

**RESOLUTION NO. 30-08-09**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INTERLOCAL AGREEMENT WITH THE TOWN OF LAKE PARK, FLORIDA COMMUNITY REDEVELOPMENT AGENCY; AUTHORIZING AND APPROVING THE ISSUANCE OF A NOTE BY THE TOWN IN CONNECTION WITH SAID LOAN AGREEMENT RELATIVE TO FINANCING OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN IMPROVEMENTS TO LAND TO BE USED FOR A MUNICIPAL PARKING FACILITY, ACQUISITION OF A BUILDING TO BE USED FOR MUNICIPAL PURPOSES, ACQUISITION AND INSTALLATION OF NEW PUBLIC WORKS DEPARTMENT FUEL TANKS, REPLACEMENT OF ADMINISTRATION BUILDING ROOF, ACQUISITION OF A STORM WATER UTILITY VEHICLE AND ACQUISITION AND INSTALLATION OF PARKING METERS; PLEDGING DESIGNATED REVENUES TO REPAY THE NOTE; AUTHORIZING THE PROPER OFFICIALS OF THE TOWN TO DO ALL OTHER THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE LOAN AGREEMENT AND SAID REVENUE NOTE; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Lake Park, Florida (the "Town"), pursuant to the provisions of the Florida Constitution; the Town Charter of the Town as amended and supplemented; Chapter 166, Florida Statutes, as amended and supplemented; and other applicable provisions of law (collectively, "Act") is authorized to borrow money, contract loans and issue bonds, notes or other obligations or evidences of indebtedness of any type or character to finance the undertaking of any capital or other project for purposes permitted under Florida law; and

WHEREAS, there is a need to fund the acquisition, construction and equipping of certain improvements to land to be used for a municipal parking facility, acquisition of a building to be used for municipal purposes, acquisition and installation of new Public Works Department fuel tanks, replacement of the administration building roof, acquisition of a storm water utility vehicle and acquisition and installation of parking meters (collectively, the "Project"); and

WHEREAS, Bank of America, N.A. (the "Financial Institution") has agreed to make a loan to the Town in an amount of not exceeding \$1,500,000 to be used by the Town to finance the costs of the Project, including, but not limited to, planning, design, engineering and architectural costs; and

**WHEREAS**, the Financial Institution's commitment to provide a loan to the Town is conditioned upon the Town agreeing to secure its obligations under the Note (as defined herein) with a pledge of Designated Revenues (as defined herein) to pay principal of, redemption premium, if any, and interest on the Note issued under the Loan Agreement (as defined herein); and

**WHEREAS**, the Town deems it to be in its best interest to enter into a loan agreement with the Financial Institution, the form of which is attached hereto as Exhibit A (the "Loan Agreement"), for the purpose of setting forth the terms and provisions by which the Financial Institution will permit the Town to borrow not exceeding \$1,500,000 in aggregate principal amount; and

**WHEREAS**, the form of the Note, the terms and the rights, security and remedies of the holder of the Note shall be as prescribed in the Loan Agreement; and

**WHEREAS**, to the extent permitted by Section 163.358, Florida Statutes, the Town has previously delegated to the Town of Lake Park, Florida Community Redevelopment Agency (the "CRA") the Town's community redevelopment powers under Part III of Chapter 163, Florida Statutes (the "Act"), and the CRA has all of the statutory powers conferred upon it by Section 163.370, Florida Statutes, including the power and authority to enter into contracts or interlocal agreements with other public entities to borrow money and accept loans and any other form of financial assistance from such public entities for the purposes of the Act.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA THAT:**

**SECTION 1. Definitions.** Any term not otherwise defined in this Resolution shall have the meaning ascribed to such term in the Loan Agreement.

**SECTION 2. Authority for this Resolution.** This Resolution is adopted pursuant to the provisions of the Act.

**SECTION 3. Resolution Constitutes Contract.** In consideration of the acceptance of the Note authorized to be issued hereunder and under the Loan Agreement by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Town, and such Noteholder and the covenants and agreements herein set forth to be performed by said Town shall be for the equal benefit, protection and security of the Noteholder.

**SECTION 4. The Loan Agreement.** The Loan Agreement, in substantially the form submitted to this meeting as Exhibit A, be and the same is hereby approved. The Mayor or the Vice-Mayor is hereby authorized and directed to execute, and the Town Clerk, or any Deputy Town Clerk to attest, the Loan Agreement and to deliver the same to the Financial Institution substantially in the form presented to this meeting, but with such changes, insertions and omissions (upon advice of the Town Attorney and Bond Counsel) as shall be approved by the

Mayor or Vice-Mayor (such approval to be conclusively evidenced by the execution and delivery thereof), and the Town Clerk, or any Deputy Town Clerk is hereby authorized and directed to affix and attest the seal of the Town thereto. Additionally, the execution and delivery of the Loan Agreement shall be subject to delivery by the Financial Institution of a truth-in-bonding statement and disclosure statement as required by Section 218.385 of the Florida Statutes.

**SECTION 5. Authorization of the Note; Negotiated Sale of the Note.** Subject and pursuant to the provisions of this Resolution and the Loan Agreement, an obligation of the Town, to be known as "Town of Lake Park, Florida Public Improvement Revenue Note, Series 2009" (with such other designation as the Town shall deem appropriate at the time of execution and delivery thereof, the "Note") is hereby authorized to be issued in aggregate principal amount of not exceeding ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) for the purpose of the costs of the Project. The Town hereby authorizes the negotiated sale of the Note to the Financial Institution pursuant to the provisions of this Resolution and the Loan Agreement.

**SECTION 6. The Interlocal Agreement.** The Interlocal Agreement (the "Interlocal Agreement") with the Town of Lake Park, Florida Community Redevelopment Agency (the "CRA"), in substantially the form submitted to this meeting as Exhibit B, be and the same is hereby approved. The Mayor or the Vice-Mayor is hereby authorized and directed to execute, and the Town Clerk, or any Deputy Town Clerk to attest, the Interlocal Agreement and to deliver the same to the CRA substantially in the form presented to this meeting, but with such changes, insertions and omissions (upon advice of the Town Attorney and Bond Counsel) as shall be approved by the Mayor or Vice-Mayor (such approval to be conclusively evidenced by the execution and delivery thereof), and the Town Clerk, or any Deputy Town Clerk is hereby authorized and directed to affix and attest the seal of the Town thereto.

**SECTION 7. Designation of Note as Town's "Qualified Tax-Exempt Obligation."** The Town (including all subordinate entities and any entities that issue debt on behalf of the Town) does not expect to issue more than \$30,000,000 in tax-exempt obligations during the calendar year ending December 31, 2009, and, therefore, the Town hereby designates the Note, as the Town's "qualified tax-exempt obligation," as such term is defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended (the "Code").

**SECTION 8. Description of the Note.** The text of the Note shall be substantially in the form attached as Exhibit A to the Loan Agreement, with such omissions, insertions and variations as may be necessary and desirable. The Note shall be in typewritten form and shall be dated the date of its delivery and bear interest from its date at the rate or rates set forth in the Note.

All payments of principal of and interest on the Note shall be payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts and shall be made to the Noteholder thereof by check mailed to the Noteholder at the address designated in writing by the Noteholder for purposes of payment

or by bank wire or bank transfer as such Noteholder may specify in writing to the Town or otherwise as the Town and such Noteholder may agree.

**SECTION 9. Execution of the Note; Appointment of Registrar and Paying Agent.** The Note shall be executed in the name of the Town by the manual or facsimile signature of the Mayor (or in her absence, the Vice-Mayor) and the official seal shall be affixed thereto, or imprinted or reproduced thereon, and attested by the manual or facsimile signature of the Town Clerk. In case any one or more of the officers, who shall have signed or sealed the Note, shall cease to be such officer of the Town, as the case may be, before the Note so signed and sealed shall have been actually delivered, such Note may nevertheless be delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. Any Note may be signed and sealed on behalf of the Town by such person who at the actual time of the execution of such Note shall hold the proper office, although at the date the Note shall actually be delivered, such person may not have held such office or may not have been so authorized.

The Director of Finance is hereby appointed to serve as Registrar and Paying Agent for the Note.

**SECTION 10. Application of Note Proceeds.** Proceeds of the Note shall be used for purposes of financing the costs of the Project.

**SECTION 11. Tax Covenant.** In order to maintain the exclusion from gross income for purposes of Federal income taxation of interest on the Note, the Town shall comply with each requirement of the Code necessary to maintain the exclusion of interest on the Note from gross income for Federal income tax purposes. In furtherance of the covenant contained in the preceding sentence, the Town agrees to continually comply with the provisions of the Tax Certificate to be executed by the Town, at the time the Note is issued, as such certificate may be amended from time to time, as a source of guidance for achieving compliance with the Code (herein referred to as the "Tax Certificate").

The Town shall make any and all payments required to be made to the United States Department of the Treasury in connection with the Note pursuant to Section 148(f) of the Code from amounts on deposit in the funds and accounts established under this Resolution and available therefor.

Notwithstanding any other provision of this Resolution to the contrary, so long as necessary in order to maintain the exclusion from gross income of interest on the Note for Federal income tax purposes, the covenants contained in this Section shall survive the payment of the Note and the interest thereon, including any payment or defeasance thereof.

The Town shall not use or permit the use of any of the proceeds of the Note, or any other funds of the Town, directly or indirectly, to acquire any securities, obligations or other investment property, and shall not take or permit to be taken any other action or actions, which would cause any Note to be an "arbitrage bond" as defined in Section 148 of the Code.

**SECTION 12. Town's Pledge of Designated Revenues For the Repayment of the Note.** In consideration of making a loan and the Financial Institution has requested that the Town pledge Designated Revenues to pay the principal of, redemption premium, if any, and interest on the Note. The Town hereby pledges Designated Revenues, in amounts sufficient to pay the principal of, redemption premium, if any, and interest on the Note, as the same become due.

For the purposes hereof, "Designated Revenues" shall mean: (a) the Town Moneys set aside in the General Fund for purposes of payment of the Note, (b) the proceeds of the Note pending the application thereof, and (c) any other additional moneys the Town may elect by subsequent proceedings of the Town to encumber for the payment of the principal of, redemption premium, if any, and interest on the Note.

Town Moneys shall mean the moneys budgeted and appropriated by the Town from not otherwise pledged, restricted or encumbered non-ad valorem revenues for the purposes of repayment of the Note, pursuant to Section 12 hereof.

SUCH PLEDGE OF THE DESIGNATED REVENUES IN CONNECTION WITH THE NOTE SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE TOWN OR THE STATE OF FLORIDA, WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY IN THE MANNER AND TO THE EXTENT SET FORTH IN THIS RESOLUTION. NO HOLDER OF A NOTE SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR PALM BEACH COUNTY, FLORIDA, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THE NOTE OR THE INTEREST THEREON.

**SECTION 13. Covenant To Budget And Appropriate.** The Town covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from non-ad valorem revenues lawfully available, amounts sufficient to pay the principal of, redemption price, if applicable, and interest on the Note when due, whether at maturity or by mandatory sinking fund redemption, all in accordance with the provisions of this Resolution and the Loan Agreement. Such covenant and agreement on the part of the Town 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 Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town, which generate non-ad valorem revenues.

**SECTION 14. Modification or Amendment.** No modification or amendment of this Resolution or of any resolution amendatory thereof or supplemental thereto, may be made without the consent in writing of the Financial Institution.

**SECTION 15. Additional Authorization.** That the Mayor, Vice-Mayor, the Town Clerk, and any other proper official of the Town, be and each of them is hereby authorized

and directed to execute and deliver any and all documents and instruments, and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution and the Loan Agreement.

**SECTION 16. Remedies of Noteholder.** Should the Town default in its obligations created by this Resolution or the Loan Agreement the Financial Institution, may, in addition to any remedy set forth in this Resolution, or the Loan Agreement, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State of Florida, or granted and contained in this Resolution or the Loan Agreement, and may enforce and compel the performance of all duties required by this Resolution, the Loan Agreement, or by any applicable statutes to be performed by the Town or by any officer thereof.

**SECTION 17. Severability of Invalid Provisions.** If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions of this Resolution.

**SECTION 18. Effective Date.** This Resolution shall take effect upon its adoption.

[Remainder of Page Intentionally Left Blank]

The foregoing Resolution was offered by Commissioner Osterman, who moved its adoption. The motion was seconded by Commissioner Rumsey and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>Absent</u>	_____
VICE-MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____

The Town Commission thereupon declared the foregoing Resolution NO. 30-08-09 duly passed and adopted this 5 day of August, 2009.

TOWN OF LAKE PARK, FLORIDA

BY: Jeffery Carey  
DESCA DUBOIS  
MAYOR

ATTEST:

Vivian M. Lemley  
VIVIAN M. LEMLEY  
TOWN CLERK



Approved as to form and legal sufficiency:

BY: Thomas J. Baird  
THOMAS J. BAIRD  
TOWN ATTORNEY

---

---

**LOAN AGREEMENT**

**BETWEEN**

**TOWN OF LAKE PARK, FLORIDA**

**AND**

**BANK OF AMERICA, N.A.**

**Dated as of August 7, 2009**

---

---

This **LOAN** (the "Agreement") is made and entered into on August 7, 2009, by and between the Town of Lake Park, Florida, a municipal corporation in the State of Florida, and its successors and assigns (the "Town"), and Bank of America, N.A., a national banking association, and its successors and assigns (the "Financial Institution");

**WITNESSETH:**

**WHEREAS**, the Town of Lake Park, Florida (the "Town"), pursuant to the provisions of the Florida Constitution; the Town Charter of the Town as amended and supplemented; Chapter 166, Florida Statutes, as amended and supplemented; and other applicable provisions of law (collectively, the "Act") is authorized to borrow money, contract loans and issue bonds, notes or other obligations or evidences of indebtedness of any type or character to finance the undertaking of any capital or other project for purposes permitted under Florida law; and

**WHEREAS**, there is a need to provide funds for the acquisition, construction and equipping of certain improvements to land to be used for a municipal parking facility, acquisition of a building to be used for municipal purposes, acquisition and installation of new Public Works Department fuel tanks, replacement of the administration building roof, acquisition of a storm water utility vehicle and acquisition of parking meters (collectively, the "Project"); and

**WHEREAS**, the Town finds that the Project will serve a public purpose under the Act; and

**WHEREAS**, the Financial Institution is willing to loan to the Town, and the Town is willing to borrow pursuant to the terms of this Agreement, money in an aggregate principal amount of \$1,475,000, to finance costs of the Project.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH:**

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, **DO HEREBY AGREE** as follows:

**ARTICLE I**  
**DEFINITION OF TERMS**

**SECTION 1.01. Definitions.** The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings in this Article I specified, unless the context clearly otherwise requires.

“**Act**” shall mean the Florida Constitution, Chapter 166 of the Florida Statutes, as amended and supplemented and the Charter of the Town, as amended and supplemented, and other applicable provisions of the law.

“**Agreement**” shall mean this Loan Agreement, dated August 7, 2009, between the Town and the Financial Institution and any and all modifications, alterations, amendment and supplements hereto made in accordance with the provisions hereof.

“**Bond Counsel**” shall mean Edwards Angell Palmer & Dodge LLP.

“**Clerk**” shall mean the Clerk of the Town.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, the applicable Treasury Regulations promulgated thereunder and any administrative or individual interpretations of the same published in a form on which the Town may rely as a matter of law.

“**Designated Revenues**” shall mean (a) the Town Moneys set aside in the General Fund pursuant to Section 2.04 hereof for purposes of payment of the Series 2009 Note, (b) the proceeds of the Series 2009 Note pending the application thereof and (c) any other additional moneys the Town may elect by subsequent proceedings of the Town to encumber for the payment of the principal of, redemption premium, if any, and interest on the Series 2009 Note.

“**Financial Institution**” shall mean Bank of America, N.A..

“**Interest Rate on the Series 2009 Note**” shall have the meaning ascribed to such term in the Note.

“**Loan**” shall mean the outstanding principal amount from time to time of the Series 2009 Note issued hereunder.

“**Non-Ad Valorem Revenues**” shall mean all legally available revenues of the Town derived from any source whatever other than ad valorem taxation on real and personal property, but including appropriable fund balances within all funds over which the Town Commission of the Town has full and complete discretion to appropriate the resources therein and which are legally available for payment of debt service by the Town.

“**Maturity Date**” shall mean October 1, 2014.

“**Noteholder**” shall mean Bank of America, N.A., or any subsequent holder of any Series 2009 Note.

“**Note Resolution**” shall mean Resolution No. \_\_\_\_-09, adopted by the Town Commission on August 5, 2009, which among other things authorized the issuance of the Series 2009 Note pursuant to this Agreement to finance the costs of the Project.

“**Payment Date**” shall mean: (i) with respect to principal, October 1 of each year (beginning on October 1, 2010) (each a “Principal Payment Date”) or any date the principal of the Series 2009 Note is optionally prepaid in whole or in part, (ii) with respect to interest, April 1, and October 1 of each year (beginning on April 1, 2010) or any date the principal of a Series 2009 Note is optionally prepaid in whole or in part, and (iii) the Maturity Date.

“**Project**” shall refer to the acquisition, construction and equipping of certain improvements to land to be used for a municipal parking facility, acquisition of a building to be used for municipal purposes, acquisition and installation of new Public Works Department fuel tanks, replacement of the administrative building roof, acquisition of a storm water utility vehicle and acquisition of parking meters.

“**Series 2009 Note**” or “**Note**” shall mean the Town’s Public Improvement Revenue Note, Series 2009.

“**State**” shall mean the State of Florida.

“**Town**” shall mean the Town of Lake Park, Florida, a municipal corporation in the State of Florida.

“**Town Moneys**” shall mean the moneys budgeted and appropriated by the Town from not otherwise pledged, restricted or encumbered Non-Ad Valorem Revenues pursuant to the Town’s covenant to budget and appropriate such Non-Ad Valorem Revenues.

**SECTION 1.02. Interpretation.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Note Resolution.

This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**SECTION 1.03. Titles and Headings.** The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

(End of Article I)

**ARTICLE II**  
**REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**SECTION 2.01. Representations by the Town.** The Town represents and warrants that:

(1) The Town is a municipal corporation in the State validly existing under the laws of the State, including the Act. Pursuant to the Note Resolution, the Town has authorized the issuance of the Series 2009 Note and the execution and delivery of this Agreement, and the performance by the Town of all of its obligations hereunder and under the Series 2009 Note, and the Town has the power and authority to execute and deliver this Agreement. This Agreement and the Note have been duly executed and delivered by and constitute the legal, valid and binding obligations of the Town, enforceable against the Town in accordance with their respective terms, subject to bankruptcy laws and other laws affecting creditor's rights and the exercise of judicial discretion.

(2) The Town has complied with all of the provisions of the constitution and laws of the State, including the Act, and has full power and authority to enter into and consummate all transactions contemplated by this Agreement or under the Series 2009 Note, and to perform all of its obligations hereunder and the transactions contemplated hereby do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, agreement, instrument or commitment to which the Town is a party or by which the Town is bound.

(3) There are no actions, suits or proceedings pending or, to the knowledge of the Town, threatened against or affecting the Town or involving the validity or enforceability of this Agreement, the Note Resolution or the Series 2009 Note, at law or in equity, or before or by any governmental authority, except actions, suits and proceedings that are fully covered by insurance or that, if adversely determined, would not materially impair the ability of the Town to perform the Town's obligations under this Agreement or under the Series 2009 Note.

(4) The financial information furnished to the Financial Institution in connection with this Loan Agreement is complete and accurate, and Town has no known undisclosed direct or contingent liability.

(5) The Town has not incurred any debts, liabilities, or obligations and has not committed itself to incur any debts, liabilities, or obligations other than those disclosed to the Financial Institution in connection with the line of credit hereunder or shown on the financial statements submitted to Financial Institution.

(6) The Town will furnish to the Financial Institution within 270 days after the close of each Fiscal Year an annual audited financial statement of the Town certified by an independent certified public accountant.

(7) The Town shall provide the Financial Institution with its annual budget upon request of the Financial Institution, and the Town shall provide the Financial Institution with the right to inspect or receive copies of other reasonable financial reports, information, accounts, statements, documents upon reasonable prior notice.

**SECTION 2.02. General Representations, Warranties and Covenants of the Financial Institution.** The Financial Institution hereby represents, warrants and agrees that it is a national banking corporation authorized to execute and deliver this Agreement and to perform its obligations hereunder, and such execution and delivery will not constitute a violation of its charter, articles of association or bylaws. Pursuant to the terms and provisions of this Agreement, the Financial Institution agrees to loan to the Town up to \$1,475,000 for the purpose of financing or refinancing the Project.

**SECTION 2.03. Tax Covenant.** In order to maintain the exclusion from gross income for purposes of Federal income taxation of interest on the Series 2009 Note, the Town shall comply with each necessary requirement of and not permit any omission under the Code to maintain the exclusion of interest on the Series 2009 Note from gross income for Federal income tax purposes. In furtherance of the covenant contained in the preceding sentence, the Town agrees to continually comply with the provisions of the Tax Certificate, to be executed by the Town, at the time the Series 2009 Note is issued, as such certificate may be amended from time to time, as a source of guidance for achieving compliance with the Code (herein referred to as the "Tax Certificate").

The Town shall make any and all payments required to be made to the United States Department of the Treasury in connection with the Series 2009 Note pursuant to Section 148(f) of the Code from amounts available therefor.

Notwithstanding any other provision of the Note Resolution to the contrary, so long as necessary in order to maintain the exclusion from gross income of interest on the Series 2009 Note for Federal income tax purposes, the covenants contained in this Section shall survive the payment of the Series 2009 Note and the interest thereon, including any payment or defeasance thereof.

The Town shall not use or permit the use of any of the proceeds of the Series 2009 Note, or any other funds of the Town, directly or indirectly, to acquire any securities, obligations or other investment property, and shall not take or permit to be taken any other action or actions, which would cause any Series 2009 Note to be an "arbitrage bond" as defined in Section 148 of the Code.

**SECTION 2.04. Covenant to Budget and Appropriate.** The Town covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available, amounts sufficient to pay the principal of, redemption price, if applicable, and interest on the Note when due, whether at maturity or by mandatory sinking fund redemption, all in accordance with the provisions of this Agreement. Such covenant and agreement on the part of the Town 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 Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town, which generate Non-Ad Valorem Revenues.

The Town agrees that its covenant and agreement to budget and appropriate Non-Ad Valorem Revenues shall be deemed entered into for the benefit of Noteholders and this

obligation may be enforced by a court of competent jurisdiction. However, 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 Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Noteholder a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of such Town. However, the covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Note, in the manner described herein, Non-Ad Valorem Revenues, and placing on the Town 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(3), Florida Statutes, which provides, in part, that the governing body of each municipality 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 2.05. Future Borrowings.** The Town shall not hereafter incur any indebtedness payable from any Non-Ad Valorem Revenues, other than any Non-Ad Valorem Revenues accounted for in an enterprise fund under governmental accounting principles, which could, but for such future indebtedness, be lawfully used to pay principal of or interest on the Note (and any and all such indebtedness payable from Non-Ad Valorem Revenues, other than any Non-Ad Valorem Revenues accounted for in an enterprise fund under governmental accounting principles, whether now existing or incurred in the future, is referred to as "Competing Debt"), unless (i) the amount of Non-Ad Valorem Revenues, other than any Non Ad Valorem Revenues accounted for in an enterprise fund under governmental accounting principles, which could lawfully be used to pay principal of and interest on the Notes received by the Town during the fiscal year of the Town most recently concluded prior to the incurrence of such indebtedness, equals or exceeds 135% of the maximum amount of principal and interest scheduled to be payable on the Note and all Competing Debt (including the proposed debt) during the then current or any future fiscal year and (ii) the Town Manager or Director of Finance of the Town certifies in writing to the Financial Institution that to the best of his or her knowledge no event has occurred which would cause him or her to believe that the amount of Non-Ad Valorem Revenues, other than any Non-Ad Valorem Revenues accounted for in an enterprise fund under governmental accounting principles, which could lawfully be used to pay principal of and interest on the Notes to be received in any future fiscal year to be less than 135% of the amount of principal and interest scheduled to be payable on the Note and all Competing Debt during such fiscal year. For purposes of calculating the foregoing, if any indebtedness bears a variable rate of interest, then the interest rate on such indebtedness shall be assumed to be the higher of (i) the average rate of actual interest borne by such indebtedness during the most recent complete month prior to the date of issuance fo such proposed indebtedness, (ii) the Bond Buyer 25 Revenue Bond index as of the date 30 days prior to the incurrence of the additional debt, provided that if the Town shall have entered into an interest rate swap or interest rate cap or shall have taken any other action which has the effect of fixing or capping the interest rate on such indebtedness for the entire term thereof, then such fixed or capped rate shall be used as the applicable rate for the period of such swap or cap.

**SECTION 2.06. Payment Covenant.** The Town covenants that it shall duly and punctually pay from Designated Revenues the principal of the Series 2009 Note, the interest thereon at the Interest Rate on the Series 2009 Note on the Payment Dates and place and in the manner provided herein and in the Series 2009 Note according to the true intent and meaning thereof.

(End of Article II)

**ARTICLE III**  
**TOWN'S OBLIGATION, DESCRIPTION,**  
**PAYMENT TERMS, OPTIONAL PREPAYMENT**

**SECTION 3.01. Series 2009 Note Not to be Indebtedness of the Town or State. THE SERIES 2009 NOTE, WHEN DELIVERED BY THE TOWN PURSUANT TO THE TERMS OF THIS AGREEMENT, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE TOWN OR THE STATE OF FLORIDA, WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY AS HEREIN PROVIDED. NO NOTEHOLDER SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR PALM BEACH COUNTY, FLORIDA, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THE SERIES 2009 NOTE OR THE INTEREST THEREON.**

The Series 2009 Note is payable as to both principal, redemption premium, if any, and interest, from a lien on and pledge of the Designated Revenues in the manner herein provided.

The covenant to appropriate Non-Ad Valorem Revenues is not a pledge by the Town of such Non-Ad Valorem Revenues until appropriated in the Town's budget as Designated Revenues but is subject in all respects to the payment of obligations secured by a pledge of Non-Ad Valorem Revenues of the Town heretofore or hereafter entered into (including the payment of debt service on bonds or other debt obligations).

**SECTION 3.02. Description and Payment Terms of the Series 2009 Note; Optional Prepayment.**

(a) The Town shall, pursuant to authority granted under the Note Resolution, issue and deliver Series 2009 Note to the Financial Institution as Noteholder. The Series 2009 Note shall be designated as "Town of Lake Park, Florida Public Improvement Revenue Note, Series 2009" with such other designation as the Town deems appropriate and the outstanding principal amount of such Series 2009 Note shall not exceed One Million Four Hundred Seventy-Five Thousand Dollars (\$1,475,000). The Series 2009 Note shall be in the form attached hereto as Exhibit A.

(b) The Series 2009 Note shall be dated its date of delivery and bear interest from its date at the rate or rates set forth therein.

(c) Each Series 2009 Note shall be subject to prepayment in the manner set forth in the Series 2009 Note.

(d) Each Series 2009 Note shall be initially registered in the name of the Financial Institution. For so long as the Note remains unpaid, the Town will keep books and records for the registration and transfer of the Note. The Note shall be transferable only upon such registration books in any denomination. The person or entity in whose name a Note shall be registered shall be deemed the registered Noteholder and the absolute owner thereof for all purposes, and the payment of principal and interest on such Note shall be made only to the Noteholder. The

Financial Institution or any subsequent Noteholder shall be entitled to freely transfer, sell or assign the Note, so long as such sale or transfer is in accordance with all applicable federal and State securities rules, laws, and regulations.

(End of Article III)

**ARTICLE IV**  
**CONDITIONS FOR LOAN**

The Financial Institution shall not be obligated to make any Loan under this Agreement unless at the date specified for the making thereof the Town delivers to the Financial Institution:

(a) A certificate of the Director of Finance of the Town, dated as of the date of such Loan, to the effect that no Event of Default (as defined in Article V of this Agreement and the Note Resolution) which with the passage of time or the giving of notice or both, shall have occurred.

(b) In the event of a change in the Project, the opinion of Bond Counsel that such use shall not adversely affect the exclusion of interest on the Series 2009 Note from gross income for Federal income tax purposes; and

(c) An Opinion of Bond Counsel regarding the due authorization, execution, delivery, validity and enforceability of the Agreement and the Series 2009 Note and the due adoption of the Note Resolution (enforceability of such instruments may be subject to standard bankruptcy exceptions and the like), the exclusion of interest on the Series 2009 Note from gross income for Federal income tax purposes, the designation of the Series 2009 Note as the Town's "qualified tax-exempt obligation" for purposes of Section 265(b)(3)(B) of the Code, that the Series 2009 Note is not a "private activity bond" within the meaning of Section 57(a)(5) of the Code, interest on the Series 2009 Note is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, that such interest is not included in adjusted current earnings when calculating corporate alternative minimum taxable income and that the Series 2009 Note and the interest thereon are exempt from taxation under the existing laws of the State of Florida, except as to estate taxes imposed by Chapter 220, Florida Statutes, on interest, income or profits on debt obligations owned by corporations as defined therein; and

(d) Fully executed Series 2009 Note, dated the date of the Loan; and

(e) An executed tax certificate and Internal Revenue Service form 8038-G.

(f) On or before the execution of this Agreement, the Town shall have caused to be delivered to the Financial Institution the following items in form and substance acceptable to the Financial Institution:

(i) Opinion of Counsel to Town regarding the due authorization, execution, delivery, validity and enforceability of this Agreement and the due adoption of the Note Resolution (enforceability may be subject to standard bankruptcy exceptions and the like); and

(ii) A certified copy of the Note Resolution of the Town approving the form of this Agreement and authorizing the issuance of the Series 2009 Note in the principal amount of \$1,475,000 to finance the preliminary costs of the Project; and

(iii) Such additional certificates, instruments and all other closing documents as the Financial Institution, or its Counsel or Bond Counsel, or Counsel to the Town, may deem necessary or appropriate.

(g) Upon satisfaction of the conditions set forth in paragraphs (a)-(f) above, the Town may borrow up to \$1,475,000 from the Financial Institution. The Town shall apply the proceeds to pay for the costs of the Project which shall include but not be limited to:

(i) the costs of architectural and engineering services related to the Project, including, without limitation, the costs of preparation of studies, surveys, reports, tests, plans and specifications;

(ii) the costs of legal, accounting, marketing and other special services related to the Project;

(iii) costs and fees incurred in connection with the issuance of the Series 2009 Note subject to the requirements of the Code and the Tax Certificate;

(iv) fees and charges incurred in connection with applications to federal, state and local governmental agencies for any requisite approval or permits regarding the acquisition of the Project;

(v) costs incurred in connection with the acquisition of the Project, including any necessary rights-of-way, easements or other interests in real or personal property;

(vi) other costs and expenses relating to the Project which are included which are incurred for the purpose of providing for the "Project," and other facilities functionally related and subordinate thereto.

(End of Article IV)

**ARTICLE V**  
**EVENTS OF DEFAULT**

An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The Town shall fail to make payment of principal or interest on the Series 2009 Note when it becomes due and payable, whether by maturity, by acceleration at the discretion of the Financial Institution as described below, or otherwise; or

(b) Any representation or warranty of the Town contained in Article II of this Agreement shall prove to be untrue in any material respect, which can not reasonably be cured within 30 days; or

(c) Failure by the Town to observe and perform any covenant, condition or agreement on its part to be observed or performed by it under this Agreement or the Note Resolution other than as referred to in clauses (a) or (b) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the Town by the Noteholder, unless the Noteholder shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Noteholder will not withhold its consent to an extension of such time if corrective action is instituted by the Town within the applicable period and diligently pursued until the default is corrected; or

(d) The filing of a petition against or by the Town relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Town or for any relief relating to the Town under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the Town, and the continuance of any such event for 90 days undismissed or undischarged.

Upon the occurrence of an Event of Default the Financial Institution may pursue any available remedy at law or in equity or by statute, including any applicable law or statute of the United States of America or of the State, to enforce the payment of principal of an interest on the Note then outstanding or the obligations of the Town thereunder. Immediately and without notice, upon the occurrence of any Event of Default the Financial Institution may declare all obligations of the Town under this Agreement and the Note to be immediately due and payable without further action of any kind and upon such declaration the Note and the interest accrued thereon shall become immediately due and payable. In addition, and regardless whether such declaration is or is not made, the Financial Institution may also seek enforcement of and exercise all remedies available to it under any applicable law.

(End of Article V)

**ARTICLE VI**  
**MISCELLANEOUS**

**SECTION 6.01. Amendments, Changes or Modifications to the Agreement.** This Agreement shall not be amended, changed or modified without the prior written consent of the Financial Institution and the Town. The Town agrees to pay all of the Financial Institution's costs and reasonable attorney fees incurred in modifying and/or amending this Agreement at Town's request or behest.

**SECTION 6.02. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**SECTION 6.03. Severability.** If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such provisions or sections shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

**SECTION 6.04. Term of Agreement.** This Agreement shall be in full force and effect from the date hereof and shall continue in effect until the later of (i) October 1, 2024, or (ii) as long as the Series 2009 Note is outstanding.

**SECTION 6.05. Notice of Changes in Fact.** Promptly after the Town becomes aware of the same, the Town will notify the Financial Institution of (i) any change in any material fact or circumstance represented or warranted by the Town in this Agreement or in connection with the issuance of the Series 2009 Note, and (ii) any default or event which, with notice or lapse of time or both, could become a default under this Agreement, the Note Resolution or a Series 2009 Note specifying in each case the nature thereof and what action the Town has taken, is taking, and/or proposes to take with respect thereto.

**SECTION 6.06. Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent registered or certified mail, postage prepaid, to the Town, Town of Lake Park, Florida, 535 Park Avenue, Lake Park, Florida, 33403 Attention: Director of Finance, and to the Financial Institution, Bank of America, N.A., 9000 Southside Boulevard, Building 100, Jacksonville, Florida 32250, or at such other address as shall be furnished in writing by any such party to the other, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail.

**SECTION 6.07. Payments Due on Sundays and Holidays.** If any date on which a payment is to be made is a Saturday, Sunday, legal holiday or day on which Banking institutions are authorized by law to remain closed in the jurisdiction in which the payment is to be made, then such payment, notice or other action shall be made on the next succeeding day not a Saturday, Sunday, legal holiday or day on which such Banking institutions are authorized by law to remain closed, and no interest shall accrue for the period after such nominal date.

## **SECTION 6.08. Arbitration and Waiver of Jury Trial.**

(a) This Section 6.08 concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, that arise out of or relate to: (i) this Agreement (including any renewals, extensions or modifications); or (ii) the Note (collectively a "Claim"). For the purposes of this arbitration provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of the Financial Institution involved in the servicing, management or administration of any obligation described or evidenced by this Agreement.

(b) At the request of any party to this Agreement, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Arbitration Act"). The Arbitration Act will apply even though this Agreement provides that it is governed by the law of a specified state. The arbitration will take place on an individual basis without resort to any form of class action.

(c) Arbitration proceedings will be determined in accordance with the Arbitration Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA"), and the terms of this Section. In the event of any inconsistency, the terms of this paragraph shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, any party to this Agreement may substitute another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted in West Palm Beach, Florida. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed, judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s). The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Agreement.

(f) This Section does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv)

act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(g) The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

(h) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, without intending in any way to limit this agreement to arbitrate, to the extent any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Claim. This provision is a material inducement for the parties entering into this Agreement.

**SECTION 6.09. Incorporation by Reference.** All of the terms and obligations of the Note, Note Resolution and other applicable closing certificate and documents are hereby incorporated herein by reference as if said Note Resolution was fully set forth in this Agreement.

**SECTION 6.10. No Third Party Beneficiaries.** The terms and provisions of this Agreement shall inure exclusively to the benefit of the Town, the Financial Institution, the Noteholders, their successors and assigns and no other person shall have any rights hereunder.

(End of Article VI)

[Remainder of page left blank intentionally]

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Date of Execution set forth below.



FLORIDA

ATTEST:

By: Vivian M. Lemley  
Clerk of the Town of Lake Park, Florida

TOWN OF LAKE PARK, FLORIDA

By: Juffery Carey  
Mayor

Date of Execution: August 5, 2009

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: Linda A. Mason  
Title: Senior Vice President

EXHIBIT A  
TO AGREEMENT

No. R-1

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
TOWN OF LAKE PARK  
Public Improvement Revenue Note  
Series 2009

<u>Principal Sum</u>	<u>Interest Rate on the</u> <u>Series 2009 Note</u>	<u>Date of Issuance</u>	<u>Maturity Date</u>
\$1,475,000	_____ %	August 7, 2009	October 1, 2024

KNOW ALL MEN BY THESE PRESENTS, that the TOWN OF LAKE PARK, FLORIDA (the "Town"), for value received, hereby promises to pay, solely from the Designated Revenues described in the within mentioned Note Resolution, to the order of Bank of America, N.A., or its assigns (the "Payee"), at 9000 Southside Boulevard, Building 100, Jacksonville, Florida 32256, or at such other place as the Payee may from time to time designate in writing, the Principal Sum stated above (or such lesser amount as shall be outstanding hereunder) advanced pursuant to that certain Loan Agreement by and between Payee and the Town, dated August 7, 2009 (the "Agreement"), together with interest thereon at the Interest Rate on the Series 2009 Note (subject to adjustment as hereinafter provided) until the Maturity Date stated above or the date the principal amount of this Note is paid, such principal and interest being payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts and shall be made to the Payee hereof by check mailed to the Payee at the address designated in writing by the Payee for purposes of payment or by bank wire or bank transfer as such Payee may specify in writing to the Town or otherwise as the Town and Payee may agree.

This Note is one of an authorized issue of Notes authorized to be issued in the outstanding aggregate principal amount of not exceeding \$1,475,000 or like tenor and effect, except as to number and date of issue, under the authority of and in full compliance with the Constitution and statutes of the State of Florida, including, particularly, Chapter 166, Florida Statutes, as amended and supplemented, and other applicable provisions of law, and a resolution duly adopted by the Town on the 5th day of August, 2009, as such resolution may be amended and supplemented from time to time, and is subject to all terms and conditions of said resolution (the "Note Resolution"). Any term used in this Note and not otherwise defined shall have the meaning ascribed to such term in the Note Resolution or the Agreement, as the case may be.

Interest on this Note shall be payable semi-annually on each April 1 and October 1, beginning April 1, 2010. Interest on this Note shall be compounded monthly and computed on the basis of a 360-day year consisting of twelve (12) thirty-day months.

The principal amount of the Note shall be paid in annual installments on October 1 of each year commencing on October 1, 2010 through and including October 1, 2024 (“Final Maturity”) in such amounts as indicated on the attached Schedule A.

On October 1, 2024 the entire principal amount of this Note remaining unpaid, together with all interest accrued hereon, shall be unconditionally due and payable.

As used in this Note,

(1) “Code” means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto;

(2) “Determination of Taxability” shall mean interest on this Note is determined or declared by the Internal Revenue Service or a court of competent jurisdiction to be included in the gross income of the Owner for federal income tax purposes under the Code.

Upon the occurrence of a Determination of Taxability, the interest rate on this Note shall be adjusted to a rate equal to 154% of the interest rate otherwise borne hereby (the “Adjusted Interest Rate”), as of and from the date such determination would be applicable with respect to this Note (the “Accrual Date”); and (i) the Town shall pay on the Maturity Date or earlier redemption date (or if this Note shall have matured, within thirty days after demand) to the Payee, or any former Payee, as may be appropriately allocated, an amount equal to the sum of (1) the difference between (A) the total interest that would have accrued on this Note at the Adjusted Interest Rate from the Accrual Date to the Maturity Date or earlier redemption date, as the case may be, and (B) the actual interest paid by the Town on this Note from the Accrual Date to the Maturity Date or earlier redemption date, as the case may be, and (2) any interest and penalties required to be paid as a result of any additional State of Florida and federal income taxes imposed upon such Payee and/or former Payee arising as a result of such Determination of Taxability; and (ii) from and after the Accrual Date, this Note shall continue to bear interest at the Adjusted Interest Rate for the period such determination continues to be applicable with respect to this Note. This adjustment shall survive payment of this Note until such time as the federal statute of limitations under which the interest on this Note could be declared taxable under the Code shall have expired.

This Note may be prepaid in whole, or in part, on any date, with three (3) days prior written notice to the Payee, by payment in an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment; plus the Prepayment Fee. For purposes hereof, the Prepayment Fee will be the sum of fees calculated separately for each Prepaid Installment, as follows:

(i) The Payee will first determine the amount of interest which would have accrued each month at the Taxable Equivalent Rate for the Prepaid Installment had it remained outstanding until the applicable Original Payment Date, using the interest rate applicable to the Prepaid Installment under the Agreement.

(ii) The Payee will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment or redemption through the Original Payment Date, using the Treasury Rate.

(iii) If (i) minus (ii) for the Prepaid Installment is greater than zero, the Payee will discount the monthly differences to the date of prepayment or redemption by the Treasury Rate. The Payee will then add together all of the discounted monthly differences for the Prepaid Installment.

The following definitions will apply to the calculation of the Prepayment Fee:

(i) "Original Payment Dates" mean the dates on which the prepaid or redeemed principal would have been paid if there had been no prepayment or redemption. If any of the principal would have been paid later than the end of the fixed rate interest period in effect at the time of prepayment or redemption, then the Original Payment Date for that amount will be the last day of the interest period.

(ii) "Prepaid Installment" means the amount of the prepaid or redeemed principal which would have been paid on a single Original Payment Date.

(iii) "Taxable Equivalent Rate" means the interest rate per annum derived from the following formula: Interest Rate on the Series 2009 Note divided by the difference of (1 minus the Maximum Corporate Income Tax Rate). The "Maximum Corporate Income Tax Rate" is the highest marginal federal income tax rate charged to U.S. corporations in effect at the time of the prepayment calculation. The "Maximum Corporate Income Tax Rate" is currently 35% (or 0.35 in numerical terms).

(iv) "Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal to the Original Payment Date of the Prepaid Installment which are principal payments (calculated as of the date of prepayment in accordance with accepted financial practice and rounded to the nearest quarter-year), as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Bank shall select a comparable publication to determine the Treasury Rate.

Upon the occurrence of an Event of Default (as defined in the Agreement), the Payee may declare the entire debt then remaining unpaid hereunder immediately due and payable; and in any such default and acceleration, the Town shall also be obligated to pay (but only from the Designated Revenues) as part of the indebtedness evidenced by this Note, all costs of collection and enforcement hereof, including such fees as may be incurred on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist, including specifically but without limitation, claims, disputes and proceedings seeking adequate protection or relief from

the automatic stay. If any payment hereunder is not made within fifteen (15) days after it is due, then the Town shall also be obligated to pay, from any legally available funds of the Town, as a part of the indebtedness evidenced by this Note a late payment fee in the amount of 4% of delinquent payment, which late payment shall be due and payable immediately.

Notwithstanding any provision in this Note to the contrary, in no event shall the interest contracted for, charged or received in connection with this Note (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of nonusurious interest allowed under the State of Florida as presently in effect and to the extent an increase is allowable by such laws, but in no event shall any amount ever be paid or payable by the Town greater than the amount contracted for herein. In the event the maturity of this Note is accelerated or prepaid in accordance with the provisions hereof, then such amounts that constitute payments of interest, together with any costs or considerations which constitute interest under the laws of the State of Florida, may never exceed an amount which would result in payment of interest at a rate in excess of the nonusurious interest allowed by the laws of the State of Florida or the United States to the extent applicable, as presently in effect and to the extent an increase is allowable by such laws; and excess interest, if any, shall be canceled automatically as of the date of such acceleration, or, if theretofore paid, shall be credited on the principal amount of the Note unpaid, but such crediting shall not cure or waive any default under the Agreement or Note Resolution.

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

**THE NOTE, WHEN DELIVERED BY THE TOWN PURSUANT TO THE TERMS OF THE AGREEMENT AND THE NOTE RESOLUTION, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE TOWN OR OF THE STATE OF FLORIDA (THE "STATE"), WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE DESIGNATED REVENUES, AS PROVIDED IN THE NOTE RESOLUTION. NO NOTEHOLDER SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE TOWN OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THE NOTE OR THE INTEREST THEREON.**

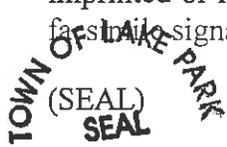
The Note has all the qualities and incidents of a negotiable instrument under Article 8 of the Uniform Commercial Code, the State of Florida, Chapter 678, Florida Statutes. This Note may be transferred or exchanged by the Noteholder hereof, but only upon the registration books maintained by the Town and in the manner provided in the Loan Agreement.

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

representations, warranties, and covenants made and set forth in the Note Resolution and the Loan Agreement and in the ancillary and closing documents relevant to this Note are remade and incorporated fully by reference herein.

The Town hereby waives presentment, demand, protest and notice of dishonor.

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



TOWN OF LAKE PARK, FLORIDA

ATTEST:

By: *Vivian M. Lemley*  
Town Clerk

By: *Puffery Carey*  
Title: Mayor

FORM OF CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This Note is one of the Notes delivered pursuant to the within mentioned Note Resolution.

DIRECTOR OF FINANCE,  
As Registrar

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

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

---

*(please print or typewrite name, address and tax identification number of assignee)*

---

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

---

\_\_\_\_\_ Attorney to transfer  
the within Note on the books kept for registration thereof, with full power of substitution in the  
premises.

SCHEDULE A

<u>October 1</u>	<u>Principal Payment</u>
2010	\$115,000
2011	125,000
2012	140,000
2013	140,000
2014	150,000
2015	65,000
2016	70,000
2017	70,000
2018	75,000
2019	80,000
2020	80,000
2021	85,000
2022	90,000
2023	90,000
2024*	100,000

---

\* Maturity Date

**INTERLOCAL AGREEMENT BETWEEN THE TOWN OF LAKE PARK, FLORIDA  
AND THE LAKE PARK COMMUNITY REDEVELOPMENT AGENCY**

**THIS INTERLOCAL AGREEMENT** is made and entered into this 5 day of August 2009 by and between the TOWN OF LAKE PARK, a municipal corporation of the State of Florida (hereinafter referred to as "TOWN") and the LAKE PARK COMMUNITY REDEVELOPMENT AGENCY, a Florida public agency established pursuant to Chapter 163, Part III, Florida Statutes (hereinafter referred to as "CRA").

**WITNESSETH:**

**WHEREAS**, the CRA is making certain land acquisitions (hereinafter referred to as "LAND ACQUISITIONS") and undertaking certain improvements (hereinafter referred to as "IMPROVEMENTS") which are within the community redevelopment area of the TOWN; and

**WHEREAS**, the TOWN believes that the LAND ACQUISITIONS and IMPROVEMENTS serve a public purpose, and wishes to support the LAND ACQUISITIONS and IMPROVEMENTS by providing a loan to the CRA; and

**WHEREAS**, after completion of the IMPROVEMENTS, the CRA shall be responsible for the subsequent maintenance of the IMPROVEMENTS and related LAND ACQUISITIONS.

**NOW THEREFORE**, in consideration of the mutual covenants, promises, and agreements herein contained, the parties agree as follows:

1. The above recitals are true, correct and incorporated herein.
2. The TOWN agrees to provide the CRA with a loan in amount of \$940,000 (hereinafter referred to as "CRA-LOAN").
3. The TOWN is obtaining the funds with which to make the CRA-LOAN from a loan (the "TOWN-LOAN") the TOWN is obtaining from a bank.
4. In consideration for the CRA-LOAN the CRA agrees to assume all responsibility

for the acquisition of the LAND ACQUISITIONS and for the design, bidding, contact preparation, and contract administration necessary for the IMPROVEMENTS, including payment(s) to contractor(s) pursuant to all applicable governmental laws and regulations and will comply with all applicable statutes and permitting requirements in the selection of contractors and the installation of the IMPROVEMENTS.

5. The CRA shall obtain or provide all labor and materials necessary for the design and installation of the IMPROVEMENTS. The CRA also agrees to assume financial responsibility for the completion of any portions of the IMPROVEMENTS that are not fully funded by the CRA-LOAN set forth in Paragraph 2, above.
6. As it relates to this Interlocal Agreement, and upon providing reasonable notice, the TOWN may initiate a financial systems analysis and/or an internal fiscal control evaluation of the CRA's use of the proceeds from the CRA-LOAN by an independent auditing firm employed by the TOWN at any time TOWN deems necessary.
7. The CRA shall be responsible for the subsequent maintenance of the IMPROVEMENTS and related LAND ACQUISITIONS. The CRA shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations from any federal, state, regional agency or local government if any are required for the IMPROVEMENTS and related LAND ACQUISITIONS.
8. The CRA shall make payments to the TOWN from legally available moneys of

the CRA in such amounts and at such times as shall correspond to the TOWN's debt service payment obligations on the portion of the TOWN-LOAN that was used to fund the CRA-LOAN. The TOWN will provide the CRA with the applicable debt service payment schedule. Nothing in this Interlocal Agreement shall be construed to compel the ad valorem taxing power of the TOWN, Palm Beach County, Florida or any political sub-division of the State of Florida or taxation in any form of any property therein to pay the CRA-LOAN.

9. Each party shall be liable for its own actions and negligence and to the extent permitted by law the CRA shall indemnify, defend and hold harmless the TOWN against any actions, claims or damages arising out of the CRA's negligence in connection with this Interlocal Agreement or the performance by the CRA as it may relate to this Interlocal Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 786.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligence, willful or intentional acts or omissions.
10. Pursuant to this Agreement, the CRA shall, maintain in force its status as an insured governmental special district, and shall provide evidence of this insurance prior to the TOWN's execution of this Interlocal Agreement.
11. The CRA may require each contractor engaged by the CRA for work associated with the IMPROVEMENTS to maintain Worker's Compensation coverage in accordance with Florida Statutes, and;
  - a. Commercial General Liability coverage, including vehicle coverage, in

combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000.00). The TOWN shall be included in the coverage as an additional insured.

- b. A payment and performance bond for the total amount of the IMPROVEMENTS in accordance with Florida Statute 255.05.
12. In the event of termination of this Interlocal Agreement, the CRA shall not be relieved of any liability for damages sustained by the TOWN by virtue of any breach of the Interlocal Agreement by the CRA.
13. The TOWN and CRA agree that no person shall, on the grounds of race, color, national origin, sexual orientation, religion or creed, sex, age, or handicap be discriminated against in performance of this Interlocal Agreement.
14. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Interlocal Agreement and the same shall remain in full force and effect.
15. This Interlocal Agreement shall be construed and governed by the laws of the State of Florida. Any legal action necessary to enforce this Interlocal Agreement shall be held in Palm Beach County.
16. Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and conditions of this Interlocal Agreement shall be born by the respective parties; provided, however, that this clause pertains only to the parties to its Interlocal Agreement.
17. Except as expressly permitted herein to the contrary, no modification,

amendments, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

18. Each party agrees to abide by all applicable governmental codes, laws, orders, rules and regulations.
19. Neither party shall be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party of the liability limits established in Section 768.28, Florida Statutes.
20. This Interlocal, Agreement represents the entire understanding among the parties, and supercedes all other negotiations, or agreements, written or oral, relating to this Agreement.
21. This Interlocal Agreement is entered into pursuant to the provisions of Section 163.370, Florida Statutes and constitutes an interlocal agreement between the TOWN and the CRA pursuant to the provisions of the Florida Interlocal Cooperation Act of 1969 (Section 163.01, Florida Statutes).

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement and it

is effective on the date first above written.

LAKE PARK COMMUNITY  
REDEVELOPMENT AGENCY

TOWN OF LAKE PARK, FLORIDA

Jeffery Carey  
CHAIR

Jeffery Carey  
MAYOR



ATTEST:  
By: Vivian M. Lemley  
AGENCY CLERK

ATTEST:  
By: Vivian M. Lemley  
TOWN CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
AGENCY ATTORNEY

By: [Signature]  
TOWN ATTORNEY

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

Date: August 5, 2009