

Note:

RESOLUTION 2010-086

- The Closing Documents for the Emergency Letter of Credit are in a separate binder.
- This reflects the Resolution passed at the 8/18/10 Town Council Meeting.

RESOLUTION NO. 2010- 086

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AUTHORIZING THE ISSUANCE OF ITS EMERGENCY LINE OF CREDIT NOTE IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$3,000,000, TO PROVIDE FINANCING TO MEET RECOVERY COSTS RELATING TO A DECLARED STATE OF EMERGENCY AFFECTING THE TOWN AND COSTS RELATED THERETO; COVENANTING TO REPAY SUCH NOTE FROM REIMBURSEMENTS RECEIVED BY THE TOWN FROM FEMA AND THE STATE OF FLORIDA; FURTHER PLEDGING THE TOWN'S FRANCHISE FEES AND PUBLIC SERVICE TAX, AND COVENANTING TO BUDGET AND APPROPRIATE FUNDS, FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES, TO REPAY SUCH NOTE; PRESCRIBING THE FORM, TERMS AND DETAILS OF THE NOTE; AWARDING THE NOTE TO COMMUNITY BANK OF BROWARD BY NEGOTIATED SALE; APPROVING THE FORM OF A LINE OF CREDIT AGREEMENT BETWEEN THE TOWN AND COMMUNITY BANK OF BROWARD; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Town Council has determined that it is appropriate and necessary to establish a line of credit to provide interim financing to meet recovery costs relating to a declared state of emergency; and

WHEREAS, Community Bank of Broward submitted a Commitment Letter to the Town dated July 22, 2010 to provide such line of credit, which was accepted by the Town Administrator on July 28, 2010 (the "Commitment Letter"); and

WHEREAS, the Town desires to approve the form of the line of credit agreement pursuant to which such borrowing will be accomplished.

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

**SECTION 1. ADOPTION OF RECITALS.** The above-referenced recitals are true and correct, and are incorporated herein by reference.

**SECTION 2. DEFINITIONS.** As used herein, unless the context otherwise requires:

“Act” means, as applicable, Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Southwest Ranches, Florida, and other applicable provisions of law.

“Bank” means Community Bank of Broward, the initial purchaser of the Note, and its successors and assigns.

“Code” means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

“Costs of the Project” means with respect to the Project, all items of cost authorized by the Act, including the costs of issuance of the Note.

“Dated Date” means the date of issuance of the Note.

“Disaster” means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by Broward County, the Governor of the State, or the President of the United States.

“Draw Period” means date beginning on the effective date of the Line of Credit Agreement and expiring on December 31, 2012.

“FEMA” means the Federal Emergency Management Agency.

“FEMA Proceeds” means all amounts received by the Town from FEMA for Costs of the Project.

“Franchise Fees” means the amounts received by the Town from Florida Power & Light Company (“FPL”), their respective successors and assigns, pursuant to Ordinance No. 2000-3, accepted by FPL, and Comcast Cablevision of Broward County (“Comcast”) pursuant to that certain Assignment Agreement between Broward County and the Town, authorized by Resolution 2000-10, consented to by Comcast, and their successors and assigns, or otherwise.

“Governing Body” means the Town Council of the Town, or its successor in function.

“Legally Available Non-Ad Valorem Revenues” means all revenues of the Town derived from any source whatsoever, other than ad valorem taxation on real and personal property, which are legally available to make the payments of principal and interest on the Note, but only after provision has been made by the Town for 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.

“Line of Credit Agreement” means that certain Line of Credit Agreement between the Bank and the Town, the form of which is attached as Exhibit “A” hereto.

“Maturity Date” means June 30, 2013.

“Mayor” means the Mayor of the Town or, in the Mayor’s absence, the Vice-Mayor, or such other persons as may be duly authorized to act on the Mayor’s behalf.

“Note” means the Town’s Emergency Line of Credit Note, authorized to be issued by the Town in the aggregate principal amount not to exceed \$3,000,000, the form of which is attached as Exhibit “A” to the Line of Credit Agreement.

“Noteholder” or “Holder” means the registered owner (or its authorized representative) of the Note.

“Pledged Revenues” means the FEMA Proceeds, the State Proceeds, the Franchise Fees and the Public Service Tax.

“Project” means expenditures for extraordinary, nonrecurring items the Town desires or needs to undertake subsequent to and as a result of a Disaster, and costs related thereto.

“Public Service Tax” means the taxes levied and collected by the Town imposed by Ordinance 2000-2, as amended by Ordinance 2001-3, and Ordinance 2000-7 of the Town or otherwise on the purchase of electricity, water, sewer, metered or bottled gas, telephone service, telegraph service and cable television service sold or used in the Town pursuant to Fla. Stat. Section 166.231.

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

“State” means the State of Florida.

“State Proceeds” means all amounts received by the Town from the State or any agency or division thereof for Costs of the Project.

“Town” means the Town of Southwest Ranches, a Florida municipal corporation, or its successor.

“Town Administrator” means the Town Administrator or other chief executive officer of the Town.

“Town Clerk” means the Town Clerk or any Deputy Town Clerk.

**SECTION 3. AUTHORITY FOR RESOLUTION.** This Resolution is enacted pursuant to the provisions of the Act. The Town has ascertained and hereby determined that enactment of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the Town in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Town herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Town.

**SECTION 4. RESOLUTION TO CONSTITUTE CONTRACT.** In consideration of the purchase and acceptance of the Note by those who shall hold the same from time to time, the provisions of this Resolution shall be a part of the contract of the Town with the Holder, and shall be deemed to be and shall constitute a contract between the Town and the Holder from time to time of the Note. The pledge made in this Resolution and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Town shall be for the benefit, protection and security of the Holder of the Note in accordance with the terms hereof.

**SECTION 5. LINE OF CREDIT AGREEMENT.** The Town hereby approves the form and content of the Line of Credit Agreement. The Mayor and the Town Administrator are hereby authorized to execute and deliver the Line of Credit Agreement on behalf of the Town, and the Town Clerk is authorized to place the Town's seal thereon and attest thereto, in substantially the form presented at this meeting with such changes, modifications, deletions and insertions as the Town Administrator and Town Attorney may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Town.

**SECTION 6. AUTHORITY FOR ISSUANCE OF NOTE.** Subject and pursuant to the provisions hereof and of the Line of Credit Agreement, a note to be known as "Town of Southwest Ranches, Florida, Emergency Line of Credit Note" is hereby authorized to be issued in an aggregate principal amount not to exceed Three Million Dollars (\$3,000,000.00) for the purpose of financing the Costs of the Project.

**SECTION 7. DESCRIPTION OF NOTE.** The Note shall be issued in one (1) typewritten certificate, shall be dated the Dated Date thereof and shall mature not later than the Maturity Date. Draws will be permitted to be made on the Note from time to time in accordance with the Line of Credit Agreement, up to the maximum principal amount of \$3,000,000. The Note shall bear interest, based on the principal amount outstanding from time to time, at the rate set forth in the Line of Credit Agreement, with such rate to be adjusted as set forth therein. The outstanding principal of and unpaid and accrued interest on the Note shall be payable on the Maturity Date or earlier redemption. Details of the Note shall be as provided in the form of Note attached as Exhibit "A" to the Line of Credit Agreement.

**SECTION 8. PLEDGE OF PLEDGED REVENUES; COVENANT TO BUDGET AND APPROPRIATE.** The Note shall be secured by, and the Town hereby grants to the Holders, a lien on and pledge of all the Pledged Revenues, as more particularly set forth in the Line of Credit Agreement. To the extent the Pledged Revenues are not sufficient to repay the Note when due, the Town covenants to budget and appropriate Legally Available Non – Ad Valorem Revenues in such amount as may be necessary to repay the Note when due, as more particularly set forth in the Line of Credit Agreement.

**SECTION 9. NOTE NOT TO BE GENERAL INDEBTEDNESS OF THE TOWN.** The Note shall not be or constitute a general obligation or indebtedness of the Town within the meaning of the Constitution of Florida, but shall be payable from and secured solely by the Town's pledge of the Pledged Revenues and by the covenant of the Town to budget and appropriate Legally Available Non-Ad Valorem Revenues, in the manner and to the extent herein, in the Line of Credit Agreement and in the Note provided. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the Town or taxation in any form on any real or personal property to pay the Note or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any funds of the Town other than the Pledged Revenues or Legally Available Non-Ad Valorem Revenues, all in the manner and to the extent herein, in the Line of Credit Agreement and in the Note provided. The Holders shall have no lien upon any real or tangible personal property of the Town.

**SECTION 10. AWARD OF NOTE BY NEGOTIATED SALE.** Because of the nature of the Note, the maturity of the Note and the prevailing market conditions, the negotiated sale of the Note to the Bank in substantial accordance with the Commitment Letter, which letter is attached hereto as Exhibit "B", is hereby found to be in the best interests of the Town; provided, however, that the provisions of this Resolution and the Line of Credit Agreement shall control to the extent of any conflict with the Commitment Letter.

**SECTION 11. BANK QUALIFIED ISSUE.** The Town hereby designates the Note to be a "qualified tax-exempt obligation" within the meaning of Section 265(b) of the Code unless, as to the calendar year in which the Note is issued, the Town cannot reasonably anticipate on the date of issuance of the Note that the amount of tax-exempt obligations (other than obligations not taken into account for purposes of determining the Town's status as a "qualified small issuer") will not exceed the maximum amount permitted under Section 265(b) of the Code for such calendar year.

**SECTION 12. MODIFICATION, AMENDMENT OR SUPPLEMENT.** This Resolution may be modified, amended or supplemented by the Town from time to time prior to the Town entering into the Line of Credit Agreement. Thereafter, no modification, amendment or supplement of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the Holder.

**SECTION 13. GENERAL AUTHORITY.** The Governing Body hereby authorizes the Mayor, Town Administrator, Town Attorney and Town Clerk to execute such other documents as may be necessary to effect the borrowing contemplated by this Resolution.

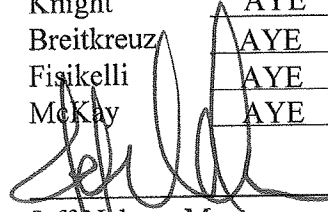
**SECTION 14. SAVINGS CLAUSE.** If any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unenforceable, such decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrase of this Resolution.


**SECTION 15. CONFLICTS.** All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 16. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 18th day of August, 2010, on a motion by Council Member Breitkreuz, seconded by Council Member McKay.

Nelson	<u>AYE</u>	Ayes	<u>5</u>
Knight	<u>AYE</u>	Nays	<u>0</u>
Breitkreuz	<u>AYE</u>	Absent	<u>0</u>
Fisikelli	<u>AYE</u>	Abstaining	<u>0</u>
McKay	<u>AYE</u>		

  
\_\_\_\_\_  
Jeff Nelson, Mayor

ATTEST:  
  
\_\_\_\_\_  
Debra Doré-Thomas, Town Clerk

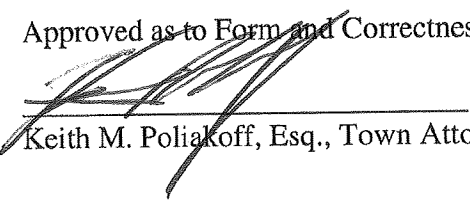
Approved as to Form and Correctness  
  
\_\_\_\_\_  
Keith M. Poliakoff, Esq., Town Attorney

EXHIBIT "A"

FORM OF LINE OF CREDIT AGREEMENT



EXHIBIT "B"

COMMITMENT LETTER

ACTIVE: 3067855\_1

## LINE OF CREDIT AGREEMENT

This Line of Credit Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Town of Southwest Ranches, a Florida municipal corporation (the "Town"), and Community Bank of Broward, a state banking association (the "Bank"), and their respective successors and assigns.

WHEREAS, on August \_\_\_\_, 2010, the Town adopted Resolution No. 2010-\_\_\_\_, authorizing the negotiation and execution of an agreement between the Town and the Bank for the purpose of establishing an emergency line of credit in an amount not to exceed \$3,000,000; and

WHEREAS, the parties desire to set forth herein the terms and conditions pursuant to which the Town will be permitted to make draws on said line of credit.

NOW, THEREFORE, in consideration for the mutual covenants herein expressed, the parties hereto do hereunto agree as follows:

### **SECTION 1. DEFINITIONS.** As used herein, unless the context otherwise requires:

"Act" means, as applicable, Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, Florida Statutes, the Charter of the Town of Southwest Ranches, Florida, and other applicable provisions of law.

"Agreement" means this Line of Credit Agreement between the Town and the Bank, as the same may be amended, modified or supplemented from time to time.

"Annual Budget" means the annual budget prepared by the Town for each Fiscal Year in accordance with Section 10 below and in accordance with the laws of the State of Florida.

"Bank" means Community Bank of Broward, the initial purchaser of the Note, and its successors and assigns.

"Business Day" means any day which is not a Saturday, Sunday or day on which banking institutions in Broward County, Florida are authorized to be closed.

"Code" means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

"Costs of the Project" means with respect to the Project, all items of cost authorized by the Act, including the costs of issuance of the Note.

RM:7549509:2

“Dated Date” means the date of issuance of the Note.

“Disaster” means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by Broward County, the Governor of the State, or the President of the United States.

“Draw Period” means date beginning on the effective date hereof and expiring on December 31, 2012.

“FEMA” means the Federal Emergency Management Agency.

“FEMA Proceeds” means all amounts received by the Town from FEMA for Costs of the Project.

“Fiscal Year” means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Town pursuant to general law.

“Franchise Fees” means the amounts received by the Town from Florida Power & Light Company (“FPL”), their respective successors and assigns, pursuant to Ordinance No. 2000-3, accepted by FPL, and Comcast Cablevision of Broward County (“Comcast”) pursuant to that certain Assignment Agreement between Broward County and the Town, authorized by Resolution 2000-10, consented to by Comcast, and their successors and assigns, or otherwise.

“Governing Body” means the Town Council of the Town, or its successor in function.

“Legally Available Non-Ad Valorem Revenues” means all revenues of the Town derived from any source whatsoever, other than ad valorem taxation on real and personal property, which are legally available to make the payments of principal and interest on the Note, but only after provision has been made by the Town for 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.

“Maturity Date” means June 30, 2013.

“Mayor” means the Mayor of the Town or, in the Mayor’s absence, the Vice-Mayor, or such other persons as may be duly authorized to act on the Mayor’s behalf.

“Note” means the Town’s Emergency Line of Credit Note, authorized to be issued by the Town in the aggregate principal amount not to exceed \$3,000,000, the form of which is attached as Exhibit “A” hereto.

RM:7549509:2

“Noteholder” or “Holder” means the registered owner (or its authorized representative) of the Note.

“Pledged Revenues” means the FEMA Proceeds, the State Proceeds, the Franchise Fees and the Public Service Tax.

“Prime Rate” means the rate quoted in the Wall Street Journal from time to time as the “prime rate,” or, if the Wall Street Journal ceases publication or ceases to quote a “prime rate,” such alternate interest rate as shall, in the reasonable opinion of the Bank, approximate such rate.

“Project” means expenditures for extraordinary, nonrecurring items the District desires or needs to undertake subsequent to and as a result of a Disaster, and costs related thereto.

“Public Service Tax” means the taxes levied and collected by the Town imposed by Ordinance 2000-2, as amended by Ordinance 2001-3, and Ordinance 2000-7 of the Town or otherwise on the purchase of electricity, water, sewer, metered or bottled gas, telephone service, telegraph service and cable television service sold or used in the Town pursuant to Fla. Stat. Section 166.231.

“Resolution” means Resolution No. 2010-\_\_\_\_, adopted by the Governing Body on August \_\_\_\_, 2010, as amended and supplemented.

“State” means the State of Florida.

“State Proceeds” means all amounts received by the Town from the State or any agency or division thereof for Costs of the Project.

“Town” means the Town of Southwest Ranches, a Florida municipal corporation, or its successor.

“Town Administrator” means the Town Administrator or other chief executive officer of the Town.

“Town Clerk” means the Town Clerk or any Deputy Town Clerk.

**SECTION 2. ISSUANCE OF NOTE.** Subject and pursuant to the provisions of the Resolution, a note to be known as “Town of Southwest Ranches, Florida, Emergency Line of Credit Note” is hereby authorized to be issued in an aggregate principal amount not to exceed Three Million Dollars (\$3,000,000.00) for the purpose of financing Costs of the Project. The Town agrees not to use the proceeds of the Note for any other purpose without the written approval of the Bank. The

Bank agrees to make advances on the Note from time to time, but only upon compliance by the Town with the provisions hereof.

### **SECTION 3. DESCRIPTION OF NOTE.**

The Note shall be issued in one (1) typewritten certificate, shall be dated the Dated Date and shall mature on the Maturity Date. Draws will be permitted to be made on the Note from time to time during the Draw Period, up to an aggregate maximum principal amount of \$3,000,000, in accordance with Section 11 hereof. The Note shall bear interest at the variable rate equal to the Prime Rate, adjusted on the 1st day of each month to the rate computed as of the last Business Day of the previous month, with such rate to be adjusted as provided in the form of Note attached as Exhibit "A" hereto. Accrued interest on the Note shall be payable, based on the amount drawn by the Town from time to time pursuant to this Line of Credit Agreement, on the first day of each month, beginning on the first such date that is at least 15 days following the Dated Date of the Note. Principal of the Note shall be due and payable at maturity. Interest on the Note shall be calculated on the basis of a 360 day year and will be paid in arrears for the actual number of days elapsed. Details of the Note, including provisions for adjusting the rate if the Note is not a "qualified tax exempt obligation" under Section 265 (b) of the Code, shall be as provided in the form of Note attached as Exhibit "A" hereto.

The Note shall be in registered form, contain substantially the same terms and conditions as set forth in Exhibit "A" hereto, shall be payable in lawful money of the United States of America, and the principal thereof, interest thereon and any other payments thereunder shall be payable by check, wire, draft or bank transfer to the Holder at such address as may be provided in writing by such Holder to the Town Clerk. So long as the Note shall remain outstanding, the Town shall maintain and keep books for the registration and transfer of the Note. The Note may be assigned as provided in the form of Note attached as Exhibit "A" hereto.

**SECTION 4. EXECUTION OF NOTE.** The Note shall be executed in the name of the Town by the manual signature of the Mayor, the seal of the Town shall be imprinted, reproduced or lithographed on the Note, and the Note shall be attested to by the manual signature of the Town Clerk. If any officer whose signature appears on the Note ceases to hold office before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes. In addition, the Note may bear the signature of, or may be signed by, such persons as at the actual time of execution of such Note shall be the proper officers to sign the Note although at the date of the Note or the date of delivery thereof such persons may not have been such officers.

**SECTION 5. NOTE MUTILATED, DESTROYED, STOLEN OR LOST.** If the Note is mutilated, destroyed, stolen or lost, the Town may, in its discretion (i) deliver a duplicate replacement Note, or (ii) pay a Note that has matured or is about to mature. A mutilated Note shall be surrendered to and canceled by the Town Clerk or its duly authorized agent. The Holder must furnish the Town or its agent proof of ownership of any destroyed, stolen or lost Note; post

satisfactory indemnity; comply with any reasonable conditions the Town or its agent may prescribe; and pay the Town's or its agent's reasonable expenses.

Any such duplicate Note shall constitute an original contractual obligation on the part of the Town whether or not the destroyed, stolen, or lost Note be at any time found by anyone, and such duplicate Note shall be entitled to equal and proportionate benefits and rights as to lien on, and source of and security for payment from, the funds pledged to the payment of the Note so mutilated, destroyed, stolen or lost.

**SECTION 6. PROVISIONS FOR REDEMPTION.** The Note may be prepaid in whole or in part at any time prior to maturity without premium or penalty in the manner provided in the form of Note attached as Exhibit "A" hereto.

**SECTION 7. PLEDGE OF PLEDGED REVENUES.** The payment of the principal, premium, if any, and interest on the Note shall be secured forthwith equally and ratably by an irrevocable lien on and pledge of the Pledged Revenues, prior and superior to all other liens or encumbrances of the Pledged Revenues, and the Town hereby irrevocably pledges the Pledged Revenues to the payment of the principal, premium, if any, and interest on the Note as the same shall become due. Such pledge of the Pledged Revenues shall be cumulative to the extent not paid, and shall continue until the Note has been paid in full.

The Town covenants to apply for such FEMA Proceeds and State Proceeds as the Town reasonably believes it is eligible to repay draws on the Note, and shall provide evidence of such application to the Bank. The Town covenants to apply all FEMA Proceeds and State Proceeds to the repayment of the Note within ten (10) days of the Town's receipt thereof. The Town further covenants to take all action necessary for the Town to remain qualified to apply for and receive the FEMA Proceeds and State Proceeds.

The Town covenants that as long as the Note shall remain unpaid, it will continue to impose the Franchise Fees and the Public Service Tax, and will not amend or repeal the provisions of the resolutions, ordinances and/or agreements of the Town that impose the Franchise Fees or the Public Service Tax as of the date hereof so as to reduce the rate at which the Franchise Fees or the Public Service Tax is imposed or the services or commodities subject to the Franchise Fees or the Public Service Tax, or otherwise modify the proceedings of the Town relevant to the Franchise Fees or the Public Service Tax in any manner that would impair or adversely affect the ability of the Town to impose and collect the Franchise Fees or the Public Service Tax. The Town represents that the Franchise Fees and the Public Service Tax are not pledged or encumbered in any manner.

**SECTION 8. COVENANT TO BUDGET AND APPROPRIATE.** In addition to the foregoing, the Town hereby covenants to budget and appropriate in its Annual Budget, by amendment if necessary, from Legally Available Non-Ad Valorem Revenues in each Fiscal Year, sufficient moneys to pay the principal of and interest on the Note in such Fiscal Year, until the Note

is paid in full. Such covenant and agreement on the part of the Town shall be cumulative to the extent not paid, and shall continue until Legally Available Non-Ad Valorem Revenues or other available funds in amounts sufficient to make all 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 City, which generate Non Ad-Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Legally Available Non-Ad Valorem Revenues, nor, except as provided in Section 12 hereof, does it preclude the Town from pledging in the future a particular source or sources of Non Ad- Valorem Revenues. Such covenant to budget and appropriate Legally Available Non-Ad Valorem Revenues is subject in all respects to the payment of obligations heretofore or hereafter (but only to the extent permitted by Section 12 hereof) entered into, including but not limited to the payment of debt service on bonds and other debt instruments. However, the covenant to budget and appropriate in its Annual Budget for the purposes and in the manner stated herein shall have the effect of making available in the manner described herein Legally Available Non-Ad Valorem Revenues and placing on the Town a positive duty to budget and appropriate, by amendment if necessary, amounts sufficient to meet its obligations hereunder.

**SECTION 9. NOTE NOT TO BE GENERAL INDEBTEDNESS OF THE TOWN.**

The Note shall not be or constitute a general obligation or indebtedness of the Town within the meaning of the Constitution of Florida, but shall be payable from and secured solely by the Pledged Revenues, and by the covenant of the Town to budget and appropriate Legally Available Non-Ad Valorem Revenues, in the manner and to the extent herein and in the Note provided. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the Town or taxation in any form on any real or personal property to pay the Note or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any funds of the Town other than the Pledged Revenues and the Legally Available Non-Ad Valorem Revenues, all in the manner and to the extent herein and in the Note provided. The Holder shall have no lien upon any real or tangible personal property of the Town

**SECTION 10. OPERATING BUDGET; FINANCIAL STATEMENTS.** Before the first day of each Fiscal Year the Governing Body shall prepare, approve and adopt in the manner prescribed by law, a detailed Annual Budget. Such Annual Budget shall provide for revenues sufficient to comply with the Town's obligations hereunder, including any unsatisfied obligations from prior Fiscal Years. The Town shall annually provide to the Bank (a) the Town's Comprehensive Annual Financial Report, within 180 days of the end of each Fiscal Year, (b) quarterly internally prepared financial statements, in such form and containing such information as is reasonably requested by the Bank, within ninety (90) days after the end of each fiscal quarter of the Town or more often if requested by the Bank, and (c) the Annual Budget within thirty (30) days of its adoption by the Town. The Town will also provide the Bank any other financial information that it shall reasonably request.

RM:7549509:2

**SECTION 11. PROCEDURE FOR MAKING DRAWS ON THE NOTE.**

(a) Draw Limitations. The total principal amount outstanding on the Note shall never exceed \$3,000,000. The initial draw on the Note shall be at least \$50,001. Subsequent draws on the Note shall be at least \$100,000. If any draw would result in the amount outstanding under the Note to exceed \$100,000, the Town shall provide the Bank with evidence that it has applied for reimbursement to FEMA and/or the State in an amount at least equal to the amount requested to be drawn.

(b) Conditions to Draws. Prior to the initial draw on the Note, the Town shall provide Bank with the following:

- (i) an Initial Draw Certificate of the Town in the form attached hereto as Exhibit "B," including any required attachments or exhibits;
- (ii) a Federal Tax Certificate of the Town in substantially the form attached hereto as Exhibit "C;"
- (iii) the opinion of the Town Attorney in substantially the form attached hereto as Exhibit "D;" and
- (iv) an opinion of bond counsel acceptable to the Bank (which may be counsel to the Bank), in form and substance acceptable to the Bank, opining as to the status of the interest on the Note for federal income tax purposes.

Prior to all subsequent draws on the Note, the Town shall provide the Bank with a Subsequent Draw Certificate of the Town in the form attached hereto as Exhibit "E."

(c) Repayment of Draws. Each draw shall be repaid no later than the Maturity Date. The Town shall not be permitted to reborrow amounts that have been drawn and repaid.

(d) Honor of Draw Request. The Bank will review each draw request to satisfy itself that the proceeds of the draw will be used for a purpose permitted hereunder. Assuming that to be the case, the Bank will honor each draw request within five (5) Business Days of receipt thereof.

**SECTION 12. ISSUANCE OF ADDITIONAL OBLIGATIONS.** The Town will not issue any debt or obligation secured by or payable from the Pledged Funds, or by a covenant to appropriate its Legally Available Non-Ad Valorem Revenues, or by a pledge of a particular source of Legally Available Non-Ad Valorem Revenues, without the written consent of the Bank, which the Bank may grant, withhold or subject to conditions in the Bank's sole discretion. The Bank hereby



consents to the issuance of the Note for purposes of any other agreements between the Bank and the Town requiring such consent as a precondition to the issuance of the Note.

**SECTION 13. AUTO-DEBIT.** At all times while this Agreement is in effect, loan payments from the Town shall be set up on auto debit, which will automatically transfer payments of interest on the Note from a pre-designated account of the Town to the Bank on each Payment Date.

**SECTION 14. MODIFICATION, AMENDMENT OR SUPPLEMENT.** This Agreement may only be modified, amended or supplemented by an instrument in writing executed by the parties hereto.

**SECTION 15. EVENTS OF DEFAULT; REMEDIES.**

A. Events of Default. Any one or more of the following events shall be an "Event of Default":

(i) The Town shall fail to pay the principal of or interest on the Note when due;

(ii) The Town shall fail to pay the principal of or interest on any other loan or obligation for the repayment of money when due;

(iii) The Town shall (a) admit in writing its inability to pay its debts generally as they become due, (b) file (or have filed against it and not dismissed within 90 days) a petition in bankruptcy or take advantage of any insolvency act, (c) make an assignment for the general benefit of creditors, (d) consent to the appointment of a receiver for itself or for the whole or any substantial part of its property, or (e) be adjudicated a bankrupt; or

(iv) The Town shall default in the due and punctual performance of any of its covenants, conditions, agreements and provisions contained herein or in the Note, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Town by the Holder of the Note; provided that such default shall not be an Event of Default if the Town within such 30 day period commences and carries out with due diligence to completion (although not necessarily within such thirty (30) day period) such action as is necessary to cure the same.

B. Remedies on Default. If an Event of Default shall have occurred and be continuing, the Holder may proceed to protect and enforce its rights hereunder by a suit, action or special proceeding in equity or at law, by mandamus or otherwise, either for the specific performance of any covenant or agreement contained herein or for enforcement of any proper legal or equitable remedy as such Holder shall deem most effectual to protect and enforce the rights aforesaid.

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

No delay or omission of a Holder to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or an acquiescence therein; and every power and remedy given by this article may be exercised from time to time, and as often as may be deemed expeditious by a Holder.

**SECTION 16. EXTENSION OF AVAILABILITY OF LINE OF CREDIT.** By written request of the Town delivered to the Bank, The Town and the Bank may agree to extend this Agreement for additional periods, each such period not to exceed two (2) years in duration. No such extension shall extend the Maturity Date of the Note. Any additional note issued by the Town pursuant to an extension of this Agreement shall mature not later than two (2) years from the date of said extension, and shall otherwise be subject to the terms and conditions hereof to the same extent as the Note.

**SECTION 17. GENERAL AUTHORITY.** The Mayor and the members of the Governing Body and the officers, attorneys and other agents or employees of the Town are hereby authorized to do all acts and things required of them by the Resolution and this Agreement, or desirable or consistent with the requirements thereof and hereof, for the full punctual and complete performance of all the terms, covenants and agreements contained herein, in this Agreement or in the Note, including the execution of any documents or instruments relating to payment of the Note, and each member, employee, attorney and officer of the Town 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 under the Resolution and hereunder.

**SECTION 18. CLOSING COSTS.** The Town shall be responsible for paying all fees and costs in connection with the issuance of the Note, including, but not limited to, the Bank's fee of \$18,000 payable at the time this Agreement is entered into, and the fees and costs of the Bank's counsel.

**SECTION 19. SAVINGS CLAUSE.** If any section, paragraph, sentence, clause or phrase of this Agreement shall, for any reason, be held to be invalid or unenforceable, such decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrase of this Agreement.

**SECTION 20. CONTROLLING LAW; OFFICIALS OF TOWN NOT LIABLE.** All covenants, stipulations, obligations and agreements of the Town contained in the Resolution, this Agreement and the Note shall be covenants, stipulations, obligations and agreements of the Town to the full extent authorized by the Act and provided by the Constitution and laws of the State of

Florida. No covenant, stipulation, obligation or agreement contained in the Resolution, this Agreement or the Note shall be a covenant, stipulation, obligation or agreement of any present or future member, agent, officer or employee of the Town or the Governing Body of the Town in his or her individual capacity, and neither the members or officers of the Governing Body of the Town nor any official executing the Note shall be liable personally on the Note or shall be subject to any personal liability or accountability by reason of the issuance or the execution of the Note by the Town or such members thereof.

**SECTION 21. NO THIRD-PARTY BENEFICIARIES.** Except as herein otherwise expressly provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and a subsequent holder of the Note issued hereunder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the Town and the Bank and their respective successors and assigns hereunder and under the Note.

**SECTION 22. COMPLIANCE WITH TAX REQUIREMENTS.** It is the intention of the Town that the interest on the Note be and remain excluded from gross income for federal income tax purposes and to this end the Town hereby represents to and covenants with the Bank that it will comply with the requirements applicable to it contained in Section 103 and Part IV of Subchapter B of Chapter 1 of the Internal Revenue Code of 1986, as amended, to the extent necessary to preserve the exclusion of the interest on the Note issued hereunder from gross income for federal income tax purposes.

**SECTION 23. COMMITMENT LETTER.** The Bank's commitment Letter to the Town dated July 22, 2010 (as the same may have been modified or amended, the "Commitment Letter") shall survive the issuance of the Note. In the event of a conflict between the Commitment Letter and this Agreement, this Agreement shall control.

**SECTION 24. 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 25. WAIVER OF JURY TRIAL.** THE TOWN AND THE BANK IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CONTROVERSY OR CLAIM BETWEEN THEM, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE, THAT ARISES OUT OF OR RELATES TO THIS LINE OF CREDIT AGREEMENT, THE NOTE OR THE RESOLUTION. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE TOWN AND THE BANK TO ENTER INTO THIS AGREEMENT.

**SECTION 26. EFFECTIVE DATE.** This Agreement shall take effect immediately upon its execution by the parties hereto.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

TOWN OF SOUTHWEST RANCHES

ATTEST:

By: \_\_\_\_\_  
JEFF NELSON, MAYOR

\_\_\_\_\_  
Debra Doré-Thomas , Town Clerk

By: \_\_\_\_\_  
CHARLES LYNN, TOWN ADMINISTRATOR

Approved as to form and correctness

\_\_\_\_\_  
Becker & Poliakoff, P.A., Town Attorney

COMMUNITY BANK OF BROWARD

By: \_\_\_\_\_  
STEVEN C. SCHULTZ, VICE PRESIDENT

EXHIBIT "A"

FORM OF NOTE

**EXHIBIT "B"**

FORM OF INITIAL DRAW CERTIFICATE

RM:7549509:2

EXHIBIT "C"

FORM OF FEDERAL TAX CERTIFICATE

EXHIBIT "D"

FORM OF OPINION OF TOWN ATTORNEY



**EXHIBIT "E"**

**FORM OF SUBSEQUENT DRAW CERTIFICATE**

RM:7549509:2

**EXHIBIT "B"**



July 22, 2010

**BANK QUALIFIED LINE OF CREDIT/TERM LOAN**

Charles Lynn  
Town Administrator  
Town of Southwest Ranches  
6589 SW 160 Avenue  
Southwest Ranches, FL 33331

Re: \$3,000,000 Revolving Line of Credit

Dear Mr. Lynn:

We are pleased to advise you that Community Bank of Broward ("Bank") has approved the following loan ("Loan"), and by your acceptance of this commitment, you agree to accept the loan based upon the terms and conditions outlined below:

**Borrower:** Town of Southwest Ranches (Town)

**Lender:** Community Bank of Broward (Bank)

**Loan:** \$3,000,000 Revolving Line of Credit with a draw period until December 31, 2012, with a maturity date of June 30, 2013. The loan is tax exempt.

*CBE would make an initial advance not to exceed \$100,000; however all subsequent draw requests must be accompanied by an application for federal funds.*

**Bank Fee:** \$18,000

**Interest Rate and Terms:** Monthly payments of interest only until June 30, 2013, priced at the Wall Street Journal Prime Rate (currently 3.25%), adjusting monthly with changes in Prime. The line will have a maturity date of June 30, 2013 with all principal due upon maturity.

**Purpose:** To fund emergency repairs/damages in the event of a natural disaster, such as a hurricane, or other emergency.

**Security/Collateral:** The line would be secured by a pledge of reimbursements from FEMA funds & pledge of non-ad valorem taxes and covenant to budget.

**Closing Date:** The loan described herein shall be closed by the Bank not later than August 27, 2010, unless extended in writing by the Bank in its sole discretion.

**Prepayment Penalty:** Prepayment during the term of the loan shall be permitted at any time, without penalty.

**Closing Costs:** Closing costs should not exceed \$23,000. This includes cost of preparing all documents, bank fee and all other applicable expenses associated with this loan.

**Other Terms and Conditions:**

1. The loan will be evidenced by a promissory note ("Note"), a Covenant to Budget, security agreement and such other documents as the Bank or Bank Counsel may require. **The closing attorney for the Bank will be:**  

Morris "Skip" Miller, Esq.  
Rudens McClosky  
Tel. #561-838-4556 / Fax #561-514-3456
2. On an annual basis, no later than 90 days after the end of each accounting period, or more often if requested by the Bank, the Borrower (including affiliated entities) shall submit to the Bank the internally-prepared financial statements. Annually, the Town shall submit its audited financial statement to the Bank. **The Bank requires receipt of all recorded documents within 30 days of closing.**
3. The occurrence of any one of the following events shall, at the option of the Bank, constitute an "event of default" under this Commitment: (a) the failure of the Borrower to comply with any terms or conditions of this Commitment; (b) the dissolution, merger or consolidation of the Borrower; (c) the filing by or against the Borrower of a petition in bankruptcy or the adjudication or insolvency or bankruptcy under any reorganization arrangement, readjustment of debt, dissolution, liquidation or similar proceeding under any federal or state statute; (d) the suspension or discontinuance of the Borrower's, or (e) the failure of the Borrower to close the Loan on or before closing date. Upon the occurrence of any "event of default" prior to the closing of the Loan, the Bank may, at its option, terminate this Commitment without notice to the Borrower.
4. **Unless otherwise extended in writing by the Bank, this Commitment, if not accepted and returned to Bank within fourteen (14) days of the date of this Commitment, shall terminate.**
5. Borrower understands and acknowledges that the law firm of the Bank's choice represents the Bank, and does not represent the Borrower in this transaction. The services performed on behalf of the Bank by Bank's Counsel are performed for the Bank only.
6. The Bank and the Borrower confirm that this Commitment contains their complete understanding concerning this transaction as of the date hereof and it supercedes all prior agreements between the Bank and Borrower. No provisions of this Commitment shall be amended, waived or modified except by written instruments signed by Bank and Borrower. This Commitment shall be governed by the laws of the State of Florida.
7. This Commitment will become effective and binding upon Borrower's acceptance, and the terms and conditions hereof shall survive the closing of the Loan, except as may be expressly modified in any of the Loan closing documents. The Borrower must comply

with the terms and conditions of this Commitment throughout the term of the Loan, including any extension thereof, except to the extent that the Commitment may conflict with or be superseded by any document executed by both Borrower and Bank subsequent to the date hereof.


8. The Borrower shall not assign this Commitment without the prior written consent of the Bank. Any assignment or conveyance without such authorization shall be null and void.
9. Borrower shall look solely to the Bank and not to any officer, director or employee or any Loan Participant for performance under this Commitment.
10. Other Closing Conditions:
  1. Written Bond Counsel opinion that the transaction is tax exempt & written evidence of approval of borrowing by Bond Counsel.
  2. Satisfactory letter of opinion from the Town's attorney stating the Town's eligibility to borrow, acceptable to the Bank and/or it's attorney in form and content.

Kindly acknowledge your acceptance of this Commitment and return the original to the undersigned. The Bank and Borrower mutually agree that, in the absence of the original document, facsimile signatures will be acceptable.

We appreciate the opportunity to provide this financing and to provide for your banking needs.

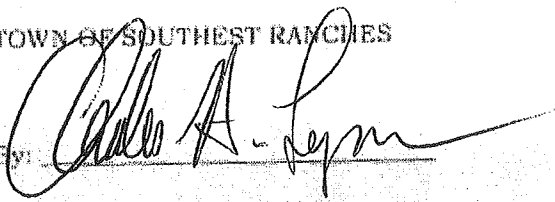
Very truly yours,

Community Bank of Broward

By:   
Steven C. Schultz, Vice President

Acknowledged and accepted this 24 day of August, 2010.

TOWN OF SOUTHEAST RANCHES

By:   
Charles A. Lynn