

RESOLUTION 2005 -039

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING THE BORROWING OF NOT EXCEEDING \$6,900,000 PURSUANT TO THE TERMS OF THE LOAN AGREEMENT IN ORDER TO FINANCE THE ACQUISITION OF CERTAIN REAL PROPERTY WITHIN THE TOWN, INCLUDING THE REIMBURSEMENT OF CERTAIN COSTS INCURRED BY THE TOWN IN CONNECTION THEREWITH, IF ANY; AUTHORIZING THE EXECUTION OF A LOAN NOTE OR LOAN NOTES TO EVIDENCE SUCH BORROWING AND AGREEING TO SECURE SUCH BORROWING WITH A COVENANT TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES AS PROVIDED IN THE LOAN AGREEMENT AND CERTAIN GRANT PROCEEDS; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO EFFECT SUCH BORROWING; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

SECTION 1. DEFINITIONS. Unless the context of use indicates another meaning or intent, the following words and terms as used in this Resolution shall have the following meanings.

"Act" means, collectively, Part I, Chapter 166, Florida Statutes, Part I, Chapter 163, Florida Statutes, the Town Charter of the Town of Southwest Ranches, Florida, and all other applicable provisions of law.

"Additional Payments" means the payments required to be made by the Public Agency pursuant to Sections 5.02(b), 5.02(c), 5.02(d), 5.05 and 6.06(e) of the Loan Agreement.

"Broward County" means Broward County, Florida, a political subdivision of the State of Florida.

"Commission" means the Florida Local Government Finance Commission, and any assigns or successors thereto.

"Designated Revenues" means (1) Public Agency Moneys budgeted and appropriated for purposes of payment of the Loan Repayments and any other amounts due under the Loan Agreement, (2) the Pledged Revenues, and (3) the proceeds of the

Loan pending the application thereof.

"Existing Note" shall mean the Town of Southwest Ranches, Florida Revenue Note, Draw No. A-1-1, dated January 6, 2004, in the aggregate principal amount of \$2,800,000.

"Florida Communities Trust" shall mean that nonregulatory state agency and instrumentality and a public body corporate and politic established and existing pursuant to Part III, Chapter 380, Florida Statutes.

"Loan" means the loan to be made by the Commission to the Public Agency from proceeds of the Series A Notes in accordance with the terms of this Resolution and of the Loan Agreement.

"Loan Agreement" means the Loan Agreement, dated as of January 6, 2004, between the Public Agency and the Commission, as the same may be amended and supplemented.

"Loan No. A-2" means the Loan designated as "Loan No. A-2" the proceeds of which are to be used to finance Project A-2.

"Loan Rate" has the meaning set forth in the Loan Agreement.

"Loan Repayments" or **"Repayments"** means the payments of principal and interest at the Loan Rate on the Loan amounts payable by the Public Agency pursuant to the provisions of the Loan Agreement and all other payments, including Additional Payments, payable by the Public Agency pursuant to the provisions of the Loan Agreement.

"Mayor" means the Mayor of the Public Agency, and such other person as may be duly authorized to act on his or her behalf.

"Non-Ad Valorem Revenues" means all legally available revenues of the Public Agency derived from any source whatsoever other than ad valorem taxation on real and personal property, which are legally available to make the Loan Repayments required in the Loan Agreement, but only after provision has been made by the Public Agency for the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Public Agency or which are legally mandated by applicable law.

"Pledged Revenues" means all grant monies received from the Florida Communities Trust and Broward County with respect to Project A-2.

"Program" means the Pooled Commercial Paper Loan Program established by the Commission.

"Project A-2" means the acquisition of certain real property located within the Public Agency as generally described in Exhibit A hereto, and more particularly described in the plans and specifications on file with the Public Agency, as the same may be approved, amended or modified from time to time. Such real property shall be used as a passive park.

"Public Agency" means the Town of Southwest Ranches, Florida, a municipal corporation of the State of Florida.

"Public Agency Moneys" shall mean the moneys budgeted and appropriated by the Public Agency for payment of the Loan Repayments and any other amounts due hereunder from Non-Ad Valorem Revenues pursuant to the Public Agency's covenant to budget and appropriate such Non-Ad Valorem Revenues contained in Section 6.04 of the Loan Agreement.

"Repayment Schedule" means the schedule of Repayments of the Loan as determined by the Town Administrator in accordance with Section 6 hereof, as the same may be amended or modified from time to time.

"Resolution" means this Resolution, as the same may from time to time be amended, modified or supplemented.

"Series A Notes" means the Commission's Pooled Commercial Paper Notes, Series A (Governmental Issue), to be issued from time to time by the Commission.

"Town Administrator" means the Town Administrator the Public Agency or such other person who is duly authorized to act on his or her behalf.

"Town Clerk" means the Town Clerk of the Public Agency, and such other person as may be duly authorized to act on his or her behalf.

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 2. AUTHORITY FOR RESOLUTION. This Resolution is adopted pursuant to the provisions of the Act.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The Commission has been established for the principal purpose of issuing commercial paper notes in order to provide funds to loan to public agencies, such as the

Public Agency, desiring to finance the cost of acquiring, constructing and equipping capital improvements and to finance other governmental needs.

(B) In furtherance of the foregoing, the Commission shall issue, from time to time, commercial paper notes to be known as "Florida Local Government Finance Commission Pooled Commercial Paper Notes, Series A (Governmental Issue)" and shall loan the proceeds of such Series A Notes to public agencies, including the Public Agency.

(C) Pursuant to the authority of the Act, the Commission has agreed to loan, from time to time, to the Public Agency such amounts as shall be authorized herein and in the Loan Agreement in order to enable the Public Agency to finance, refinance and/or reimburse the costs of the acquisition, construction and equipping of various capital improvements, including Project A-2, and the Public Agency desires to borrow such amounts from the Commission subject to the terms and conditions of the Loan Agreement.

(D) There is presently a need by the Public Agency to finance Project A-2 and the most cost-effective means by which to finance Project A-2 is by use of moneys obtained pursuant to the Program by means of the Loan.

(E) The Public Agency is authorized under and pursuant to the Act to enter into the Loan Agreement for the purposes set forth therein.

(F) The Public Agency hereby determines that the provision of funds by the Commission to the Public Agency in the form of Loan No. A-2 pursuant to the terms of the Loan Agreement and the financing of the costs of Project A-2 will assist in the development and maintenance of the public welfare of the residents of the Public Agency, and shall serve a public purpose by improving the health and living conditions, and providing governmental services, facilities and programs and will promote the most efficient and economical development of such services, facilities and programs.

(G) Loan No. A-2 shall be repaid solely from the Designated Revenues described in the Loan Agreement and herein. Such Designated Revenues shall include moneys derived from a covenant to budget and appropriate legally available Non-Ad Valorem Revenues and the Pledged Revenues. The ad valorem taxing power of the Public Agency will never be necessary or authorized to make the Loan Repayments.

(H) Due to the potential volatility of the market for tax-exempt obligations such as the Note or Notes to be issued evidencing Loan No. A-2, the complexity of the transactions relating to such Note or Notes and the uniqueness of the Program, it is in the best interest of the Public Agency to deliver the Note or Notes to the Commission pursuant to the Program by a negotiated sale pursuant to Section 218.385(1), Florida Statutes, allowing the Public Agency to utilize the Program in which it participates from time to time and to enter the market at the most advantageous time, rather than at a specified advertised date, thereby permitting the Public Agency to obtain the best possible price, issuance costs and interest rate for such Note or Notes.

SECTION 4. TERMS OF LOAN. The Public Agency hereby approves of the Loan in an aggregate principal amount of not exceeding \$6,900,000 for the purposes of providing the Public Agency with sufficient funds to finance, refinance or reimburse the costs of Project A-2. The Mayor, the Town Administrator and the Town Clerk are hereby authorized to execute, seal and deliver on behalf of the Public Agency a Loan Note or Notes and other documents, instruments, agreements and certificates necessary or desirable to effectuate the Loan as provided in the Loan Agreement. The Loan Note or Notes with respect to Loan No. A-2 shall reflect the terms of the Loan and shall be substantially in the form attached to the Loan Agreement as Exhibit I. The Town Administrator shall determine the date of funding of Loan No. A-2 and the amount thereof in accordance with the terms of the Loan Agreement as shall be determined by the Town Administrator as appropriate to finance Project A-2 and is permitted by the Loan Agreement. Loan No. A-2 shall mature in accordance with the provisions described in Schedule I attached hereto or in such other amounts and at such other times as the Town Administrator may determine. Loan No. A-2 shall bear interest at the Loan Rate in accordance with the terms of the Loan Agreement. The Public Agency further agrees to make all Loan Repayments required of it pursuant to the terms of the Loan Agreement. The letter of credit fee with respect to the Loan shall equal 40 basis points or such other amount as may be agreed upon between the Public Agency and Wachovia Bank.

SECTION 5. AUTHORIZATION OF PROJECT A-2. The Public Agency does hereby authorize the acquisition of Project A-2 and the reimbursement of any costs incurred by the Public Agency with respect to Project A-2 within the prior 60 days and which are approved by bond counsel to the Commission.

SECTION 6. SECURITY FOR THE LOAN. The Public Agency's obligation to repay the Loan will be secured by a pledge of and lien upon the Designated Revenues in accordance with the terms of the Loan Agreement. The obligation of the Public Agency to repay the Loan shall not be deemed a pledge of the faith and credit or taxing power of the Public Agency and such obligation shall not create a lien on any property whatsoever of or in the Public Agency other than the Designated Revenues.

SECTION 7. SPECIAL COVENANTS AND ACKNOWLEDGMENTS. (A) The Public Agency hereby covenants and agrees that it will not pledge or grant a lien on its half-cent sales tax proceeds, electric utility tax proceeds or the proceeds of its electric franchise fees prior to the earlier of August 30, 2005 or the date that the Existing Note is no longer outstanding under the Loan Agreement.

(B) The Public Agency hereby covenants and agrees that in the event the Existing Note remains outstanding under the Loan Agreement as of July 30, 2005, the Public Agency shall execute and deliver a new loan agreement with the Commission with respect to the Program (the "New Loan Agreement"), with terms and provisions acceptable to the Bank, and shall issue a note thereunder, the proceeds of which shall be applied, together with any other legally available moneys of the Public Agency, to repay Loan No. A-2 in its entirety. As security for the loans to be incurred under the New Loan Agreement, the

Public Agency shall pledge and grant a senior lien on all proceeds of its half cent sales tax, electric utility tax and electric franchise fees (the "Alternative Security"). The New Loan Agreement will contain a debt service coverage test of at least 120% and shall contain a provision requiring the Bank's written consent prior to the Public Agency issuing any debt secured by the Alternative Security.

(C) The Public Agency acknowledges that, prior to the issuance of any Loan Note securing Loan No. A-2, the Bank and Commission shall execute a certificate waiving the provisions of Section 6.04(c) of the Loan Agreement through July 30, 2005. In connection therewith, the Public Agency hereby covenants and agrees that, prior to July 30, 2005, it shall not issue any debt payable from or secured by Non-Ad Valorem Revenues without the prior written consent of the Bank.

SECTION 8. GENERAL AUTHORITY. The members of the Council and the officers, attorneys and other agents or employees of the Public Agency are hereby authorized to do all acts and things required of them by this Resolution and the Loan Agreement, or desirable or consistent with the requirements of this Resolution and the Loan Agreement, for the full punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan Agreement, and each member, employee, attorney and officer of the Public Agency or its Council is hereby authorized and directed to execute and deliver any and all papers 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 9. SEVERABILITY. 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.

SECTION 10. REPEAL OF INCONSISTENT RESOLUTIONS. All resolutions or parts thereof in conflict herewith are hereby superseded and repealed to the extent of such conflict.

SIGNATURES ON FOLLOWING PAGE

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 10th day of February, 2005.

Fink Y
Knight Y
Blanton Y
Maines Y
Nelson N

Ayes 4
Nays 1
Absent or
Abstaining _____

Mecca Fink

Mecca Fink, Mayor

ATTEST:

Shari Canada
Shari Canada, Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff
Gary A. Poliakoff, J.D., Town Attorney
894459_1.DOC

SCHEDULE I

PROPOSED LOAN REPAYMENT SCHEDULE

The principal of the Loan shall be repaid as follows (or on such other date or dates and in such amounts as the Town Administrator shall determine):

Date	<u>Principal Repayment</u>
December 1, 2009	\$6,900,000

Interest on the Loan shall be paid monthly in accordance with the terms and provisions of the Loan Agreement. Additional Payments shall also be made in accordance with the Loan Agreement.

EXHIBIT A

General Description of Project A-2

Project A-2 generally includes the acquisition of approximately 11.788 acres of vacant land located at the southeast corner of Dykes Road and Griffin Road, adjacent to the interchange of I-75, also known as the Calusa Corners Plat.