable and proper charges, expenses and liabilities of the trustee or receiver and Registrar hereunder;

B. To the payment of the amounts required for reasonable and necessary Operating Expenses, and for the reasonable renewals, repairs and replacements of the System necessary to prevent loss of Gross Revenues, as certified by the Consulting Engineer;

C. To the payment of the interest (including Hedge Payments) and principal or Redemption Price, if applicable, then due on the Bonds, as follows:

(1) 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 (including Hedge Payments) 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 9.01 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.

(2) 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 (including Hedge Payments) 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, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

D. To the payment of all amounts owed to the Insurers not covered by A, B or C above and all amounts owed to Counterparties not covered by A, B or C above.

SECTION 7.07. CONTROL BY INSURER. To the extent an Insurer makes any payment of principal of or interest on Bonds in accordance with its Bond Insurance Policy, such Insurer shall become subrogated to the rights of the recipients of such payments in accordance with the terms of its Bond Insurance Policy. Upon the occurrence and continuance of an Event of Default, an Insurer of a Series of Bonds, if such Insurer shall not be in payment default under its Bond Insurance Policy, shall be deemed to be the sole owner of such Bonds for purposes of (A) directing and controlling the enforcement of all rights and remedies with respect to such Series of Bonds, including any waiver of an Event of Default and removal of any trustee, and (B) exercising any voting right or privilege or giving any consent or direction or taking any other action that the Holders of such Bonds are entitled to take pursuant to this Article VII hereof. No provision expressly recognizing or granting rights in or to an Insurer shall be modified without the consent of such Insurer. An Insurer's rights under this Section 7.07 shall be suspended during any period in which such Insurer is in default in its payment obligations under its Bond Insurance Policy (except to the extent of amounts previously paid by such Insurer and due and owing to such Insurer) and shall be of no force or effect if its Bond Insurance Policy is no longer in effect or if the Insurer asserts that its Bond Insurance Policy is not in effect or if the Insurer waives such rights in writing. The rights granted to an Insurer under this Section 7.07 are granted in consideration of such Insurer issuing its Bond Insurance Policy. The Issuer shall provide each Insurer immediate notice of any Event of Default described in Section 7.01(A) hereof and notice of any other Event of Default occurring hereunder within 30 days of the occurrence thereof. Each Insurer of any Bonds hereunder shall be considered a third-party beneficiary to the Resolution with respect to such Bonds.

**ARTICLE VIII
SUPPLEMENTAL RESOLUTIONS**

SECTION 8.01. SUPPLEMENTAL RESOLUTION 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 Resolution shall thereafter form a part hereof) for any of the following purposes:

(A) 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.

(B) 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.

(C) 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.

(D) 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.

(E) To specify and determine the matters and things referred to in Sections 2.01 or 2.02 hereof, including the issuance of Additional Bonds, 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.

(F) To authorize Projects or to change or modify the description of any Project.

(G) To specify and determine matters necessary or desirable for the issuance of Variable Rate Bonds, Capital Appreciation Bonds or Taxable Bonds (including Bondholder Subsidy Bonds and Issuer Subsidy Bonds).

(H) To provide for the establishment of a separate subaccount or subaccounts in the Reserve Account which shall independently secure one or more Series of Bonds.

(I) To comply with any future rules and regulations with respect to tax-exempt, Issuer Subsidy Bonds or Bondholder Subsidy Bonds.

(J) To revise the procedures provided in Section 4.05(B)(4) hereof pursuant to which moneys are drawn on a Reserve Account Insurance Policy or Reserve Account Letter of Credit and moneys are reimbursed to the provider of such Policy or Letter of Credit.

(K) To make any other change that would not materially adversely affect the interests of the Holders of the Bonds. In making such determination, no consideration shall be given to any Bond Insurance Policy or Credit Facility.

SECTION 8.02. SUPPLEMENTAL RESOLUTION WITH BONDHOLDERS' AND INSURER'S CONSENT. Subject to the terms and provisions contained in this Section 8.02 and Sections 8.01 and 8.03 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 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 8.02. Any Supplemental Resolution which is adopted in accordance with the provisions of this Section 8.02 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, without the consent of all affected Bondholders, (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 the Pledged Funds other than the lien and pledge created by this Resolution or except as otherwise permitted or provided hereby which materially adversely affects any Bondholders, (D) a preference or priority of any Bond or Bonds over any other Bond or Bonds (except as to the establishment of separate subaccounts in the Reserve Account provided in Section 4.05(B)(4) hereof), or (E) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Resolution. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders or the Insurer of the adoption of any Supplemental Resolution as authorized in Section 8.01 hereof.

If at any time the Issuer shall determine that it is necessary or desirable to adopt any Supplemental Resolution pursuant to this Section 8.02, the 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 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 8.02 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 8.02.

Whenever the Issuer shall deliver to the Clerk an instrument or instruments in writing purporting to be executed by the Holders 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 8.02, 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 8.03. AMENDMENT WITH CONSENT OF INSURER ONLY. For purposes of amending this Resolution pursuant to Section 8.02 hereof, an Insurer of Bonds shall be considered the Holder of such Bonds which it has insured, provided such Bonds, at the time of the adoption of the amendment, shall be rated by the Rating Agencies which shall have rated such Bonds at the time such Bonds were insured no lower than the ratings assigned thereto by such Rating Agencies on such date of being insured. The consent of the Holders of such Bonds shall not be required if the Insurer of such Bonds shall consent to the amendment as provided by this Section 8.03. At least 15 days prior to adoption of any amendment made pursuant to this Section 8.03, notice of such amendment shall be delivered to the Rating Agencies rating the Bonds. Upon filing with the Clerk of evidence of such consent the Insurer or Insurers as aforesaid, the Issuer may adopt such Supplemental Resolution. After the adoption by the Issuer of such Supplemental Resolution, notice thereof shall be mailed in the same manner as notices of an amendment under Section 8.02 hereof.

ARTICLE IX MISCELLANEOUS

SECTION 9.01. 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 (in the case of Issuer Subsidy Bonds, without regard to Issuer Subsidy Payments or subsidy payments made to the Holders of the Bondholder Subsidy Bonds), at the times and in the manner stipulated therein and in this Resolution and if the Issuer shall pay all amounts owing to any provider of a Reserve Account Letter of Credit or Reserve Account Insurance Policy and all amounts owing to the Insurers, if any, 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 the 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 9.01 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 Refunding 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 (as verified by an independent certified public accountant), to pay the principal of or Redemption Price, if applicable, and interest due and to become due on said Bonds (in the case of Issuer Subsidy Bonds, without regard to Issuer Subsidy Payments or subsidy payments made to the Holders of the Bondholder Subsidy Bonds) on and prior to the redemption date or maturity date thereof, as the case may be. Except as hereafter provided, neither the Refunding 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 Refunding 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 Refunding Securities and moneys for the deposited Refunding Securities and moneys if the new Refunding 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 the redemption date thereof, as the case may be, by the deposit of moneys, or specified Refunding Securities and moneys, if any, in accordance with this Section 9.01, 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 Refunding 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 is 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 9.01 are not by their terms subject to redemption within the next succeeding 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 9.01 of moneys or Refunding Securities has been made and said Bonds are deemed to be paid in accordance with the provisions of this Section 9.01 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.

In the event that the principal of or Redemption Price, if applicable, and interest due on the Bonds shall be paid by an Insurer or Insurers, such Bonds shall remain Outstanding, shall not be defeased and shall not be considered paid by the Issuer, and the pledge of the Pledged Funds and all covenants, agreements and other obligations of the Issuer to the Bondholders shall continue to exist and such Insurer or Insurers shall be subrogated to the rights of such Bondholders.

SECTION 9.02. CAPITAL APPRECIATION BONDS. For the purposes of (A) receiving payment of the Redemption Price if a Capital Appreciation Bond is redeemed prior to maturity, or (B) receiving payment of a Capital Appreciation Bond if the principal of all Bonds becomes due and payable under the provisions of this Resolution, or (C) computing the amount of Bonds held by the Holder of a Capital Appreciation Bond in giving to the Issuer or any trustee or receiver appointed to represent the Bondholders any notice, consent, request or demand pursuant to this Resolution for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value.

SECTION 9.03. 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.

SECTION 9.04. 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.

SECTION 9.05. VALIDATION AUTHORIZED. To the extent deemed necessary by Bond Counsel or desirable by the Issuer's general counsel, Bond Counsel is authorized to institute appropriate proceedings for validation of a Series of Bonds herein authorized pursuant to Chapter 75, Florida Statutes.

SECTION 9.06. REPEAL OF INCONSISTENT RESOLUTIONS. All ordinances, resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SECTION 9.07. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

THE FOREGOING RESOLUTION WAS ADOPTED BY THE TOWN OF FORT MYERS BEACH, FLORIDA ON AUGUST 5, 2013.

TOWN OF FORT MYERS BEACH, FLORIDA

Alan Mandel, Mayor

ATTEST:

Approved as to Legal Sufficiency:

Michelle Mayher, Town Clerk

Fowler White Boggs
Town Attorney

RESOLUTION NO. 13-13

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA SUPPLEMENTING THE TOWN'S AMENDED AND RESTATED WATER AND WASTEWATER REVENUE BOND RESOLUTION ADOPTED ON AUGUST 5, 2013; AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$1,980,000 PRINCIPAL AMOUNT OF A TOWN OF FORT MYERS BEACH, FLORIDA UTILITY REVENUE REFUNDING BOND, SERIES 2013 IN ORDER TO REFUND ALL THE ISSUER'S OUTSTANDING REVENUE REFUNDING NOTE, SERIES 2010; AUTHORIZING A NEGOTIATED SALE OF SAID BOND TO STI INSTITUTIONAL & GOVERNMENT, INC.; PROVIDING FOR A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE TOWN TO THE EXTENT PLEDGED FUNDS ARE INSUFFICIENT TO PAY DEBT SERVICE ON THE SERIES 2013 BOND; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; DESIGNATING THE SERIES 2013 BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION; DELEGATING CERTAIN AUTHORITY TO THE MAYOR, CLERK AND OTHER OFFICERS OF THE ISSUER; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS IN CONNECTION WITH ISSUANCE OF THE SERIES 2013 BOND; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH, AS FOLLOWS:

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

(A) There is currently a need for the Town of Fort Myers Beach, Florida (the "Town" or "Issuer") to refinance the outstanding principal amount of its \$2,520,000 Revenue Refunding Note, Series 2010 (the "Prior Indebtedness") which matures on August 6, 2013 and that refinancing of the Prior Indebtedness will be in the best interest of the Issuer and the citizens of the Town and serves a valid public purpose.

(B) STI Institutional & Government, Inc. (the "Purchaser") has submitted its proposal letter to provide the Issuer with a term loan in an amount not to exceed \$1,980,000 to refinance the Prior Indebtedness, which proposal letter is attached hereto as EXHIBIT B.

(C) The Series 2013 Bond, to be designated as the "Town of Fort Myers Beach, Florida Utility Revenue Refunding Bond, Series 2013," shall be repaid solely from certain revenues, as described herein, and, to the extent such revenues are insufficient, a covenant of the Issuer to budget and appropriate legally available Non-Ad Valorem Revenues (as hereinafter defined), in the manner and to the extent set forth herein and the ad valorem taxing power of the Issuer will never be necessary or authorized to pay said amounts.

(D) It is not reasonably anticipated that more than \$10,000,000 of tax-exempt obligations as defined under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), will be issued by the Issuer during calendar year 2013.

(E) On the date hereof, the Issuer has adopted Resolution No. 13-12 (the "Original Resolution"), to facilitate the borrowing of moneys from time to time to improve and expand the System and to refinance certain indebtedness related to the System.

(F) Due to the present volatility of the market for tax-exempt obligations such as the Series 2013 Bond and the complexity of the Pledged Funds securing such Series 2013 Bond, it is in the best interest of the Issuer to sell the Series 2013 Bond by a negotiated sale to the Purchaser, allowing the Issuer to refinance the Prior Indebtedness in a timely and efficient manner, thereby permitting the Issuer to obtain the best interest rate for the Series 2013 Bond. Prior to issuance of the Series 2013 Bond, the Purchaser shall provide the information required by Section 218.385, Florida Statutes, in connection with the negotiated sale of the Series 2013 Bond.

(G) The covenants, pledges and conditions in the Original Resolution shall be applicable to the Series 2013 Bond herein authorized and said Series 2013 Bond shall be on a parity with and rank equally as to the lien on and source and security for payment from the Pledged Funds and in all other respects with all Additional Bonds hereafter issued pursuant to the Original Resolution, and shall constitute "Bonds" within the meaning of the Original Resolution.

(H) The Original Resolution provides that such Series 2013 Bond shall mature on such date and in such amount, shall bear such rate of interest, shall be payable in such places and shall be subject to such redemption provisions as shall be determined by Supplemental Resolution; and it is now appropriate that the Issuer set forth the parameters and mechanism to determine such terms and details.

SECTION 2. AUTHORITY FOR THIS SUPPLEMENTAL RESOLUTION. This Supplemental Resolution is adopted pursuant to the provisions of the Act.

SECTION 3. DEFINITIONS. When used in this Supplemental Resolution, terms defined in the Original Resolution shall have the meanings therein stated, except as such definitions shall be hereinafter amended or defined.

"Adjusted BQ Rate" shall mean, upon a Loss of BQ Status, the interest rate per annum that shall provide the Purchaser with the same after tax yield that the Purchaser would have otherwise received had the Loss of BQ Status not occurred, taking into account the increased taxable income of the Purchaser as a result of such Loss of BQ Status. The Purchaser shall provide the Issuer with a written statement explaining the calculation of the Adjusted BQ Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Issuer.

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

"Clerk" shall mean the Clerk of the Issuer or her or his duly authorized designee.

"Default Rate" shall mean the lesser of (A) sum of the Prime Rate plus 18% per annum, or (B) or the maximum rate allowed by law.

"Determination of Taxability" shall mean the occurrence after the date hereof of the adoption or taking effect of any law, rule or regulation that changes the ability of the holder to exclude all or a portion of the interest on the Series 2013 Bond for federal income tax purposes or a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that interest paid or payable on all or a portion of the Series 2013 Bond is or was includable in the gross income of the Purchaser for federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Issuer has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any lender, and until the conclusion of any appellate review, if sought.

"Final Maturity Date" shall have the meaning ascribed to it in Section 5(B) hereof.

"Interest Dates" shall have the meaning ascribed to it in Section 5(B) hereof.

"Interest Rate" shall mean prior to a Determination of Taxability, the interest rate per annum equal to (A) 1.81%, multiplied by (B) the Margin Rate Factor, subject to adjustment as provided herein.

"Loss of BQ Status" shall mean a determination by the Purchaser that the Series 2013 Bond is not a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code (or any successor provision).

"Margin Rate Factor" shall mean the fraction the numerator of which is equal to one minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The Margin Rate Factor shall be 0.65/0.65 or 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35%, and thereafter shall increase from time to time effective as of the effective date of any decrease in the Maximum Federal Corporate Tax Rate.

"Maximum Federal Corporate Tax Rate" shall mean the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11(b)(1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which could apply to the Purchaser). The Maximum Federal Corporate Tax Rate on the date of execution of this Supplemental Resolution is 35%.

"Prime Rate" shall mean the per annum rate which the SunTrust Bank announces from time to time to be its prime rate, as in effect from time to time. The Purchaser's prime rate is a reference or benchmark rate, is purely discretionary and does not necessarily represent the lowest or best rate charged to borrowing customers. SunTrust Bank may make commercial loans or other loans at rates of interest at, above or below the Purchaser's prime rate. Each change in SunTrust Bank's prime rate shall be effective from and including the date such change is announced as being effective.

"Non-Ad Valorem Revenues" shall mean all revenues of the Issuer derived from any source whatsoever other than ad valorem taxation on real or personal property, which are legally available to make the payments, if necessary, as required herein.

"Prior Indebtedness" shall mean the Issuer's Revenue Refunding Note, Series 2010, issued in the principal amount of \$2,520,000 on August 6, 2010 and currently outstanding in the principal amount of \$1,980,000.

"Purchaser" shall mean STI Institutional & Government, Inc., and its successors and assigns.

"Put Date" shall mean initially August 6, 2016, and thereafter such date as agreed upon by the Issuer and the Purchaser, unless, in the sole discretion of the Purchaser, not more than 120 days prior to such date the Purchaser provides written notice to the Issuer that the Purchaser has determined not to tender the Series 2013 Bond for purchase on any such date, in which case such date shall no longer be a Put Date.

"Taxable Period" shall mean the period of time between (A) the date that interest on the Series 2013 Bond is deemed to be includable in the gross income of the owner thereof for federal income tax purposes as a result of a Determination of Taxability, and (B) the date of the Determination of Taxability.

"Taxable Rate" shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Purchaser with the same after tax yield that the Purchaser would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Purchaser as a result of such Determination of Taxability. The Purchaser shall provide the Issuer with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Issuer.

SECTION 4. AUTHORIZATION OF THE REFUNDING OF THE PRIOR INDEBTEDNESS. The Issuer hereby authorizes the refunding of the Prior Indebtedness and the refinancing thereof with proceeds of the sale of the Series 2013 Bond to the Purchaser.

SECTION 5. DESCRIPTION OF THE SERIES 2013 BOND. (A) Pursuant to Sections 2.01 and 2.02 of the Original Resolution, the Issuer has heretofore authorized the issuance of a Bond in the aggregate principal amount not to exceed \$1,980,000 to be known as the "Town of Fort Myers Beach, Florida Utility Revenue Refunding Bond, Series 2013" (or such other series designation as the Mayor may determine), for the principal purpose of refunding the Prior Indebtedness. The principal amount of the Series 2013 Bond to be issued shall be \$1,980,000. The Series 2013 Bond shall be dated as of the date of its delivery (or such other date as shall be determined by the Mayor) and shall be issued in the form of a fully registered Bond without coupons in one denomination of \$1,980,000 (the "Authorized Denomination"). Notwithstanding Section 2.08 of the Original Resolution, the Series 2013 Bond shall be substantially in the form attached as EXHIBIT A hereto. No CUSIP number shall be requested by the Issuer for the Series 2013 Bond upon issuance and thereafter shall only be requested by the Issuer with the prior written consent of the Purchaser.

(B) The Series 2013 Bond shall bear interest from its date of issuance at the Interest Rate unless otherwise adjusted pursuant to Section 11 hereof, based on a 360-day year consisting of twelve 30-day months. Upon an Event of Default the Interest Rate shall equal the Default Rate. The Series 2013 Bond shall be a Term Bond (within the meaning of the Original Resolution) and shall mature on October 1, 2023 (the "Final Maturity Date"). Interest shall be payable semi-annually commencing on October 1, 2013 and on the first day of April and October thereafter (each an "Interest Date"). The principal amount of the Series 2013 Bond shall be paid annually commencing October 1, 2013, in accordance with the Sinking Fund Installment schedule attached to the Series 2013 Bond. In any case where the due date of interest or of principal of the Series 2013 Bond is not a Business Day, the payment of such interest or principal need not be made

on such date but may be made on the next succeeding Business Day, provided that credit for payments shall not be given until payment is actually received by the Purchaser. Notwithstanding anything in the Original Resolution to the contrary, the Series 2013 Bond shall not be required to be preserved for payment, except upon payment of the final installation of principal, and no notation of such payments shall be required to be made on such Series 2013 Bond.

SECTION 6. SECURITY; 2013 RESERVE SUBACCOUNT. (A) The Series 2013 Bond shall be secured equally and ratably by a pledge of the Pledged Funds with all Bonds which may be Outstanding from time to time as provided in Section 4.02 of the Original Resolution; provided, however, the Series 2013 Bond shall not be secured by or have a lien on the Reserve Account of the Sinking Fund, but rather shall be secured by a separate subaccount established below.

(B) There is hereby established for the Series 2013 Bond a "2013 Reserve Subaccount" in the Reserve Account of the Sinking Fund. The Reserve Account Requirement for the Series 2013 Bond shall be \$0.

SECTION 7. ISSUER'S COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES. To the extent the Pledged Funds are insufficient to pay scheduled debt service on the Series 2013 Bond, the Issuer covenants and agrees, to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts which shall be sufficient to pay debt service on the Series 2013 Bond. Such covenant and agreement on the part of the Issuer to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Issuer, the Issuer does not covenant to maintain any services or programs, now provided or maintained by the Issuer, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Issuer from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Issuer to levy and collect any particular Non-Ad Valorem Revenues. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its annual budget for the purposes and in the manner stated herein shall have the effect of making available for the payment of debt service on the Series 2013 Bond in the manner described herein Non-Ad Valorem Revenues 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(2), Florida Statutes, which provides, in part, that the governing body of each municipality to make appropriations for each Fiscal Year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law.

SECTION 8. DESIGNATION OF THE SERIES 2013 BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION. The Issuer hereby designates the Series 2013 Bond as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. This designation is based upon the findings of the Issuer set forth in Section 1(D) hereof, and the Mayor is authorized to certify such finding upon the issuance of the Series 2013 Bond.

SECTION 9. OPTIONAL PREPAYMENT.

(A) The Series 2013 Bond may be redeemed prior to the Final Maturity Date, at the option of the Issuer, from any moneys legally available therefor, upon notice as provided herein, in whole or in part, without penalty or premium, on or after August 6, 2014, by paying to the Purchaser the unpaid principal amount of the Series 2013 Bond, plus the unpaid interest accrued on the amount of principal so redeemed to the date of such redemption. Notwithstanding anything in the Original Resolution to the contrary, any partial prepayment shall be applied to reduce the principal installments in inverse order of the scheduled payment date.

(B) Notwithstanding Article III of the Original Resolution, any redemption shall be made on such Business Day as shall be specified by the Issuer in a written notice provided to the Purchaser not less than two (2) days prior thereto by first class mail. Notice having been given as aforesaid, the outstanding principal of the Series 2013 Bond shall become due and payable on the date of redemption stated in such notice, and interest accrued and unpaid to the date of redemption on the principal amount then being paid. If on the date of redemption moneys for the payment of the principal amount to be redeemed on the Series 2013 Bond, and accrued interest to the date of redemption on such principal amount, shall have been paid to the Purchaser as above provided, then from and after the date of redemption, interest on such redeemed principal amount of the Series 2013 Bond shall cease to accrue. If said money shall not have been so paid on the date of redemption, such principal amount of the Series 2013 Bond shall continue to bear interest until payment thereof at the Interest Rate, as adjusted herein.

SECTION 10. PUT PROVISION. The Purchaser, in its sole discretion, has the right to "put" the Series 2013 Bond to the Issuer on the Put Date, provided, that the Purchaser may give written notice to the Issuer not later than 120 days prior to such put date that it will, in its sole discretion, extend the term for an additional mutually agreeable time period; provided further, that the failure to give any notice shall mean that

the term has not been extended and the Issuer shall be obligated to pay or purchase the Series 2013 Bond in full on such Put Date.

SECTION 11. ADJUSTMENTS TO INTEREST RATES. (A) Upon the occurrence of a Determination of Taxability and for as long as the Series 2013 Bond remains outstanding, the Interest Rate on the Series 2013 Bond shall be converted to the Taxable Rate (unless an Event of Default shall have occurred, in which case the Default Rate shall apply). In addition, upon a Determination of Taxability, the Issuer shall pay to the Purchaser (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Series 2013 Bond during the Taxable Period, and (B) the amount of interest that would have been paid during the Taxable Period had the Series 2013 Bond borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Purchaser as a result of the Determination of Taxability. This adjustment shall survive payment of this Series 2013 Bond until such time as the federal statute of limitations under which the interest on this Series 2013 Bond could be declared taxable under the Code shall have expired.

(B) So long as no Determination of Taxability shall have occurred, upon the occurrence of a Loss of BQ Status and for as long as the Series 2013 Bond remains outstanding, the Interest Rate on the Series 2013 Bond shall be converted to the Adjusted BQ Rate (unless an Event of Default shall have occurred, in which case the Default Rate shall apply). In addition, upon a Loss of BQ Status, the Issuer shall pay to the Purchaser (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Series 2013 Bond during the period of time from the date of issuance of the Series 2013 Bond and the next succeeding interest payment date, and (B) the amount of interest that would have been paid during the period in clause (A) had the Series 2013 Bond borne interest at the Adjusted BQ Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Purchaser as a result of the Loss of BQ Status.

SECTION 12. APPLICATION OF SERIES 2013 BOND PROCEEDS. All of the proceeds derived from the sale of the Series 2013 Bond, \$1,980,000, shall be retained by the Purchaser and transferred to SunTrust Bank and used to refund all of the outstanding Prior Indebtedness.

SECTION 13. ADDITIONAL COVENANTS AND CONDITIONS. In addition to the covenants, conditions and restrictions provided in the Original Resolution, so long as the Series 2013 Bond is Outstanding, the Issuer hereby agrees to the following additional covenants and restrictions:

(A) ADDITIONAL BONDS. In the event the Issuer desires to issue Additional Bonds payable on parity with the Series 2013 Bond, the Issuer covenants that it will only issue such Additional Bonds if the ratio of the average Net Revenues (which shall

exclude any investment earnings from the Construction Fund) and Connection Fees for the two most recent Fiscal Years to the projected Maximum Annual Debt Services on the existing and proposed Bonds is at least equal to 1.2:1.

(B) ANNUAL AUDIT AND BUDGET. Notwithstanding Section 5.06 of the Original Resolution, the Issuer shall deliver a copy of the Annual Audit to the Purchaser no later than 270 days after the end of each Fiscal Year and an annual budget within 30 days of adoption, together with any other information the Purchaser may reasonably request.

(C) DEFAULT RATE OF INTEREST. Notwithstanding Section 7.01 of the Original Resolution, upon and during the occurrence of an Event of Default the Series 2013 Bonds shall bear interest at the Default Rate. Immediately and without notice, upon the occurrence of any Event of Default, the Purchaser may declare this Supplemental Resolution and the Series 2013 Bond to be immediately due and payable without further action of any kind and upon such declaration the Series 2013 Bond and the interest accrued thereon, and all other amounts owing to the Purchaser shall immediately become due and payable.

(D) RATE COVENANT. In calculating the rate covenant described in Section 5.04 of the Original Resolution, the Issuer hereby covenants that the test set forth in subsection (A) shall be met when substituting "120%" instead of "110%" in such paragraph.

(E) Consent for Amendments. The Issuer shall not amend this Supplemental Resolution or the Original Resolution pursuant to Section 8.02 of the Original Resolution, without the prior written consent of the Purchaser.

(F) Events of Default. Notwithstanding Article VII of the Original Resolution, if the Issuer shall default in the performance of or compliance with any term or covenant contained in this Supplemental Resolution or the Series 2013 Bonds or any representation or warranty made in writing by or on behalf of the Issuer in this or the Series 2013 Bonds shall prove to have been false or incorrect in any material respect on the date made or reaffirmed shall be deemed to be an Event of Default under the Original Resolution.

(G) Notice of Defaults. Notwithstanding Article VII of the Original Resolution, the Issuer shall within three (3) Business Days after it acquires knowledge thereof, notify the Purchaser of: (1) any change in any material fact or circumstance represented or warranted by the Issuer in the Original Resolution or this Supplemental Resolution or in connection with the issuance of the Series 2013 Bond; (2) upon the happening, occurrence, or existence of any Event of Default, and (3) any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Purchaser, along with such written notice, a detailed statement of all relevant facts and the action being taken or proposed to be taken

by the Issuer with respect thereto. Regardless of the date of receipt of such notice by the Purchaser, such date shall not in any way modify the date of occurrence of the actual Event of Default.

(H) Defeasance Opinion. So long as the Series 2013 Bond is Outstanding and the Purchaser or one of its affiliates as the Holder of the Series 2013 Bond, in the event that a defeasance escrow trust is established, such defeasance escrow trust shall be established pursuant to the requirements of Article IX and any additional requirements requested by the Purchaser based on its policies in effect at such time.

SECTION 14. WAIVER OF JURY TRIAL. The Issuer knowingly, voluntarily, and intentionally waives any right it may have to a trial by jury, with respect to any litigation or legal proceedings based on or arising out of this Supplemental Resolution or the Series 2013 Bond, including any course of conduct, course of dealings, verbal or written statement or actions or omissions of any party which in any way relates to the Series 2013 Bond or this Supplemental Resolution.

SECTION 15. APPLICABLE LAW AND VENUE. This Series 2013 Bond shall be governed by applicable federal law and the internal laws of the state of Florida. The Issuer agrees that certain material events and occurrences relating to this Series 2013 Bond bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of this Series 2013 Bond shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. Unless applicable law provides otherwise, in the event of any legal proceeding arising out of or related to this Series 2013 Bond, Issuer consents to the jurisdiction and venue of any court located in the state of Florida.

SECTION 16. GENERAL AUTHORITY. The Mayor, the Clerk, the Issuer's general counsel, finance director and the other officers, attorneys and other agents or employees of the Issuer are hereby authorized to do all acts and things required of them by this Supplemental Resolution, the Original Resolution, or desirable or consistent with the requirements hereof or of the Original Resolution, for the full punctual and complete performance of all the terms, covenants and agreements contained herein or in the Series 2013 Bond, the Original Resolution, and each member, employee, attorney and officer of the Issuer is hereby authorized and directed to execute and deliver any and all papers and instruments and to be and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereunder. If the Mayor is unavailable or unable at any time to perform any duties or functions hereunder, the Vice-Mayor of the Issuer is hereby authorized to act on his or her behalf.

SECTION 17. SEVERABILITY AND INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained 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 or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Series 2013 Bond.

SECTION 18. ORIGINAL RESOLUTION TO CONTINUE IN FORCE. Except as herein expressly provided, the Original Resolution and all the terms and provisions thereof are and shall remain in full force and effect.

SECTION 19. EFFECTIVE DATE. This Supplemental Resolution shall take effect immediately upon its adoption.

[SIGNATURE PAGE TO FOLLOW]

THE FOREGOING RESOLUTION WAS ADOPTED BY THE TOWN OF FORT MYERS BEACH, FLORIDA ON AUGUST 5, 2013.

**TOWN OF FORT MYERS BEACH,
FLORIDA**

Alan Mandel, Mayor

ATTEST:

Approved as to Legal Sufficiency:

Michelle Mayher, Town Clerk

Fowler White Boggs
Town Attorney

EXHIBIT A

FORM OF SERIES 2013 BOND

No. R-1

\$1,980,000

**UNITED STATES OF AMERICA
STATE OF FLORIDA
TOWN OF FORT MYERS BEACH, FLORIDA
UTILITY REVENUE REFUNDING BOND,
SERIES 2013**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>
1.81%	October 1, 2023	August 6, 2013

Registered Holder: STI INSTITUTIONAL & GOVERNMENT, INC.

Principal Amount: ONE MILLION NINE HUNDRED EIGHTY THOUSAND AND
00/100 DOLLARS

KNOW ALL MEN BY THESE PRESENTS, that the Town of Fort Myers Beach, Florida (the "Issuer"), for value received, hereby promises to pay, solely from the Pledged Funds hereinafter described, and to the extent such Pledged Funds are insufficient, from Non-Ad Valorem Revenues budgeted and appropriated in accordance with Section 7 of the Supplemental Resolution (as hereinafter defined), to the Registered Holder identified above, or registered assigns as hereinafter provided, on the Maturity Date identified above, the Principal Amount identified above and to pay 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 (subject to adjustment as provided in the hereinafter defined Resolution) on April 1 and October 1 of each year commencing October 1, 2013, until such Principal Amount shall have been paid, except as the provisions hereinafter set forth with respect to redemption, tender and acceleration prior to maturity may be or become applicable hereto. The Principal Amount of this Series 2013 Bonds shall be paid annually commencing October 1, 2013, in accordance with the Sinking Fund Installment scheduled attached hereto as Appendix I to this Series 2013 Bond.

Such Principal Amount and interest and the premium, if any, on this Series 2013 Bond are payable in any coin or currency of the United States of America which, on the

respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Series 2013 Bond is issued under the authority of and in full compliance with the Constitution and laws of the State of Florida Chapter 166, Florida Statutes, the Issuer's Charter and other applicable provisions of law (the "Act"), and the Issuer's Amended and Restated Water and Wastewater Revenue Bond Resolution No. 13-12, dated August 5, 2013 (the "Original Resolution"), as amended and supplemented and as particularly supplemented by Resolution No. 13-13 adopted by the Issuer on August 5, 2013 (the "Supplemental Resolution" and together with the Original Resolution, collectively, the "Resolution"), and is subject to all the terms and conditions of the Resolution.

This Series 2013 Bond and the interest hereon are payable solely from and secured by a lien upon and a pledge of (1) the Net Revenues (as defined in the Original Resolution) to be derived from the operation of the Issuer's water system (the "System"), (2) the Connection Fees (as defined in the Original Resolution), (3) any other Special Assessments Proceeds (to the extent the Issuer has included such as Pledged Funds pursuant to a Supplemental Resolution), and (4) until applied in accordance with the provisions of the Original Resolution, all moneys, including investments thereof, in the funds and accounts established by the Original Resolution, except (A) as for the Rebate Fund, (B) to the extent moneys therein shall be required to pay the Operating Expenses (as defined in the Original Resolution), and (C) to the extent moneys on deposit in a subaccount of the Reserve Account established by the Original Resolution shall be pledged solely for the payment of the Series of Bonds for which it was established in accordance with the provisions of the Resolution, subject in each case to the application thereof for the purposes and on the conditions permitted by the Resolution (collectively, the "Pledged Funds"). It is expressly agreed by the Registered Holder of this Bonds that the full faith and credit of the Issuer are not pledged to the payment of the principal of, premium, if any, and interest on this Series 2013 Bond and that such Holder shall never have the right to require or compel the exercise of any taxing power of the Issuer to the payment of such principal, premium, if any, and interest. This Series 2013 Bond and the obligation evidenced hereby shall not constitute a lien upon the System or any other property of the Issuer, but shall constitute a lien only on, and shall be payable solely from, the Pledged Funds in accordance with the terms of the Resolution and to the extent such Pledged Funds are insufficient, from Non-Ad Valorem Revenues budgeted and appropriated in accordance with Section 7 of the Supplemental Resolution. Neither the State of Florida nor Lee County, Florida, shall be obligated to pay this Series 2013 Bond and neither the full faith and credit nor the taxing power of the State of Florida or of any political subdivision thereof or Lee County is pledged to the payment of the principal of or the interest on this Series 2013 Bond. The issuance of this Series 2013 Bond shall not directly or indirectly or contingently obligate the State of Florida or Lee County, Florida

to levy or to pledge any form of taxation whatever or to make any appropriation for the payment of this Series 2013 Bond.

The Series 2013 Bond may be redeemed prior to the Final Maturity Date, at the option of the Issuer, from any moneys legally available therefor, upon notice as provided herein, in whole or in part, without penalty or premium, on or after August 6, 2014, by paying to the Purchaser the unpaid principal amount of the Series 2013 Bond, plus the unpaid interest accrued on the amount of principal so redeemed to the date of such redemption. Notwithstanding anything in the Original Resolution to the contrary, any partial prepayment shall be applied to reduce the principal installments in inverse order of scheduled payment date.

Notwithstanding Article III of the Original Resolution, any redemption shall be made on such Business Day as shall be specified by the Issuer in a written notice provided to the Purchaser not less than two (2) days prior thereto by first class mail. Notice having been given as aforesaid, the outstanding principal of the Series 2013 Bond shall become due and payable on the date of redemption stated in such notice, and interest accrued and unpaid to the date of redemption on the principal amount then being paid. If on the date of redemption moneys for the payment of the principal amount to be redeemed on the Series 2013 Bond, and accrued interest to the date of redemption on such principal amount, shall have been paid to the Purchaser as above provided, then from and after the date of redemption, interest on such redeemed principal amount of the Series 2013 Bond shall cease to accrue. If said money shall not have been so paid on the date of redemption, such principal amount of the Series 2013 Bond shall continue to bear interest until payment thereof at the Interest Rate, as adjusted in accordance with the Supplemental Resolution and herein.

The Purchaser, in its sole discretion, has the right to "put" this Series 2013 Bond to the Issuer on the Put Date (as defined in the Resolution), provided, that the Purchaser may give written notice to the Issuer not later than 120 days prior to such put date that it will, in its sole discretion, extend the term for an additional mutually agreeable time period; provided further, that the failure to give any notice shall mean that the term has not been extended and the Issuer shall be obligated to pay or purchase the Series 2013 Bond in full on such put date.

Reference to the Original Resolution and any and all Resolutions supplemental thereto and modifications and amendments thereof and to the Act is made for a description of the pledge and covenants securing this Series 2013 Bond, the nature, manner and extent of enforcement of such pledge and covenants, and the rights, duties, immunities and obligations of the Issuer.

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 connection with the issuance of

this Series 2013 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 the Act, and that the issuance of the Series 2013 Bond does not violate any constitutional or statutory limitations or provisions.

Neither the members of the Town Council of the Issuer nor any person executing this Series 2013 Bond shall be liable personally hereon or be subject to any personal liability or accountability by reason of the issuance hereof.

This Series 2013 Bond is one of a series of Bonds which were validated by judgment of the Circuit Court of the Twentieth Judicial Circuit of Florida in and for Lee County, Florida, rendered on April 25, 2011.

IN WITNESS WHEREOF, the Town Council of the Town of Fort Myers Beach, Florida has issued this Series 2013 Bond and has caused the same to be executed by the manual or facsimile signature of the Mayor, and to be countersigned and attested by the manual or facsimile signature of the Clerk to the Town Council of the Town of Fort Myers Beach, Florida, all on the Date of Original Issue.

**TOWN OF FORT MYERS BEACH,
FLORIDA**

ATTEST:

By: _____
Mayor

By: _____
Clerk

CERTIFICATE OF AUTHENTICATION

This Series 2013 Bond is the Series 2013 Bond of the Issuer described in the within-mentioned Resolution.

DATE OF AUTHENTICATION:

**TOWN OF FORT MYERS BEACH,
FLORIDA, as Registrar**

By: _____
Clerk

EXHIBIT B

PURCHASER PROPOSAL LETTER

Proposal to:



Town of Ft. Myers Beach, Florida

Bank Term Loan:

Tax Exempt, Public Utilities Refunding Note, Series 2013

July 8, 2013

Proposals presented by:



STI Institutional & Government, Inc.
A SunTrust Company



STI Institutional & Government, Inc.
1777 Main Street, 6th Floor
Sarasota, Florida 34236

Joshua A. McCoy
Vice President
Relationship Manager
Tel: 941-951-3005
Joshua.A.Mccoy@SunTrust.com

July 8, 2013

RE: Utilities Revenue Bond Refunding

Dear Evelyn Wicks,

STI Institutional & Government, Inc., ("STING") is pleased to present this proposal to the Town of Ft. Myers Beach (the "Town") for the refunding of Public Utilities Bank Loan in the amount of \$1,980,000. The STING proposal is a refunding Term of 3-years with a straight-line principal payment amortization (\$180,000) over the remaining 11-years of the Facility. STI Institutional & Government, Inc. sincerely appreciates this opportunity with the Town and welcomes any questions you may have with regard to this proposal.

This Proposal Letter is an expression of interest by STING in the proposed Facility and should not be construed to be, expressly or by implication, a commitment, an offer, an agreement in principle or an agreement by STING to provide the proposed Facility. After STING has conducted further due diligence, we may decide to modify the proposed terms and conditions, or we may decide not to provide the proposed Facility.

This Proposal Letter is not intended to, and shall not create a legally binding obligation on the part of the STING or the Borrower. This Proposal Letter constitutes the entire understanding between STING and the Borrower in connection with the proposed Facility as of the date hereof and supersedes any prior written or oral communications or understandings.

This Proposal Letter shall be governed by the laws of the State of Florida. If you have any questions in connection with this Proposal Letter or any of the proposed terms and conditions, please do not hesitate to contact me.

Yours sincerely,

Joshua A. McCoy, Vice President

**PUBLIC UTILITIES REVENUE REFUNDING
TERM SHEET**

Borrower: Town of Fort Myers Beach, Florida

Lender: STI Institutional & Government, Inc.

Contact: Joshua A. McCoy
Vice President
STI Institutional & Government, Inc.
1777 Main Street, FL-Sarasota-3061
Sarasota, FL 34236
Email: joshua.a.mccoy@suntrust.com
Phone: 941-951-3005

Facility Type: Bank Qualified Loan in the form of a tax-exempt loan (the "BQ Bond")

Purpose: The proceeds from the Public Utilities Revenue Bond, Series 2013 will be used to refund outstanding Series 2010 Bank Loan.

Amount: Up to \$1,980,000

Terms: Semi-annual interest payments due October 1 and April 1 of each year through maturity with the first payment due October 1, 2013. Principal shall be payable annually on October 1 of each year commencing October 1, 2013, with a final maturity date of October 1, 2023, based upon an 11-year year straight line principal schedule of \$180,000 payable annually.

Put Provision: Initially, 3-years, at which time the Lender, in its sole discretion, has the right to "put" the BQ Loan to the Borrower; provided, that the Lender may give written notice to the Borrower not later than 120 days prior to such put date that it will, in its sole discretion, extend the term for an additional mutually agreeable time period; provided further, that the failure to give any notice shall mean that the term has not been extended and the Borrower shall be obligated to pay or purchase the Bond in full on such put date.

Security: The proposed Utility System Revenue Refunding Note, Series 2013, will be secured by a senior lien of Net Revenues of the Town's Public Utility System. "Net Revenues" is defined as Gross Revenues or Revenues, after deduction of the Cost of Operation and Maintenance. Payment of the Loan will also be secured by a covenant to budget and appropriate from legally available non-ad valorem revenues of the Town.

Interest Rate Options: A BQ fixed rate (no Prepayment Penalty option) equal to 1.78% as of the date of this proposal held for two business days.

Rate Lock Option: For the above mentioned rates, a rate lock is available for thirty (30) days from the date of this letter at an additional cost of 3 basis points.

**Prepayment
Alternatives:**

The following Prepayment Alternative was selected.

Alternative – No Prepayment Penalty: The Lender will allow prepayment in whole or in part without any penalty after 12 months at an additional cost of 17 basis points as stated in the “Interest Rate Options” section above.

All payments shall be subject to two Business Days' prior notice to the Lender.

After-Tax Yield Maintenance:

- The interest rates quoted herein take into consideration a marginal maximum federal corporate tax rate of 35%. In the event of a decrease in the marginal maximum corporate tax rate, the Lender shall have the right to adjust the interest rate upwards in order to maintain the same after tax yield for the Lender.
- If a determination of taxability event occurs the rate will be adjusted upwards to a fixed rate equal to a rate determined necessary by Lender to maintain the same after-tax yield. Upon an occurrence of a Determination of Taxability, the Borrower hereby agrees to pay to the Lender (i) an additional amount equal to the difference between (A) the amount of interest paid on the Bonds during the Taxable Period and (B) the amount of interest that would have been paid on the Bonds during the Taxable Period had the Bonds borne interest at the Taxable Rate, plus (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Lender as a result of the occurrence of a Determination of Taxability.

Legal Fees:

Our proposed counsel is Micheal Wiener and Ed Vogel at Holland & Knight in Florida. Fees for our counsel for the Public Utilities Bond will be \$5,000.00 if our counsel reviews documentation prepared by the counsel to the Borrower.

Covenants and Conditions:

- A) All matters relating to this loan, including all instruments and documents required, are subject to the Lender's policies and procedures in effect, applicable governmental regulations and/or statutes, and approval by the Lender and the Lender's Counsel.
- B) Borrower shall submit to the Lender annual financial statements within 270 days of fiscal year end and an annual budget within 30 days of adoption, together with any other information the Lender may reasonably request.
- C) Borrower shall be required to deliver a written opinion from Borrower's Counsel, in form and substance acceptable to the Lender and Lender's Counsel, that all documents are valid, binding and enforceable in accordance with their terms, that execution and delivery of said documents has been duly authorized, and addressing such other matters as the Lender and the Lender's Counsel deem appropriate.
- D) The provisions, terms and conditions contained herein are not inclusive of all the anticipated terms that will be applicable to the credit and do not purport to summarize all of the conditions, covenants, definitions, representations, warranties, that shall include but not be limited to the waiver of jury trial, submission to jurisdiction and venue, events of default, remedies including but not limited to acceleration and other provisions that may be contained in documents required to consummate this financing. A payment or covenant default shall be subject to a default rate of the lesser of 18% or the maximum rate allowed by law. All of such terms will be set forth in the final, definitive loan documents, and all such terms must be

acceptable to the Lender and its counsel. The Lender shall maintain the right to transfer and assign the Bond in whole or in part to accredited investors. Notwithstanding any terms or conditions the Lender will have the right to assign all or a portion of the bond or loan to an affiliate of the Lender in its sole discretion.

- E) The "Bank-Qualified" rate quoted herein assumes the BQ Bond is a "qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Internal Revenue Service Code. Receipt of opinion from Bond Counsel in form and substance satisfactory to the Lender, which shall include, without limitation, opinion that the interest on the BQ Bond is excludable from gross income of the owners thereof for federal income tax purposes and that the BQ Bond is a qualified tax-exempt obligation under Section 265 (b)(3) of the Internal Revenue Code.
- F) Parity: This debt will be on parity with all other Town of Fort Myers Beach, Florida senior debt secured by the Town's Public Utilities System Net Revenues.
- G) Rate Covenant: The Issuer will fix, establish, revise from time to time whenever necessary, maintain and collect always such fees, rates, rentals and other charges for the use of the products, services and facilities of the System which will always provide Net Revenues, including connection fees, in each Fiscal Year sufficient to pay one hundred twenty percent (120%) of the Bond Service Requirement on all Outstanding Bonds in the applicable Bond Year.
- H) Additional Bonds Test: In order to issue additional parity bonds secured by Pledged Revenues, the average net Pledged Revenues for the two most recent fiscal years must equal at least 1.2x the projected maximum annual debt service on the existing and proposed debt.