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**LEE COUNTY, FLORIDA**

**COMPOSITE  
TRANSPORTATION FACILITIES REVENUE BOND RESOLUTION**

**Resolution No. 86-4-12  
As Amended and Restated  
(as amended through October, 2014)**

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A RESOLUTION AUTHORIZING THE ISSUANCE BY LEE COUNTY OF NOT EXCEEDING \$100,000,000 IN THE AGGREGATE PRINCIPAL AMOUNT OF TRANSPORTATION FACILITIES REVENUE BONDS, SERIES 1987 TO FINANCE THE COST OF REFUNDING CERTAIN OUTSTANDING OBLIGATIONS OF THE COUNTY AND CONSTRUCTING AND ACQUIRING CERTAIN IMPROVEMENTS TO VARIOUS BRIDGES AND OTHER TRANSPORTATION FACILITIES LOCATED WITHIN THE COUNTY; PLEDGING THE NET REVENUES DERIVED FROM SUCH BRIDGES AND TRANSPORTATION FACILITIES TO SECURE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; PROVIDING FOR THE RIGHTS OF THE HOLDERS OF SAID BONDS; PROVIDING FOR THE ISSUANCE OF ADDITIONAL BONDS; AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS RESOLUTION.

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:**

**ARTICLE I  
GENERAL**

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

**"Accountant"** shall mean a recognized independent certified accountant or recognized firm of independent certified public accountants designated by the Issuer to perform the duties of the Accountant under the provisions hereof.

**"Accreted Value"** shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Capital Appreciation Bond (the principal amount at its initial offering) plus the interest accrued on such Capital Appreciation Bond from the date of delivery to the original purchasers thereof to the Interest Date next preceding the date of computation or the date of computation if an Interest Date, such interest to accrue at a rate not exceeding the legal rate, compounded semiannually, plus, with respect to matters related to the payment upon

redemption or acceleration of the Capital Appreciation Bonds, if such date of computation shall not be an Interest Date, a portion of the difference between the Accreted Value as of the immediately preceding Interest Date and the Accreted Value as of the immediately succeeding Interest Date, calculated based on the assumption that Accreted Value accrues during any semi-annual period in equal daily amounts on the basis of a 360-day year.

**"Act"** shall mean Ordinance No. 86-11 of the Issuer enacted on April 16, 1986, Chapter 125, Florida Statutes, and other applicable provisions of law.

**"Additional Bonds"** shall mean the obligations issued at any time under the provisions of Section 6.02 hereof on a parity with the Bonds then Outstanding.

**"Additional Project"** shall mean any structure, property, improvement, facility, machine or equipment which shall constitute a Transportation Facility, or portion thereof, or any renewal or replacement thereof, provided the same shall be financed in whole or in part from Bonds.

**"Amortized Cost"**, when used with respect to an obligation purchased at a premium above or discount below par, shall mean, as of any subsequent date of valuation, the value obtained by dividing the total premium or discount by the number of interest payment dates remaining to maturity on any such obligation at the time of such purchase and by multiplying the amount calculated by the number of interest payment dates having passed since the date of purchase and (1) in the case of an obligation purchased at a premium, by deducting the product thus obtained from the purchase price, and (2) in the case of an obligation purchased at a discount, by adding the product thus obtained to the purchase price. In the case of an obligation purchased at par, "Amortized Cost" shall mean, as of any subsequent date of valuation, the par amount thereof.

**"Annual Audit"** shall mean the annual audit prepared pursuant to the requirements of Section 5.09 hereof.

**"Annual Budget"** shall mean the annual budget prepared pursuant to the requirements of Section 5.04 hereof.

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

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

(1) Obligations of the United States Treasury and obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:

- Export - Import Bank,
- Farmers Home Administration,
- General Services Administration,
- U.S. Maritime Administration,
- Small Business Administration,
- Governmental National Mortgage Association (GNMA),
- U.S. Department of Housing & Urban Development (PHA's), and
- Federal Housing Administration.

(2) Bonds, notes or other evidences of indebtedness rated "AAA" by Standard & Poor's Corporation and "Aaa" by Moody's Investors Service issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years.

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

(4) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's Corporation and "P-1" by Moody's Investors Service and which matures not more than 270 days after the date of purchase.

(5) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Corporation.

(6) Prerefunded Municipal Obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on the escrow, in the highest rating category of Standard & Poor's Corporation and Moody's Investors Service; or (B) (i) which are fully secured as to principal and interest and

redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (1) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates thereof pursuant to such irrevocable instructions, as appropriate, and (ii) which fund is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate.

(7) Units of participation in the Local Government Surplus Funds Trust Fund established pursuant to Part IV, Chapter 218, Florida Statutes, or any similar common trust fund which is established pursuant to law as a legal depository of public moneys and for which the State Board of Administration acts as custodian. Such units of participation need not be individually collateralized by the securities in the aforementioned Trust Fund nor shall any such securities be required to be held by the Issuer.

(8) Investment agreements approved in writing by AMBAC Indemnity [supported by appropriate opinions of counsel] with notice to Standard & Poor's Corporation.

(9) Other forms of investments approved in writing by AMBAC Indemnity with notice to Standard & Poor's Corporation.

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

**"Balloon Bonds"** shall mean such principal portion of a Series of Bonds which (1) shall mature in a single Fiscal Year on the same date, (2) shall not be required to be amortized by payment or redemption by the terms of the Supplemental Resolution authorizing such Bonds, and (3) shall constitute at least twenty-five percent (25%) of the principal amount of such Series.

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

**"Bond Year"** shall mean such period as may be provided by Supplemental Resolution.



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

**"Bonds"** shall mean the Series 1987 Bonds, together with any Additional Bonds issued pursuant to this Resolution (including Taxable Bonds) and any Subordinated Indebtedness which accedes to the status of Bonds pursuant to Section 6.03 hereof.

**"Cape Coral Bridge"** shall mean the bridge across the Caloosahatchee River, including all approaches thereto, which bridge extends from Del Prado Boulevard in the City of Cape Coral to McGregor Boulevard in the City of Fort Myers and which is commonly known as the "Cape Coral Bridge".

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

**"Chairman"** shall mean the Chairman of the Board of County Commissioners of Lee County, Florida and such other person as may be duly authorized to act on his or her behalf.

**"Clerk"** shall mean the Clerk of the Board of County Commissioners of Lee County, Florida and such other person as may be duly authorized to act on his or her behalf.

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

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

**"Consulting Engineers"** shall mean an engineer or firm of engineers of reputation for skill and experience with respect to the construction, operation and maintenance of facilities similar to the Transportation Facilities, which is duly licensed under the laws of the State of Florida and designated by the Issuer to perform the duties of the Consulting Engineers under the provisions hereof. The Issuer may designate one or more Consulting Engineers to perform the duties provided therefor by this Resolution.

**"Cost"**, when used in connection with a Project, shall mean (1) the Issuer's cost of physical construction; (2) costs of acquisition by or for the Issuer of such Project; (3) costs of land and interests therein and the cost of the Issuer incidental to such acquisition; (4) the cost of any indemnity and surety bonds and premiums for insurance during construction; (5) all interest due to be paid on the Bonds and other obligations relating to the Project during the construction period of such Project and for a reasonable period thereafter; (6) engineering, legal and other consultant fees and expenses; (7) costs and expenses of the financing incurred during the construction period for such Project, including audits, fees and expenses of any Paying Agent, Registrar, Credit Bank or depository; (8) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any indebtedness of the Issuer (other than the Bonds) incurred for such Project; (9) costs of machinery, equipment, supplies and spare parts required by the Issuer for the commencement of operation of such Project; (10) repayments to the Toll Facilities Revolving Trust Fund, established pursuant to Section 338.251, Florida Statutes, made in regard to advances of funds for expenses incurred for such Project and any other similar repayments required by law; and (11) any other costs properly attributable to such construction or acquisition, as determined by generally accepted accounting principles applicable to such Transportation Facilities, and shall include reimbursement to the Issuer for any such items of Cost heretofore paid by the Issuer. Any Supplemental Resolution may provide for additional items to be included in the aforesaid Costs.

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

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

**"Enterprise Fund"** shall mean the fund established pursuant to Section 4.04 hereof.

**"Escrow Deposit Agreement"** shall mean the Escrow Deposit Agreement entered into by and between the Issuer and a banking institution or trust company, as escrow holder, in connection with the refunding of the Refunded Obligations.

**"Federal Securities"** shall mean direct obligations of the United States of America, including obligations issued in book entry form by the Department of the

Treasury of the United States, none of which permit redemption prior to maturity at the option of the obligor.

**"Financial Advisor"** shall mean a recognized financial advisor or firm of financial advisors knowledgeable in financial matters relating to the issuance of obligations the interest on which is excluded from gross income for purposes of federal income taxation and which is designated by the Issuer to perform the duties of the Financial Advisor under the provisions hereof.

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

**"Governing Body"** shall mean the Board of County Commissioners of Lee County, Florida, or its successor in function.

**"Government Grant"**, when used with respect to the Transportation Facilities, shall mean any sum of money heretofore or hereafter received by the Issuer from the United States of America or any agency thereof or from the State or any agency or political subdivision thereof as or on account of a grant or contribution, not repayable by the Issuer, for or with respect to (1) the construction, acquisition or other development of an addition or improvement to any part of the Transportation Facilities or any costs of any such construction, acquisition, improvement or development, or (2) the financing of any such construction, acquisition, improvement or development.

**"Gross Revenues"** shall mean all income and moneys received by the Issuer from the rates, fees, tolls and other charges to be made and collected by the Issuer from the operation and ownership of the Transportation Facilities, or otherwise received by the Issuer or accruing to the Issuer in the ownership and operation of the Transportation Facilities, calculated in accordance with generally accepted accounting principles employed in the operation of facilities similar to the Transportation Facilities, including, without limiting the generality of the foregoing, all Investment Earnings. "Gross Revenues" shall not include any Government Grants and operating subsidies received by the Issuer on account of the Transportation Facilities; provided, however, "Gross Revenues" shall include any moneys provided as operating subsidies which are received by the Issuer from November 1, 1997 through December 31, 2000 pursuant to an agreement, dated March 18, 1996, between the Issuer and the State of Florida Department of Transportation.

**"Initial Project"** shall mean the following facilities acquired and constructed or to be constructed or acquired, together with all necessary and incidental equipment,

structures, improvements and appurtenances, including any real property interests and personal property necessary or desirable for efficient operation of such facilities:

(1) Construction of a two-lane parallel span to the Cape Coral Bridge, with four lane approaches on the east and west sides and an urban interchange at College Parkway and McGregor Boulevard;

(2) Construction of various improvements to the Sanibel Bridge, including construction of a high level fixed span four lane bridge to replace the existing draw bridge, widening of the causeway to four lanes, and raising up the causeway islands;

(3) Construction of various improvements to Sanibel-Captiva Road, Sanibel Road and Blind Pass Bridge; and

(4) Such changes, deletions, additions or modifications to the enumerated improvements and facilities provided in clauses (1), (2) and (3) above as may be approved by Supplemental Resolution.

**"Insurer"** shall mean such Person as shall be in the business of insuring or guaranteeing the payment of principal of and interest on municipal securities and whose credit is such that, at the time of any action or consent required or permitted by the Insurer pursuant to the terms of this Resolution, all municipal securities insured or guaranteed by it are then rated, because of such insurance or guarantee, in one of the two highest rating categories (without regard to gradations, such as "plus" or "minus" of such categories) by Moody's Investors Service or Standard & Poor's Corporation.

**"Interest Subaccount"** shall mean the separate subaccount in the Sinking Account established pursuant to Section 4.04(C) hereof.

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

**"Investment Earnings"** shall mean earnings and income derived from the investment of moneys under the provisions of this Resolution which are transferred to the Revenue Account as herein provided.

**"Issuer"** shall mean Lee County, Florida, and also includes any authority or other governmental entity to which may hereafter be transferred substantially all of the powers and responsibilities of the Issuer with respect to the ownership, financing, operation, enlargement, improvement and maintenance of the Transportation Facilities.

**"Maximum Annual Debt Service"** shall mean the largest aggregate amount in any Fiscal Year, excluding all Fiscal Years which shall have ended prior to the Fiscal

Year in which the Maximum Annual Debt Service shall at any time be computed, of the Annual Debt Service.

**"Maximum Interest Rate"** shall mean, with respect to any particular Series of Variable Rate Bonds, a numerical rate of interest, which shall be set forth in the Supplemental Resolution of the Issuer delineating the details of such Series of Bonds, that shall be the maximum rate of interest such Series of Bonds or payments made pursuant to a Credit Facility securing such Series of Bonds may at any particular time bear.

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

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

**"Operation and Maintenance Account"** shall mean the separate account in the Enterprise Fund established pursuant to Section 4.04(B) hereof.

**"Operating Expenses"** shall mean the Issuer's reasonable and necessary expenses for current operation, maintenance and repair with respect to the Transportation Facilities and shall include, without limiting the generality of the foregoing, administration expenses, insurance and surety bond premiums, legal and engineering expenses, ordinary and current rentals of equipment or other property, refunds of moneys lawfully due to others, payments to pension, retirement, health and hospitalization funds, and any other expenses required to be paid for or with respect to proper operation, maintenance or repair of the Transportation Facilities, all to the extent properly attributable to the Transportation Facilities in accordance with generally accepted accounting principles employed in the operation of facilities similar to the Transportation Facilities, and disbursements for the expenses, liabilities and compensation of any Paying Agent, Registrar, Credit Bank or depository under this Resolution. "Operating Expenses" do not include (1) any costs or expenses in respect of original construction or improvement, renewal or repair other than expenditures necessary to prevent an interruption or continuance of an interruption of Gross Revenues or minor capital expenditures necessary for the proper and economical operation or maintenance of the Transportation Facilities, (2) operation and maintenance expenses of Transportation Facilities which the Issuer or other public entity has agreed to pay from sources other than Gross Revenues, and (3) any provision for interest, depreciation, amortization or similar charges.

**"Outstanding"**, when used with reference to Bonds and as of any particular date, shall describe all Bonds theretofore and thereupon being authenticated and delivered except, (1) any Bond in lieu of which other Bond or Bonds have been issued under agreement to replace lost, mutilated or destroyed Bonds, (2) any Bond surrendered by the

Holder thereof in exchange for other Bond or Bonds under Sections 2.06 and 2.08 hereof, and (3) Bonds deemed to have been paid pursuant to Section 9.01 hereof.

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

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

**"Pledged Funds"** shall mean (1) the Net Revenues and (2) until applied in accordance with the provisions of this Resolution, all moneys, including investments thereof, in the Revenue Account (subject to the Issuer's obligation to make deposits into the Operation and Maintenance Account), the Sinking Account (including all subaccounts therein), the Renewal and Replacement Account and the Surplus Account.

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

**"Prerefunded Obligations"** shall mean any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (a) which are not callable at the option of the obligor prior to maturity or as to which irrevocable notice has been given by the obligor to call on the date specified in the notice, and (b) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in paragraph (1) of the definition of "Authorized Investments," which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (c) which fund is sufficient, as verified by an independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this paragraph, as appropriate, and (d) which are rated, based on the escrow, in the highest rating category of Standard & Poor's Corporation and Moody's Investors Service.

**"Principal Subaccount"** shall mean the separate subaccount in the Sinking Account established pursuant to Section 4.04(C) hereof.

**"Project"** shall mean the Initial Project and any Additional Project.

**"Rebate Account"** shall mean the separate account in the Enterprise Fund established pursuant to Section 4.04(G) hereof.

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

**"Refunded Obligations"** shall mean the Issuer's Sanibel Bridge Improvement Revenue Bonds, dated June 1, 1979, the payment of which is provided for from the proceeds of the Series 1987 Bonds.

**"Refunded Resolution"** shall mean Resolution No. 77-9-22, adopted by the Issuer on September 21, 1977, as amended and supplemented, which authorized the issuance of the Refunded Obligations.

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

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

**"Renewal and Replacement Account"** shall mean the separate account in the Enterprise Fund established pursuant to Section 4.04(D) hereof.

**"Renewal and Replacement Account Requirement"** shall mean an amount equal to the greater of (1) \$500,000, or (2) 5% of the Gross Revenues, exclusive of any Investment Earnings, received by the Issuer during the immediately preceding Fiscal Year, or such other amount as may be certified to the Issuer by the Consulting Engineers as an amount appropriate for the purposes of this Resolution in accordance with Section 4.05(B)(6) hereof.

**"Reserve Account Insurance Policy"** shall mean an insurance policy or surety bond deposited in the Reserve Subaccount in lieu of or in partial substitution for cash on deposit therein pursuant to Section 4.05(B)(5) hereof.

**"Reserve Subaccount"** shall mean the separate subaccount in the Sinking Account established pursuant to Section 4.04(C) hereof.

**"Reserve Subaccount Requirement"** shall mean, as of any date of calculation, an amount equal to the Maximum Annual Debt Service for all Outstanding Bonds. In computing the Reserve Subaccount Requirement in respect of any Bonds that constitute Variable Rate Bonds the interest rate on such Bonds shall be assumed to be the

Maximum Interest Rate for such Bonds. The Reserve Subaccount Requirement in respect of any Variable Rate Bonds shall be calculated semiannually at the same time the valuations of obligations in the Reserve Subaccount are made pursuant to Section 4.08 hereof. In computing the Reserve Subaccount Requirement in respect of any Bonds that constitute Balloon Bonds, the principal amount of such Balloon Bonds shall be adjusted as if it were to be amortized in substantially equal annual installments of principal and interest over a term equal to the lesser of (1) twenty-five (25) years, or (2) the weighted average estimated useful life of the Project financed or to be financed from the proceeds of such Bonds. The fixed interest rate used for such computation shall be the rate at which it is assumed that the Issuer could reasonably expect to borrow or to have borrowed by issuing such Bonds with such term and level Annual Debt Service for each Fiscal Year; such reasonable expectations being established by a certificate of the Chairman and a letter of the Financial Advisor confirming the interest rate assumption as reasonable.

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

**"Revenue Account"** shall mean the separate account in the Enterprise Fund established pursuant to Section 4.04(A) hereof.

**"Sanibel Bridge"** shall mean the bridge and causeway across San Carlos Bay, including all approaches thereto, which bridge and causeway extends between McGregor Boulevard and Periwinkle Way on Sanibel Island and which is commonly known as the "Sanibel Bridge and Causeway".

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

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

**"Series 1987 Bonds"** shall mean the Issuer's Transportation Facilities Revenue Bonds, Series 1987 authorized pursuant to Section 2.02 hereof.

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

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



**"Standard & Poor's Corporation"** shall mean Standard & Poor's Corporation, and any assigns or successors thereto.

**"State"** shall mean the State of Florida.

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

**"Subordinated Indebtedness Account"** shall mean the separate account in the Enterprise Fund established pursuant to Section 4.04(E) hereof.

**"Surplus Account"** shall mean the separate account in the Enterprise Fund established pursuant to Section 4.04(F) hereof.

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

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

**"Term Bonds"** shall mean those Bonds which shall be designated as Term Bonds hereby or by Supplemental Resolution of the Issuer.

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

**"Traffic Engineers"** shall mean an independent engineer or engineering firm or corporation, at the time retained by the Issuer pursuant to this Resolution, to perform the acts and carry out the duties provided for such Traffic Engineers in this Resolution and enjoying a favorable national reputation for skill and expertise in connection with the preparation of user and revenue estimates for facilities similar to the Transportation Facilities or any portion thereof.

**"Transportation Facilities"** shall mean the Sanibel Bridge, the Cape Coral Bridge, and such other bridges, causeways or expressways that (1) shall be designated as "Transportation Facilities" by Supplemental Resolution, (2) shall be financed in whole or in part by Bonds issued pursuant to the Act and this Resolution or by Subordinated Indebtedness which accedes to the status of Bonds pursuant to Section 6.03 hereof, and (3) shall have a toll or fee associated with the use thereof.

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

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 initial date of adoption of this Resolution.

Words importing the masculine gender include every other gender.

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

**SECTION 1.02. AUTHORITY FOR RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Act. The Issuer hereby ascertains and determines that adoption of this Resolution is necessary to carry out the powers, purposes and duties expressly provided in the Act, that each and every matter and thing as to which provision is made herein is necessary in order to carry out and effectuate the purposes of the Issuer in accordance with the Act and to carry out and effectuate the plan and purpose of the Act, and that the powers of the Issuer herein exercised are in each case exercised in accordance with the provisions of the Act and in furtherance of the purposes of the Issuer.

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

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

(A) That the Issuer now owns, operates and maintains the Sanibel Bridge and the Cape Coral Bridge for the purpose of servicing the transportation needs of the general public.

(B) That there is hereby authorized the acquisition and construction of improvements to the Sanibel Bridge and the Cape Coral Bridge, in the form of the Initial Project. The Initial Project shall be financed from the proceeds of the Series 1987 Bonds issued pursuant to this Resolution and by other moneys available for such purpose, if any.

(C) That the Issuer has heretofore issued and has now outstanding and unpaid the Refunded Obligations.

(D) That, except as provided by the Refunded Resolution, the Pledged Funds are not pledged or encumbered in any manner.

(E) That it is deemed to be in the best interests of the citizens of the Issuer that the Refunded Obligations be defeased so that certain restrictive covenants in the Refunded Resolution may be changed and the Issuer be given greater flexibility in financing Transportation Facilities.

(F) That there is hereby authorized the payment and refunding of the Refunded Obligations all in the manner as provided by this Resolution.

(G) That for the payment and refunding of said Refunded Obligations, the Issuer shall, as provided herein, deposit part of the proceeds derived from the sale of the Series 1986 Bonds in a special escrow deposit trust fund, which shall be sufficient, together with investment earnings therefrom, to refund the Refunded Obligations as the same become due and payable or are redeemed prior to maturity, all as provided in this Resolution and the Escrow Deposit Agreement.

(H) That the principal of and interest on the Bonds to be issued pursuant to this Resolution, and all other payments provided for in this Resolution will be paid solely from the Pledged Funds in accordance with the terms hereof; and the ad valorem taxing power or any other funds of the Issuer will never be necessary or authorized to pay the principal of and interest on the Bonds to be issued pursuant to this Resolution, or to make any other payments provided for in this Resolution, and the Bonds shall not constitute a lien upon the Transportation Facilities or upon any other property whatsoever of or in the Issuer.

**SECTION 1.05. AUTHORIZATION OF INITIAL PROJECT.** The Issuer does hereby authorize the acquisition and construction of the Initial Project.

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

**SECTION 2.01. AUTHORIZATION OF BONDS.** This Resolution creates an issue of Bonds of the Issuer to be designated as "Lee County, Florida Transportation Facilities Revenue Bonds," which may be issued in one or more Series as hereinafter provided. The aggregate principal amount of the Bonds which may be executed and delivered under this Resolution is not limited except as is or may hereafter be provided in this Resolution or as limited by the Act or by law.

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

The Bonds shall be issued for such purpose or purposes; shall bear interest at such rate or rates not exceeding the maximum rate permitted by law; and shall be payable on such dates; all as determined by Supplemental Resolution of the Issuer.

The Bonds shall be issued in such denominations and such form, whether coupon or registered; shall be dated such date; shall bear such numbers; shall be payable at such place or places; shall contain such redemption provisions; shall have such Paying Agents and Registrars; shall mature in such years and amounts; and the proceeds shall be used in such manner; all as determined by Supplemental Resolution of the Issuer. The Issuer may issue Bonds which may be secured by a Credit Facility or by an insurance policy or surety bond of an Insurer all as shall be determined by Supplemental Resolution of the Issuer.

**SECTION 2.02. AUTHORIZATION AND DESCRIPTION OF SERIES 1987 BONDS.** A Series of Bonds entitled to the benefit, protection and security of this Resolution is hereby authorized in the aggregate principal amount of not exceeding \$100,000,000 for the purposes of refunding of the Refunded Obligations and constructing and acquiring the Initial Project. Such Series of Bonds shall be designated as, and shall be distinguished from the Bonds of all other Series by the title, "Lee County, Florida Transportation Facilities Revenue Bonds, Series 1987"; provided the Issuer may change such designation in the event that the total amount of Series 1987 Bonds authorized herein are not issued in a simultaneous transaction or the Series 1987 Bonds are not issued in calendar year 1987.

The Series 1987 Bonds shall be dated as of the first day of the month in which occurs the delivery of the Series 1987 Bonds to the purchaser or purchasers thereof or such other date as may be set forth by Supplemental Resolution of the Issuer; shall be issued as fully registered Bonds; shall be numbered consecutively from one upward in order of maturity preceded by the letter "R"; shall be in such denominations and shall bear interest at a rate or rates not exceeding the maximum rate permitted by law, payable in such manner and on such dates; shall consist of such amounts of Serial Bonds, Term Bonds, Variable Rate Bonds and Capital Appreciation Bonds, maturing in such years and amounts not exceeding forty (40) years from their dated date; shall be payable in such place or places; shall have such Paying Agents and Registrars; and shall contain such redemption provisions; all as the Issuer shall provide hereafter by Supplemental Resolution.

The principal of or Redemption Price, if applicable, on the Series 1987 Bonds are payable upon presentation of the Series 1987 Bonds at the office of the Paying Agent designated therefor. Interest payable on any Series 1987 Bond on any Interest Date will be paid by check of the Paying Agent to the Holder in whose name such Bond shall be registered at the close of business on the date which shall be the fifteenth day (whether or not a business day) of the calendar month next preceding such Interest Date, or, unless otherwise provided by Supplemental Resolution, at the request of a Holder of not less than \$1,000,000 aggregate principal amount of Bonds, by bank wire transfer for the account of such Holder. All payments of principal of or Redemption Price, if applicable, and interest on the Series 1987 Bonds shall be payable, unless otherwise provided by Supplemental Resolution, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

**SECTION 2.03. APPLICATION OF SERIES 1987 BOND PROCEEDS.**

Except as otherwise provided by Supplemental Resolution of the Issuer, the proceeds derived from the sale of the Series 1987 Bonds, including accrued interest and premium, if any, shall, simultaneously with the delivery of the Series 1987 Bonds to the purchaser or purchasers thereof, be applied by the Issuer as follows:

(A) Accrued interest and proceeds of the Series 1987 Bonds representing capitalized interest, if any, shall be deposited in the Interest Subaccount and shall be used only for the purpose of paying the interest which shall thereafter become due on the Series 1987 Bonds.

(B) A sufficient amount of Series 1987 Bond proceeds shall be deposited in the Reserve Subaccount which, together with any moneys and securities on deposit therein and insurance policies obtained in accordance with Section 4.05(B)(5) hereof, shall equal the Reserve Subaccount Requirement.

(C) A sufficient amount of Series 1987 Bond proceeds shall be deposited irrevocably in trust in the escrow deposit trust fund under the terms and provisions of the Escrow Deposit Agreement and shall be invested in Federal Securities (as defined in the Refunded Resolution), or such other obligations as may be provided for such purpose by the Refunded Resolution, in the manner set forth in the Escrow Deposit Agreement, which investments shall mature at such times and in such amounts as shall be sufficient to pay the principal of or Redemption Price, if applicable, and interest on the Refunded Obligations as the same mature and become due and payable or are redeemed prior to maturity.

(D) A sufficient amount of the Series 1987 Bond proceeds shall be applied to the payment of the premiums of any municipal bond insurance policies applicable to the Series 1987 Bonds or reserves established therefor and to the payment of costs and expenses associated with the issuance of the Series 1987 Bonds to the extent such costs and expenses shall not be paid from the Construction Fund.

(E) The balance of the Series 1987 Bond proceeds shall be deposited in the Construction Fund.

**SECTION 2.04. EXECUTION OF BONDS.** The Bonds shall be executed in the name of the Issuer with the manual or facsimile signature of the Chairman and the official seal of the Issuer shall be affixed or imprinted thereon, attested and countersigned with the manual or facsimile signature of the Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person who at the actual time of the execution of such Bond shall hold the proper office of the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Bonds shall be actually sold and delivered.

**SECTION 2.05. AUTHENTICATION.** No Bond of any Series shall be secured hereunder or entitled to the benefit hereof or shall be valid or obligatory for any purpose unless there shall be manually endorsed on such Bond a certificate of authentication by the Registrar or such other entity as may be approved by the Issuer for such purpose. Such certificate on any Bond shall be conclusive evidence that such Bond

has been duly authenticated and delivered under this Resolution. The form of such certificate shall be substantially in the form provided in Section 2.10 hereof.

**SECTION 2.06. TEMPORARY BONDS.** Until the definitive Bonds of any Series are prepared, the Issuer may execute, in the same manner as is provided in Section 2.04 hereof, and deliver, upon authentication by the Registrar pursuant to Section 2.05 hereof, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, except as to the denominations thereof, one or more temporary Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued, in denominations of \$5,000 or any multiple thereof authorized by the Issuer (except as to Capital Appreciation Bonds and Variable Rate Bonds which may be issued in such denominations as provided by Supplemental Resolution), and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The Issuer, at its own expense, shall prepare and execute definitive Bonds, which shall be authenticated by the Registrar. Upon the surrender of such temporary Bonds for exchange, the Registrar, without charge to the Holder thereof, shall deliver in exchange therefor definitive Bonds, of the same aggregate principal amount and Series and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds issued pursuant to this Resolution. All temporary Bonds surrendered in exchange for another temporary Bond or Bonds or for a definitive Bond or Bonds shall be forthwith cancelled by the Registrar.

**SECTION 2.07. BONDS MUTILATED, DESTROYED, STOLEN OR LOST.** In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver, and the Registrar shall authenticate, a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder furnishing the Issuer and the Registrar proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer and the Registrar may incur. All Bonds so surrendered shall be cancelled by the Registrar. If any of the Bonds shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same or cause the Bond to be paid, upon being indemnified as aforesaid, and if such Bonds be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds issued pursuant to this Section 2.07 shall constitute original, additional contractual obligations on the part of the Issuer whether or not the lost, stolen or destroyed Bond be at any time found by anyone, and such duplicate Bond

shall be entitled to equal and proportionate benefits and rights as to lien on the Pledged Funds to the same extent as all other Bonds issued hereunder.

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

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

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

The Registrar shall, in any case where it is not also the Paying Agent in respect to any Series of Bonds, forthwith (A) following the fifteenth day prior to an interest payment date for such Series; (B) following the fifteenth day next preceding the date of mailing of notice of redemption of any Bonds of such Series; and (C) at any other time as reasonably requested by the Paying Agent of such Series, certify and furnish to such Paying Agent the names, addresses and holdings of Bondholders and any other relevant information reflected in the registration books. Any Paying Agent of any fully registered



Bond shall effect payment of interest on such Bonds by mailing a check to the Holder entitled thereto or may, in lieu thereof, upon the request and at the expense of such Holder, transmit such payment by bank wire transfer for the account of such Holder.

In all cases in which Bonds shall be exchanged or the transfer of Bonds shall be registered, the Issuer shall execute and deliver Bonds and the Registrar shall authenticate such Bonds in accordance with the provisions of this Resolution. Execution of Bonds by the Chairman and Clerk for purposes of exchanging, replacing or registering the transfer of Bonds may occur at the time of the original delivery of the Series of which such Bonds are a part. All Bonds surrendered in any such exchanges or registrations of transfer shall be held by the Registrar in safekeeping until directed by the Issuer to be cancelled by the Registrar. For every such exchange or registration of transfer, the Issuer or the Registrar may make a charge sufficient to reimburse it for any tax, fee, expense or other governmental charge required to be paid with respect to such exchange or registration of transfer. The Issuer and the Registrar shall not be obligated to make any such exchange or registration of transfer of Bonds of any Series during the fifteen (15) days next preceding an Interest Date on the Bonds of such Series (other than Capital Appreciation Bonds and Variable Rate Bonds), or, in the case of any proposed redemption of Bonds of such Series, then during the fifteen (15) days next preceding the date of the first mailing of notice of such redemption and continuing until such redemption date.

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

**SECTION 2.09. COUPON BONDS.** The Issuer, at its discretion, may by Supplemental Resolution authorize the issuance of coupon Bonds, registrable as to principal only or as to both principal and interest. Such Supplemental Resolution shall provide for the negotiability, transfer, interchangeability, denominations and form of such Bonds and coupons appertaining thereto.

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

No. R-\$

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
LEE COUNTY  
TRANSPORTATION FACILITIES REVENUE BOND,  
SERIES**

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

Principal Amount:

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

Such Principal Amount and interest and the premium, if any, on this Bond are payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. Such Principal Amount and the premium, if any, on this Bond, are payable at the principal corporate trust office of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as Paying Agent. Payment of each installment of interest shall be made to the person in whose name this Bond shall be registered on the registration books of the Issuer maintained by \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as Registrar, at the close of business on the date which shall be the fifteenth day (whether or not a business day) of the calendar month next preceding each interest payment date applicable thereto and shall be paid by a check of such Paying Agent mailed to such Registered Holder at the address appearing on such registration books or, at the request of

a Registered Holder of not less than \$1,000,000 aggregate principal amount of Bonds, by bank wire transfer for the account of such Holder.

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds") of like date, tenor and effect, except as to principal amount, maturity date, interest rate, denomination, registered holder and number, issued to finance \_\_\_\_\_, in and for the Issuer, under the authority of and in full compliance with the Constitution and laws of the State of Florida, particularly Chapter 125, Florida Statutes, Ordinance No. 86-11, enacted on April 16, 1986, as amended, and other applicable provisions of law (the "Act"), and a resolution duly adopted by the Board of County Commissioners of the Issuer, on April 16, 1986, as restated, amended and supplemented (the "Resolution"), and is subject to all the terms and conditions of the Resolution.

This Bond and the interest hereon are payable solely from and secured by a lien upon and a pledge of (i) the Net Revenues (as defined in the Resolution) to be derived from the ownership and operation of various transportation facilities located in the Issuer (the "Transportation Facilities"), as more particularly described in the Resolution and (ii) until applied in accordance with the provisions of the Resolution, all moneys, including investments thereof, in certain funds, accounts and subaccounts established by the Resolution (collectively, the "Pledged Funds"), subject in each case to the application thereof for the purposes and on the conditions permitted by the Resolution. It is expressly agreed by the Registered Holder of this Bond that the full faith and credit of the Issuer are not pledged to the payment of the principal of, premium, if any, and interest on this Bond and that such Holder shall never have the right to require or compel the exercise of any taxing power of the Issuer to the payment of such principal, premium, if any, and interest. This Bond and the obligation evidenced hereby shall not constitute a lien upon the Transportation Facilities or any other property of the Issuer, other than the Pledged Funds, but shall constitute a lien only on, and shall be payable solely from, the Pledged Funds in accordance with the terms of the Resolution.

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

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

This Bond is one of a series of Bonds which were validated by judgment of the Circuit Court for Lee County, Florida, rendered on \_\_\_\_\_..

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

**IN WITNESS WHEREOF**, the Board of County Commissioners of Lee County, Florida has issued this Bond and has caused the same to be executed by the manual or facsimile signature of its Chairman, and by the manual or facsimile signature of the Clerk of the Board of County Commissioners of Lee County, Florida, and its corporate seal or a facsimile thereof to be affixed or reproduced hereon.

**LEE COUNTY, FLORIDA**

(SEAL)

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Chairman of the Board of County  
Commissioners of Lee County, Florida

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Clerk to the Board of County Commissioners of  
Lee County, Florida

(PROVISIONS ON REVERSE SIDE OF BOND)

The transfer of this Bond is registrable in accordance with the terms of the Resolution only upon the books of the Issuer kept for that purpose at the principal corporate trust office of the Registrar by the Registered Holder hereof in person or by his attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or his attorney duly authorized in writing, and thereupon a new Bond or Bonds in the same aggregate principal amount shall be issued to the transferee in exchange therefor, and upon the payment of the charges, if any, therein prescribed. The Bonds are issuable in the form of fully registered Bonds in the denomination of \$5,000 and any integral multiple thereof, not exceeding the aggregate principal amount of the Bonds. The Issuer, the Registrar and any Paying Agent may treat the Registered Holder of this Bond as the absolute owner hereof for all purposes, whether or not this Bond shall be overdue, and shall not be affected by any notice to the contrary. The Issuer shall not be obligated to make any exchange or to register the transfer of the Bonds during the fifteen (15) days next preceding an interest payment date applicable thereto or, in the case of any proposed redemption of the Bonds, then, during the fifteen (15) days next preceding the date of the first mailing of notice of such redemption and continuing until such redemption date.

(INSERT REDEMPTION PROVISIONS)

Redemption of this Bond under the preceding paragraphs shall be made as provided in the Resolution upon notice given by first class mail sent at least thirty (30) days prior to the redemption date to the Registered Holder hereof at the address shown on the registration books maintained by the Registrar; provided, however, that failure to mail notice to the Registered Holder hereof, or any defect therein, shall not affect the validity of the proceedings for redemption of this Bond. In the event that less than the full principal amount hereof shall have been called for redemption, the Registered Holder hereof shall surrender this Bond in exchange for one or more Bonds in an aggregate principal amount equal to the unredeemed portion of principal, as provided in the Resolution.

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

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed, in regular and due form and time as required by

the laws and Constitution of the State of Florida applicable thereto, and that the issuance of the Bonds does not violate any constitutional or statutory limitations or provisions.

**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers to \_\_\_\_\_

---

Insert Social Security or Other Identifying Number of Assignee

---

(Name and Address of Assignee)

---

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

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

Signature guaranteed:

---

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

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**NOTICE:** The signature to this assignment must correspond with the name of the Registered Holder as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever and the Social Security or other identifying number of such assignee must be supplied.

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

TEN COM -- as tenants in common

TEN ENT -- as tenants by the entireties

JT TEN -- as joint tenants with right of survivorship and not as tenants in common

UNIF TRANS MIN ACT -- \_\_\_\_\_  
(Cust.)

Custodian for \_\_\_\_\_  
(Minor)

under Uniform Transfers to Minors Act of \_\_\_\_\_  
(State)

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



**CERTIFICATE OF AUTHENTICATION**

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

DATE OF AUTHENTICATION:

\_\_\_\_\_

\_\_\_\_\_,  
Registrar

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

## **ARTICLE III REDEMPTION OF BONDS**

**SECTION 3.01. PRIVILEGE OF REDEMPTION.** The terms of this Article III shall apply to redemption of Bonds other than Capital Appreciation Bonds or Variable Rate Bonds. The terms and provisions relating to redemption of Capital Appreciation Bonds and Variable Rate Bonds shall be provided by Supplemental Resolution.

**SECTION 3.02. SELECTION OF BONDS TO BE REDEEMED.** The Bonds shall be redeemed only in the principal amount of \$5,000 each and integral multiples thereof. The Issuer, or its agent, shall, at least sixty (60) days prior to the redemption date (unless a shorter time period shall be satisfactory to the Registrar), notify the Registrar of such redemption date and of the principal amount of Bonds to be redeemed. For purposes of any redemption of less than all of the Outstanding Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected not more than forty-five (45) days prior to the redemption date by the Registrar from the Outstanding Bonds of the maturity or maturities designated by the Issuer by such method as the Registrar shall deem fair and appropriate and which may provide for the selection for redemption of Bonds or portions of Bonds in principal amounts of \$5,000 and integral multiples thereof.

The Registrar shall promptly notify the Issuer and Paying Agent (if the Registrar is not the Paying Agent for such Bonds) in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

**SECTION 3.03. NOTICE OF REDEMPTION.** Notice of such redemption, which shall specify the Bond or Bonds (or portions thereof) to be redeemed and the date and place for redemption, shall be given by the Registrar on behalf of the Issuer, and (A) shall be filed with the Paying Agents of the Bonds, (B) shall be mailed first class, postage prepaid, at least thirty (30) days prior to the redemption date to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books kept by the Registrar, and (C) shall be mailed certified, postage prepaid, at least thirty-five (35) days prior to the redemption date to the registered securities depositaries and two or more nationally recognized municipal bond information services. Failure to mail notice to the Holders of the Bonds to be redeemed, or any defect therein, shall not affect the validity of the proceedings of redemption of such Bonds as to which no such failure or defect has occurred.

Each notice of redemption shall state: (1) the CUSIP numbers of all Bonds being redeemed; (2) the original issue date of such Bonds; (3) the maturity date and rate of

interest borne by each Bond being redeemed; (4) the redemption date; (5) the Redemption Price; (6) the date on which such notice is mailed; (7) if less than all Outstanding Bonds are to be redeemed, the certificate number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed; (8) that on such redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable; (9) that the Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the redemption price at the principal office of the Registrar at an address specified; and (10) the name and telephone number of a person designated by the Registrar to be responsible for such redemption.

**SECTION 3.04. REDEMPTION OF PORTIONS OF BONDS.** Any Bond which is to be redeemed only in part shall be surrendered at any place of payment specified in the notice of redemption (with due endorsement by, or written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds, of any authorized denomination, as requested by such Holder in an aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bonds so surrendered.

**SECTION 3.05. PAYMENT OF REDEEMED BONDS.** Notice of redemption having been given substantially as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Registrar and/or Paying Agent at the appropriate Redemption Price, plus accrued interest. Each check or other transfer of funds issued by the Paying Agent to pay the Redemption Price of Bonds being redeemed shall bear the CUSIP number or numbers of such Bonds and identify the payments applicable to each CUSIP number. All Bonds which have been redeemed shall be cancelled and destroyed by the Registrar and shall not be reissued.

**ARTICLE IV**  
**SECURITY, SPECIAL FUNDS AND APPLICATION THEREOF**

**SECTION 4.01. BONDS NOT TO BE INDEBTEDNESS OF ISSUER.** The Bonds shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of any constitutional or statutory provision, but shall be special obligations of the Issuer, payable solely from and secured by a lien upon and pledge of the Pledged Funds, in the manner and to the extent provided in this Resolution. No Holder of any Bond, or any Credit Bank or Insurer shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Bond, or be entitled to payment of such Bond or on account of such Bond from any moneys of the Issuer except from the Pledged Funds in the manner and to the extent provided herein.

The Pledged Funds shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer.

**SECTION 4.02. SECURITY FOR BONDS.** The payment of the principal of or Redemption Price, if applicable, and interest on the Bonds shall be secured forthwith equally and ratably by a pledge of and lien upon the Pledged Funds; provided, however, a Series of Bonds may be further secured or guaranteed by a Credit Facility or insurance policy or surety bond of an Insurer in addition to the security provided herein. The Issuer does hereby irrevocably pledge the Pledged Funds to the payment of the principal of or Redemption Price, if applicable, and interest on the Bonds, subject to the application thereof for the purposes and on the conditions permitted by the Resolution. In addition, the Issuer does hereby irrevocably pledge and grant a lien upon the Net Revenues to the payment of the Policy Costs in accordance with the provisions hereof; provided, however, such pledge and lien shall be junior and subordinate in all respect to the pledge and lien upon such Net Revenues granted hereby to the Bondholders.

**SECTION 4.03. CONSTRUCTION FUND.** The Issuer covenants and agrees to establish a special fund in a bank, trust company or such other entity in the State, which is eligible under the laws of the State to be a depository for county funds, to be known as the "Lee County, Florida Transportation Facilities Construction Fund," which shall be used only for payment of the Cost of a Project. Moneys in the Construction Fund, until applied in payment of any item of the Cost of a Project in the manner hereinafter provided, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

There shall be paid into the Construction Fund the amounts required to be so paid by the provisions of this Resolution, and there may be paid into the Construction Fund, at

the option of the Issuer, any moneys received for or in connection with a Project by the Issuer from any other source.

The Issuer shall establish within the Construction Fund a separate account for each Project (or, at the Issuer's option, any portion of a Project), the Cost of which is to be paid in whole or in part out of the Construction Fund. The Issuer agrees to establish in the Construction Fund one or more separate accounts for the Initial Project.

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

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

The Issuer covenants that the acquisition and construction of each Project will be completed without unreasonable delay and in accordance with sound engineering practices. The Issuer shall make disbursements or payments from the Construction Fund to pay the Cost of a Project upon the filing with the Clerk of certificates signed by an Authorized Issuer Officer and by the Consulting Engineers, stating with respect to each disbursement or payment to be made: (A) the item number of the payment, (B) the name and address of the Person to whom payment is due, (C) the amount to be paid, (D) the Construction Fund account from which payment is to be made, (E) the purpose, by general classification, for which payment is to be made, and (F) that (i) each obligation, item of cost or expense mentioned therein has been properly incurred, is in payment of a part of the Cost of a Project and is a proper charge against the account of the Construction Fund from which payment is to be made and has not been the basis of any previous disbursement or payment, or (ii) each obligation, item of cost or expense mentioned therein has been paid by the Issuer, is a reimbursement of a part of the Cost of a Project, is a proper charge against the account of the Construction Fund from which payment is to be made, has not been theretofore reimbursed to the Issuer or otherwise been the basis of any previous disbursement or payment and the Issuer is entitled to reimbursement thereof. The Clerk shall retain all such certificates of the Authorized Issuer Officers and the Consulting Engineers for seven (7) years from the respective dates of such certificates. The Clerk shall make available the certificates at all reasonable times for inspection by any Holder of any of the Bonds, the agent or representative of any Holder of any of the Bonds, any Credit Bank or each Insurer of Outstanding Bonds.

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

The date of completion of a Project shall be determined by the Consulting Engineers which shall certify such fact in writing to the Governing Body. The Consulting Engineers may perform such tests relating to a Project as they deem necessary in order to make such certification. Promptly after the date of the completion of a Project, and after paying or making provision for the payment of all unpaid items of the Cost of such Project, the Issuer shall deposit in the following order of priority any balance of moneys remaining in the Construction Fund to: (1) another account of the Construction Fund for which the Consulting Engineers have stated that there are insufficient moneys present to pay the Cost of the related Project, (2) the Reserve Subaccount, to the extent of a deficiency therein, and (3) such other account or subaccount established hereunder as shall be determined by the Governing Body, provided the Issuer has received an opinion of Bond Counsel to the effect that such transfer to such other account or subaccount shall not adversely affect the exclusion, if any, from gross income of interest on the Bonds for purposes of federal income taxation.

**SECTION 4.04. CREATION OF ENTERPRISE FUND.** The Issuer covenants and agrees to establish with one or more banks, trust companies or such other entities in the State, which are eligible under the laws of the State to be depositories for county funds, an enterprise fund to be known as the "Lee County, Florida Transportation Facilities Enterprise Fund," which shall consist of the following accounts and subaccounts:

- (A) The "Lee County, Florida Transportation Facilities Revenue Account."
- (B) The "Lee County, Florida Transportation Facilities Operation and Maintenance Account".
- (C) The "Lee County, Florida Transportation Facilities Sinking Account." The Issuer shall maintain four separate subaccounts in the Sinking Account: the "Interest Subaccount," the "Principal Subaccount," the "Term Bonds Redemption Subaccount" and the "Reserve Subaccount."
- (D) The "Lee County, Florida Transportation Facilities Renewal and Replacement Account."
- (E) The "Lee County, Florida Transportation Facilities Subordinated Indebtedness Account."
- (F) The "Lee County, Florida Transportation Facilities Surplus Account."

(G) The "Lee County, Florida Transportation Facilities Rebate Account."

Moneys in the aforementioned accounts and subaccounts (other than moneys on deposit in the Subordinated Indebtedness Account and the Rebate Account), until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

The Issuer shall at any time and from time to time appoint one or more depositories to hold, for the benefit of the Bondholders, any one or more of the accounts and subaccounts established hereby. Such depository or depositories shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from each of such accounts or subaccounts as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than Fifty Million Dollars (\$50,000,000).

**SECTION 4.05. DISPOSITION OF GROSS REVENUES.**

(A) Revenue Account. The Issuer shall deposit into the Revenue Account promptly, as received, all Gross Revenues as well as any other moneys (other than Gross Revenues) contributed by the Issuer or any other entity for the payment of Operating Expenses of the Transportation Facilities or debt service on the Bonds, which shall be disbursed in accordance with the provisions of this Resolution.

(B) All moneys on deposit in the Revenue Account shall be disposed of by the Issuer on or before the twenty-fifth (25th) day of each month, commencing in the month immediately following the delivery of any of the Bonds to the purchasers thereof, or such later date as hereinafter provided, in the following manner and in the following order of priority:

(1) Operation and Maintenance Account. The Issuer shall deposit or credit to the Operation and Maintenance Account such sums as are necessary to pay Operating Expenses for the next succeeding month as provided in the Annual Budget; provided the Issuer may transfer moneys from the Revenue Account to the Operation and Maintenance Account at any time to pay Operating Expenses to the extent there is a deficiency in the Operation and Maintenance Account for such purpose. Amounts in the Operation and Maintenance Account shall be paid out from time to time by the Issuer for reasonable and necessary Operating Expenses;

provided, however, that no such payment shall be made unless the provisions of Section 5.04 hereof in regard to the current Annual Budget are complied with.

(2) Interest Subaccount. The Issuer shall next deposit or credit to the Interest Subaccount the sum which, together with the balance in said Subaccount, shall equal the interest on all Outstanding Bonds accrued and unpaid and to accrue to the end of the then current calendar month. Moneys in the Interest Subaccount shall be applied by the Issuer for deposit with the Paying Agents the interest on the Bonds on or prior to the date the same shall become due. The Issuer shall adjust the amount of the deposit to the Interest Subaccount on the month immediately preceding any interest payment date so as to provide sufficient moneys in the Interest Subaccount to pay the interest on the Bonds becoming due on such interest payment date. No further deposit need be made to the Interest Subaccount when the moneys therein are equal to the interest coming due on the Outstanding Bonds on the next succeeding interest payment date.

(3) Principal Subaccount. Commencing in the month which is one year prior to the first principal payment date, the Issuer shall deposit or credit to the Principal Subaccount the sum which, together with the balance in said Subaccount, shall equal the principal amounts on all Outstanding Serial Bonds due and unpaid and that portion of the principal next due which would have accrued on said Serial Bonds during the then current calendar month if such principal amounts were deemed to accrue monthly (assuming that a year consists of twelve (12) equivalent calendar months of thirty (30) days each) in equal amounts from the next preceding principal payment due date, or, if there is no such preceding principal payment due date, from a date one year preceding the due date of such principal amount. Moneys in the Principal Subaccount shall be applied by the Issuer for deposit with the Paying Agents the principal of the Bonds on or prior to the date the same shall mature. Serial Capital Appreciation Bonds shall be payable from the Principal Subaccount in the Fiscal Years in which such Bonds mature and monthly payments into the Principal Subaccount on account of such Bonds shall commence in the month which is one year prior to the date on which such Bonds mature. The Issuer shall adjust the amount of the deposit to the Principal Subaccount on the month immediately preceding any principal payment date so as to provide sufficient moneys in the Principal Subaccount to pay the principal on the Serial Bonds becoming due on such principal payment date. No further deposit need be made to the Principal Subaccount when the moneys therein are equal to the principal coming due on the Outstanding Bonds on the next succeeding principal payment date.

(4) Term Bonds Redemption Subaccount. Commencing in the month which is one year prior to any Sinking Account Installment due date, there shall be



deposited to the Term Bonds Redemption Subaccount the sum which, together with the balance in such Subaccount, shall equal the Sinking Account Installments on all Term Bonds Outstanding due and unpaid and that portion of the Sinking Account Installments of all Term Bonds Outstanding next due which would have accrued on such Term Bonds during the then current calendar month if such Sinking Account Installments were deemed to accrue monthly (assuming that a year consists of twelve (12) equivalent calendar months having thirty (30) days each) in equal amounts from the next preceding Sinking Account Installment due date, or, if there is no such preceding Sinking Account Installment due date, from a date one year preceding the due date of such Sinking Account Installment. Moneys in the Term Bonds Redemption Subaccount shall be applied by the Issuer for deposit with the Paying Agents the amount required to purchase or redeem the Sinking Account Installments on or prior to the date the same shall be purchased or redeemed. The Issuer shall adjust the amount of the deposit to the Term Bonds Redemption Subaccount on the month immediately preceding any Sinking Account Installment date so as to provide sufficient moneys in the Term Bonds Redemption Subaccount to pay the Sinking Account Installments becoming due on such date. No further deposit need be made to the Term Bonds Redemption Subaccount when the moneys therein are equal to Sinking Account Installment coming due on the Outstanding Bonds on the next succeeding Sinking Account Installment date. Payments to the Term Bonds Redemption Subaccount shall be on parity with payments to the Principal Subaccount.

Amounts accumulated in the Term Bonds Redemption Subaccount with respect to any Sinking Account Installment (together with amounts accumulated in the Interest Subaccount with respect to interest, if any, on the Term Bonds for which such Sinking Account Installment was established) may be applied by the Issuer, on or prior to the sixtieth (60th) day preceding the due date of such Sinking Account Installment, (a) to the purchase of Term Bonds of the Series and maturity for which such Sinking Account Installment was established, or (b) to the redemption at the applicable Redemption Prices of such Term Bonds, if then redeemable by their terms. The applicable Redemption Price (or principal amount of maturing Term Bonds or Term Bonds to be purchased) of any Term Bonds so purchased or redeemed shall be deemed to constitute part of the Term Bonds Redemption Subaccount until such Sinking Account Installment date, for the purposes of calculating the amount to be transferred from such Subaccount. As soon as practicable after the 60th day preceding the due date of any such Sinking Account Installment, the Issuer shall proceed to call for redemption on such due date, by causing notice to be given as provided in Section 3.03 hereof, Term Bonds of the Series and maturity for which such Sinking Account Installment was established (except in the case of Term Bonds maturing on a Sinking Account

Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Account Installment. The Issuer shall pay out of the Term Bonds Redemption Subaccount and the Interest Subaccount to the appropriate Paying Agents, on or before the day preceding such redemption date (or maturity date), the amount required for the redemption (or for the payment of such Term Bonds then maturing), and such amount shall be applied by such Paying Agents to such redemption (or payment). All expenses in connection with the purchase or redemption of Term Bonds shall be paid by the Issuer from the Operation and Maintenance Account.

(5) Reserve Subaccount. There shall be deposited to the Reserve Subaccount a sum sufficient to maintain therein an amount equal to the Reserve Subaccount Requirement. On or prior to each principal and interest payment date for the Bonds (in no event earlier than the twenty-fifth (25th) day of the month next preceding such payment date), moneys in the Reserve Subaccount shall be applied by the Issuer to the payment into the Interest Subaccount, the Principal Subaccount and the Term Bonds Redemption Subaccount, when the moneys therein shall be insufficient to pay the principal of and interest on the Bonds coming due, but only to the extent the moneys transferred from the Surplus Account for such purposes pursuant to Section 4.05(B)(9) hereof shall be inadequate to fully provide for such insufficiency. Whenever there shall be surplus moneys in the Reserve Subaccount by reason of a decrease in the Reserve Subaccount Requirement, such surplus moneys shall be deposited by the Issuer into the Revenue Account.

Upon the issuance of any Additional Bonds under the terms, limitations and conditions as herein provided, the Issuer shall increase the sum required to be accumulated and maintained on deposit in the Reserve Subaccount to be at least equal to the Reserve Subaccount Requirement on all Outstanding Bonds and on the Additional Bonds becoming due in any ensuing Fiscal Year. Such required sum may be paid on the date of issuance, in full or in part, from proceeds of such Additional Bonds and other legally available funds of the Issuer; provided that the amount on deposit in the Reserve Subaccount as of the date of issuance of such Additional Bonds shall, together with income to be earned on investments held to the credit of the Reserve Subaccount during the period for which interest has been capitalized from proceeds of such Additional Bonds, be at least equal to the Reserve Subaccount Requirement on all Bonds then Outstanding, including such Additional Bonds.

Notwithstanding the foregoing provisions, in lieu of the required deposits into the Reserve Subaccount, and upon provision of written notice to Moody's Investors Service and Standard & Poor's Corporation, the Issuer may cause to be

deposited into the Reserve Subaccount a Reserve Account Insurance Policy for the benefit of the Bondholders in an amount equal to the difference between the Reserve Subaccount Requirement and the sums then on deposit in the Reserve Subaccount, if any. Such Reserve Account Insurance Policy shall be payable to the Paying Agent (upon the giving of notice as required thereunder) on any interest payment date on which a deficiency exists which cannot be cured by funds in any other account or subaccount held pursuant to this Resolution and available for such purpose. The issuer providing such Reserve Account Insurance Policy shall be an insurer (a) whose municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in such issues being rated in the highest rating category (without regard to gradations, such as "plus" or "minus" of such categories) by Moody's Investors Service and Standard & Poor's Corporation, or (b) who holds the highest policyholder rating accorded insurers by A.M. Best & Company. If a disbursement is made from a Reserve Account Insurance Policy provided pursuant to this paragraph, the Issuer shall either reinstate the maximum limits of such Reserve Account Insurance Policy immediately following such disbursement or deposit into the Reserve Subaccount from the Pledged Funds, as herein provided, funds in the amount of the disbursement made under such instrument, or a combination of such alternatives.

Whenever the amount in the Reserve Subaccount, together with the amount in the other subaccounts of the Sinking Account, is sufficient to fully pay all Outstanding Bonds in accordance with their terms (including principal or applicable Redemption Price and interest thereon), the funds on deposit in the Reserve Subaccount shall be transferred to the other accounts of the Sinking Account.

Cash on deposit in the Reserve Subaccount shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Reserve Account Insurance Policy. If and to the extent that more than one Reserve Account Insurance Policy is deposited in the Reserve Subaccount, drawings thereunder and repayments of Policy Costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

The obligation to reimburse the issuer of a Reserve Account Insurance Policy for any Policy Costs upon such Reserve Account Insurance Policy shall be subordinate to the payment of debt service on the Bonds. The right of the issuer of a Reserve Account Insurance Policy to payment or reimbursement of Policy Costs shall be superior to cash replenishment of the Reserve Subaccount.

The Issuer and Paying Agent for any Bonds additionally secured by a Reserve Account Insurance Policy shall comply in all respects with the terms of any agreement entered into in connection with the issuance of such Reserve Account Insurance Policy, including providing all notices and demands for payment required therein.

All Policy Costs due and owing under any Reserve Account Insurance Policy must be paid in full prior to the optional redemption of any Bonds, the distribution of any moneys to the Issuer or the termination of this Resolution.

(6) Renewal and Replacement Account. There shall be deposited to the Renewal and Replacement Account such sums as shall be sufficient to pay one-twelfth (1/12) of an amount equal to the greater of (a) \$500,000, or (b) five percent (5%) of the Gross Revenues, exclusive of Investment Earnings, received by the Issuer during the immediately preceding Fiscal Year until the amount accumulated in such Account is equal to the Renewal and Replacement Account Requirement; provided, however, that (i) such Renewal and Replacement Account Requirement may be increased or decreased as the Consulting Engineers shall certify to the Issuer is necessary for the purposes of the Renewal and Replacement Account, and (ii) in the event that the Consulting Engineers shall certify that the Renewal and Replacement Account Requirement is excessive for the purposes of the Renewal and Replacement Account such excess amount as may be on deposit therein may be transferred by the Issuer from the Renewal and Replacement Account for deposit into the Revenue Account. The moneys in the Renewal and Replacement Account shall be applied by the Issuer for the purpose of paying the cost of (i) major improvements or additions to the Transportation Facilities, (ii) unusual or extraordinary maintenance or repairs, maintenance or repairs not recurring annually, and renewals and replacements, including major items of equipment, and (iii) repairs or replacements resulting from an emergency caused by some extraordinary occurrence when the moneys in the Operation and Maintenance Account and insurance proceeds, if any, available therefor are insufficient to meet such emergency. On or prior to each principal and interest payment date for the Bonds (in no event earlier than the twenty-fifth (25th) day of the month next preceding such payment date), moneys in the Renewal and Replacement Account shall be applied for the payment into the Interest Subaccount, the Principal Subaccount and the Term Bonds Redemption Subaccount when the moneys therein are insufficient to pay the principal of and interest on the Bonds coming due, but only to the extent moneys transferred from the Surplus Account and the Reserve Subaccount for such purpose pursuant to Sections 4.05(B)(9) and 4.05(B)(5), respectively, hereof shall be inadequate to fully provide for such insufficiency.

(7) Subordinated Indebtedness Account. Gross Revenues shall next be deposited by the Issuer into the Subordinated Indebtedness Account in such amounts as shall be required by the proceedings authorizing such Subordinated Indebtedness. Moneys held for the credit of the Subordinated Indebtedness Account shall be applied to the retirement of Subordinated Indebtedness issued under the provisions of this Resolution in accordance with its terms. Moneys held for the credit of the Subordinated Indebtedness Account may be pledged to the payment of the principal of and the interest on any Subordinated Indebtedness issued by the Issuer.

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

(9) Surplus Account. The balance of any Gross Revenues remaining in said Revenue Account shall be deposited in the Surplus Account and applied to the payment, on or prior to each principal and interest payment date for the Bonds (in no event earlier than the twenty-fifth (25th) day of the month next preceding such payment date), into the Interest Subaccount, the Principal Subaccount and the Term Bonds Redemption Subaccount when the moneys therein shall be insufficient to pay the principal of and interest on the Bonds coming due. Moneys in the Surplus Account may also be used by Issuer at any time to make payment of amounts required by the terms of any interlocal agreement the Issuer may enter into in regard to a Transportation Facility. Moneys in the Surplus Account may be applied for any lawful transportation-related purpose of the Issuer, including, but not limited to, purchase or redemption of Bonds, payment of Subordinated Indebtedness, and payment of improvements, renewals and replacements to the Transportation Facilities.

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

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

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

In the case of Bonds secured by a Credit Facility, amounts on deposit in the Sinking Account may be applied as provided in the applicable Supplemental Resolution to reimburse the Credit Bank for amounts drawn under such Credit Facility to pay the principal of or Redemption Price, if applicable, and interest on such Bonds or to pay the purchase price of any such Bonds which are tendered by the Holders thereof for payment. The Issuer may also establish a separate account in the Reserve Subaccount for any Series of Bonds secured by a Credit Facility and provide a pledge of such account to the payment of such Series of Bonds apart from the pledge provided herein. To the extent a Series of Bonds is secured separately by an account of the Reserve Subaccount, the Holders of such Bonds shall not be secured by any other moneys in the Reserve Subaccount.

**SECTION 4.06. REBATE ACCOUNT.** Amounts on deposit in the Rebate Account shall be held in trust by the Issuer and used solely to make required rebates to the United States (except to the extent the same may be transferred to the Revenue Account) and the Bondholders shall have no right to have the same applied for debt service on the Bonds. The Issuer agrees to undertake all actions required of it in its Certificate as to Arbitrage and Certain Other Tax Matters, dated the date of issuance of the Series 1987 Bonds, relating to the such Series 1987 Bonds, as well as any successor Certificate thereto, including, but not limited to:

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

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

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

(D) keeping such records of the determinations made pursuant to this Section 4.06 as shall be required by the Code, as well as evidence of the fair market value of any investments purchased with proceeds of the Bonds.

The provisions of the above-described Certificate as to Arbitrage may be amended from time to time as shall be necessary, in the opinion of Bond Counsel, to comply with the provisions of the Code.

**SECTION 4.07. INVESTMENTS.** The moneys in the Construction Fund, the Revenue Account, Operation and Maintenance Account, the Principal Subaccount, the Interest Subaccount, the Term Bonds Redemption Subaccount, the Renewal and Replacement Account, the Subordinated Indebtedness Account and the Surplus Account shall be invested and reinvested by the Issuer in Authorized Investments, maturing not later than the dates on which such moneys will be needed for the purposes of such fund or account. Moneys in the Reserve Subaccount shall be invested in such obligations as provided in clauses (1) through (5) of the definition of "Authorized Investments" in Section 1.01 hereof, as follows: fifty percent (50%) of the amounts on deposit shall be invested in obligations maturing not later than two (2) years from the date of investment, and one hundred percent (100%) of the amounts on deposit shall be invested in obligations maturing not later than five (5) years from the date of investment.

Any and all income received from the investment of moneys in the Interest Subaccount, the Principal Subaccount, the Term Bonds Redemption Subaccount, the Renewal and Replacement Account (only to the extent such income and the other amounts in such Account exceed the Renewal and Replacement Account Requirement) and the Reserve Subaccount (only to the extent such income and the other amounts in such Subaccount exceed the Reserve Subaccount Requirement) shall be transferred to the Revenue Account; provided, however, that during any period for which interest has been capitalized from Bond proceeds, all income received from the investment of moneys in the Reserve Subaccount (only to the extent such income and other amounts in such Subaccount exceed the Reserve Subaccount Requirement) shall be transferred to the Construction Fund. Surplus moneys in the Renewal and Replacement Account and the Reserve Subaccount shall be transferred to the Revenue Account regardless of whether such moneys become surplus as a result of a change in valuation of investments in such Account or Subaccount, a change in the moneys required to be on deposit therein, or otherwise. Any and all income received from the investment of moneys in the Revenue Account, the Operation and Maintenance Account, the Reserve Subaccount (to the extent

such income and the other amounts in such Subaccount do not exceed the Reserve Subaccount Requirement), the Renewal and Replacement Account (to the extent such income and the other amounts in such Account do not exceed the Renewal and Replacement Account Requirement), the Subordinated Indebtedness Account, the Surplus Account and in each separate account of the Construction Fund shall be retained in such respective Account or Subaccount.

Nothing in this Resolution shall prevent any Authorized Investments acquired as investments of or security for funds held under this Resolution, except the collateral for such Authorized Investments, which must be delivered if it is not in book-entry form, from being issued or held in book-entry form on the books of the issuer of such Authorized Investments.

**SECTION 4.08. VALUATION.** For the purpose of determining the amount on deposit to the credit of any fund, account or subaccount established hereunder, obligations in which money in such account or subaccount shall have been invested shall be valued at the market value thereof.

The Issuer shall value the Reserve Subaccount Requirement and the investments in the Reserve Subaccount and the Renewal and Replacement Account semi-annually twelve (12) business days prior to each Interest Date. If upon valuation of the obligations on deposit to the credit of the Reserve Subaccount, the balance to the credit of the Reserve Subaccount is less than the Reserve Subaccount Requirement, the Issuer shall compute the amount by which the Reserve Subaccount Requirement exceeds such balance and shall cure such deficiency as provided in Section 4.05(B)(5) hereof.

The value of any investments shall be calculated as follows: (A) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal or The New York Times, the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination; (B) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times, the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers at the time making a market in such investments or the bid price published by a nationally recognized pricing service; (C) as to certificates of deposit and bankers acceptances, the face amount thereof, plus accrued interest; and (D) as to any investment not specified above, the value thereof established by prior agreement between the Issuer and any Insurer of any Bonds affected by such investment.

If more than one provision of the valuation provisions described herein shall apply at any time to any particular investment, the value thereof at such time shall be



determined in accordance with the provision establishing the lowest value of such investment.

**SECTION 4.09. SEPARATE ACCOUNTS.** The moneys required to be accounted for in each of the foregoing funds, accounts and subaccounts established herein may be deposited in a single, non-exclusive bank account, and funds allocated to the various funds, accounts and subaccounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

The designation and establishment of the various funds, accounts and subaccounts in and by this Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to establish certain priorities for application of such revenues as herein provided.

## **ARTICLE V COVENANTS**

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

**SECTION 5.02. USE AND OPERATION OF TRANSPORTATION FACILITIES.** The Issuer covenants that it will establish and enforce reasonable rules and regulations governing the use of the Transportation Facilities and the operation thereof; that all conditions of employment and all compensation, salaries, fees and wages paid by it in connection with the maintenance, repair and operation of the Transportation Facilities will be reasonable; that no more persons will be employed by it than are necessary; that all persons employed by it will be qualified for their respective positions; that it will maintain and operate the Transportation Facilities in an efficient and economical manner; that it will at all times maintain the Transportation Facilities in good repair and in sound operating condition and will make all necessary repairs, renewals and replacements; and that it will observe and perform all of the terms and conditions contained in the Act.

**SECTION 5.03. PAYMENT OF LAWFUL CHARGES.** The Issuer covenants that, except as otherwise permitted in Sections 5.10 and 6.01 hereof, it will not create or suffer to be created any lien or charge upon the Transportation Facilities or upon the Gross Revenues, except the lien and pledge of the Bonds hereby upon the Net Revenues, and that, from the Gross Revenues or other available funds, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty (60) days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects that, if unpaid, might by law become a lien upon the Transportation Facilities or the Gross Revenues; provided, however, that nothing in this Section 5.03 contained shall require the Issuer to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith.

**SECTION 5.04. ANNUAL BUDGET.** The Issuer shall annually prepare and adopt, prior to the beginning of each Fiscal Year, an Annual Budget in accordance with applicable law. The Annual Budget, prior to adoption, shall be promptly filed with the Traffic Engineers and the Consulting Engineers, which shall review said Budget and make such recommendations as they deem appropriate. No expenditure for the operation and maintenance of the Transportation Facilities shall be made in any Fiscal Year in excess of the amount provided therefor in the Annual Budget, (A) without a written finding and recommendation by an Authorized Issuer Officer, which finding and recommendation shall state in detail the purpose of and necessity for such increased

expenditures, and (B) until the Governing Body shall have approved such finding and recommendation by an amended budget. No such increased expenditures in excess of twenty percent (20%) of the amounts provided therefor in the Annual Budget shall in any event be made except upon the further certification of the Traffic Engineers that such increased expenditures are reasonable and necessary to the continued operation of the Transportation Facilities.

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

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

#### **SECTION 5.05. RATES.**

(A) The Issuer covenants, subject to applicable State and federal laws and regulations, to fix, establish, maintain and collect such fees, rates, tolls, charges and other income for the use and services of its Transportation Facilities, and revise the same from time to time, whenever necessary, as will always provide in each Fiscal Year, Net Revenues which shall be adequate at all times to pay in each Fiscal Year (1) at least one hundred twenty percent (120%) of the Annual Debt Service on all Outstanding Bonds becoming due in such Fiscal Year, and (2) at least one hundred percent (100%) of all amounts required by this Resolution to be deposited in the Reserve Subaccount, including all Policy Costs then due and owing, and the Renewal and Replacement Account during such Fiscal Year.

(B) In computing the Annual Debt Service on Variable Rate Bonds for purposes of Section 5.05(A), such Variable Rate Bonds shall be deemed to bear interest at the greater of (1) the rate of interest on such Variable Rate Bonds on the date of their issuance plus one-half of the difference between such rate and the Maximum Interest Rate, or (2) the rate of interest on such Variable Rate Bonds on the date of calculation.

(C) If, in any Fiscal Year, the Issuer shall fail to comply with the requirements contained in Section 5.05(A) above, it shall cause the Traffic Engineers to review its rates, fees, tolls, charges, income, Gross Revenues, Operating Expenses and methods of operation and to make written recommendations as to the methods by which the Issuer may promptly seek to comply with the requirements set forth in Section 5.05(A) above. The Issuer shall implement such recommendations to the extent required so as to cause it to thereafter comply with said requirements prior to the end of the next ensuing Fiscal Year.

(D) Until such time as the toll on the Cape Coral Bridge shall be imposed by the Issuer, the Issuer agrees to budget and appropriate moneys in each Fiscal Year which shall be sufficient to operate and maintain the Cape Coral Bridge. Moneys which are appropriated by the Issuer for the above-described purpose shall be deposited into the Revenue Account.

**SECTION 5.06. UNIFORMITY OF TOLLS.** The Issuer covenants that, no later than the commencement of operation of each Transportation Facility, the Issuer shall establish and place into effect reasonable tolls, fees and charges in regard to the use of such Transportation Facility. The Issuer further covenants that tolls for traffic using the Transportation Facilities will be classified in a reasonable way to cover all traffic, so that the tolls may be uniform in application to all traffic falling within any reasonable class regardless of the status or character of any Person participating in the traffic, and that no reduced rate of toll will be allowed within any such class except that, subject to the provisions of Section 5.05 hereof, provision may be made for the use of commutation or other tickets or privileges based upon frequency or volume. The Issuer further covenants that no free vehicular passage will be permitted on the Transportation Facilities except public and private school buses that are being used for the purpose of regular school transportation, vehicles owned by the State of Florida, the County, or any municipality within the County that are being used for public purposes, ambulances that are being used for patient transport, vehicles owned and operated by agents and independent contractors of the County that are being used in connection with the maintenance or operation of the Causeway, vehicles driven by members of the clergy, other vehicles exempted from the payment of tolls by laws of the State of Florida, and except on such portions of any approaches of the Transportation Facilities as may be determined by the Issuer.

**SECTION 5.07. INSPECTION OF TRANSPORTATION FACILITIES.** The Issuer covenants that it will cause either the Florida Department of Transportation or the Consulting Engineers to make an inspection of the Transportation Facilities at least once in the Fiscal Year ending on September 30, 1989 and at least once in every second Fiscal Year thereafter, to submit to the Issuer a report or reports setting forth their findings whether the Transportation Facilities have been maintained in good repair,

working order and condition. In the event the Florida Department of Transportation submits the above-described report, the Issuer shall have the Consulting Engineers review such report.

Promptly after the receipt of such reports by the Issuer, copies thereof shall be filed with the Clerk and mailed by the Issuer to any Credit Bank and each Insurer of Outstanding Bonds and to all Bondholders who shall have filed their names and addresses with the Clerk for such purposes.

**SECTION 5.08. BOOKS AND RECORDS.** The Issuer shall keep books, records and accounts of the revenues and operations of the Transportation Facilities, which shall be kept separate and apart from all other books, records and accounts of the Issuer, and the Holders of not less than five percent (5%) in aggregate principal amount of the Bonds Outstanding or the duly authorized representatives thereof, as well as any Credit Bank and each Insurer of Outstanding Bonds, shall have the right at all reasonable times to inspect all books, records and accounts of the Issuer relating thereto.

The Issuer agrees to permit each Insurer of Outstanding Bonds to discuss the affairs, finances and accounts of the Issuer or any information such Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer. The Issuer covenants and agrees to permit each Insurer of Outstanding Bonds to have access to the Transportation Facilities and have access to and to make copies of all books and records relating to Bonds insured by such Insurer at any reasonable time.

Each Insurer of Outstanding Bonds shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from such Insurer shall be deemed a default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any Bondholder.

**SECTION 5.09. ANNUAL AUDIT.** The Issuer shall, immediately after the close of each Fiscal Year, cause the books, records and accounts relating to the Transportation Facilities to be properly audited by the Accountant, and shall require the Accountant to complete its report of such Annual Audit in accordance with applicable law. Such Annual Audits shall contain, but not be limited to, a balance sheet; an income statement; a statement of changes in financial position; statement of changes in fund balances; details of all Bonds, notes and Subordinated Indebtedness issued, paid, purchased or redeemed during such period; a statement as to changes of fees, rates, tolls and charges for use of Transportation Facilities; a statement of insurance coverage; and any other statements as required by law or accounting convention. Each Annual Audit

shall be in conformity with generally accepted accounting principles consistently applied. A copy of each Annual Audit shall regularly be furnished to any Credit Bank or each Insurer of Outstanding Bonds and to any Holder of a Bond who shall have furnished his address to the Clerk and requested in writing that the same be furnished to him.

**SECTION 5.10. COVENANT AGAINST SALE OR ENCUMBRANCE; EXCEPTIONS.** The Issuer covenants that, except as in this Section 5.10 otherwise permitted, it will not sell or otherwise dispose of or encumber any Transportation Facilities or any part thereof.

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

Prior to any such sale, lease or other disposition of said property: (1) if the amount to be received therefor is not in excess of one-fourth (1/4) of one percent (1%) of the value of the Transportation Facilities at original cost, the Authorized Issuer Officer shall make a finding in writing determining that one or more of the conditions for sale, lease or disposition of property provided for in the second paragraph of this Section 5.10 have been met; or (2) if the amount to be received from such sale, lease or other disposition of said property shall be in excess of one-fourth (1/4) of one percent (1%) of the value of the Transportation Facilities at original cost, (a) the Authorized Issuer Officer and the Consulting Engineers shall each first make a finding in writing determining that one or more of the conditions for sale, lease or other disposition of property provided for in the second paragraph of this Section 5.10 have been met and that such sale, lease or other disposition will not adversely affect the security for the Bondholders, (b) the Issuer shall, by resolution, duly adopt, approve and concur in the finding of the Authorized Issuer Officer and the Consulting Engineers, and (c) the Issuer shall obtain an opinion of Bond Counsel to the effect that such sale, lease or other disposition is not in violation of the Act and will not adversely affect the federal tax exempt status of interest on the Bonds (other than Taxable Bonds).

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

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

The transfer of the Transportation Facilities as a whole from the control of the Issuer to some other board or authority which may hereafter be created for such purpose and which constitutes a governmental entity, interest on obligations issued by which are excluded from gross income for purposes of federal income taxation, shall not be deemed prohibited by this Section 5.10 and such successor board or authority shall fall within the definition of "Issuer" in Section 1.01 hereof.

**SECTION 5.11. INSURANCE.** The Issuer will carry such insurance as the Consulting Engineers certify to be customary and reasonable for entities such as the Issuer which own and operate facilities similar to the Transportation Facilities. The Issuer shall provide insurance, to the extent available at commercially reasonable rates, against loss caused by damage to or destruction of all or any part of any of the Transportation Facilities; use and occupancy insurance covering loss of Gross Revenues; comprehensive public liability insurance for bodily injury and property damage and such other insurance as the Issuer may determine. All such insurance policies shall be carried in a responsible insurance company or companies authorized and qualified to assume the risks thereof.

The Issuer shall, immediately upon receipt, deposit the proceeds from use and occupancy insurance to the credit of the Revenue Account. The proceeds from property loss insurance shall be applied as follows: (A) if such proceeds, together with other available funds of the Issuer, are sufficient to repair or replace the damaged Transportation Facilities, such proceeds and other available funds shall be deposited to the credit of the Renewal and Replacement Account and applied to such repair or replacement; or (B) if such proceeds, together with other available funds of the Issuer, are not sufficient to repair or replace the damaged Transportation Facilities, such proceeds shall be (1) applied to the redemption of Bonds or (2) deposited in irrevocable trust for the payment of Bonds in the manner set forth in Section 9.01, provided the Issuer has received an opinion of Bond Counsel to the effect that such deposit shall not adversely affect the exclusion, if any, from gross income of interest on the Bonds for purposes of federal income taxation.

The Issuer may establish certain minimum levels of insurance for which the Issuer may self-insure. Such minimum levels of insurance shall be in amounts as recommended in writing by an insurance consultant who is of favorable reputation and experience and is qualified to survey risks and to recommend insurance coverage for public entities engaged in operating facilities similar to the Transportation Facilities.

**SECTION 5.12. NO IMPAIRMENT OF RIGHTS.** The Issuer will not enter into any contract or contracts, nor take any action, the results of which shall impair the security granted hereunder to the Holders of the Bonds. The Issuer will not permit the operation of any facilities and services competing with the Transportation Facilities within its jurisdiction; provided, however, the Issuer reserves the right to construct, acquire, own and operate Transportation Facilities, in addition to the Sanibel Bridge and the Cape Coral Bridge. The Issuer may also construct, acquire, own and operate facilities which are financed by means other than by the issuance of Bonds that compete with the Transportation Facilities, provided the Issuer has received a report of the Traffic Engineers stating that, based upon its knowledge and analysis of the financial performance and operations of the Transportation Facilities, after giving effect to the competing facilities, there would be sufficient Gross Revenues to enable the Issuer to meet its obligations under Section 5.05 hereof for each of the five Fiscal Years following the completion of such competing facilities. Notwithstanding the foregoing, the Issuer covenants and agrees neither to construct nor, to the full extent permitted by law, permit the construction of any bridge or tunnel spanning the Caloosahatchee River south of the U.S. Highway 41 Bridge which is not a Transportation Facility.

**SECTION 5.13. COVENANTS WITH CREDIT BANKS AND INSURERS.** Subject to the provisions of Article VIII hereof, the Issuer may make such covenants as it may, in its sole discretion, determine to be appropriate with any Insurer, Credit Bank or other financial institution that shall agree to insure or to provide for Bonds of any one or more Series credit or liquidity support that shall enhance the security or the value of such Bonds. Such covenants may be set forth in the applicable Supplemental Resolution and shall be binding on the Issuer, the Registrar, the Paying Agent and all the Holders of Bonds the same as if such covenants were set forth in full in this Resolution.

**SECTION 5.14. CONSULTING ENGINEERS.** The Issuer shall at all times employ Consulting Engineers, whose duties shall be to make any certifications and perform any other acts required or permitted of the Consulting Engineers under this Resolution.

**SECTION 5.15. FINANCIAL ADVISOR.** The Issuer shall employ a Financial Advisor, at such times as may be required pursuant to the terms hereof, whose duties shall be to make any certifications and perform all other acts required or permitted of the Financial Advisor under this Resolution.



**SECTION 5.16. TRAFFIC ENGINEERS.** The Issuer shall employ Traffic Engineers, at such times as may be required pursuant to the terms hereof, whose duties shall be to make any certifications and perform all other acts required or permitted of the Traffic Engineers under this Resolution.

**SECTION 5.17. FEDERAL INCOME TAX COVENANTS; TAXABLE BONDS.**

(A) The Issuer covenants with the Holders of each Series of Bonds (other than Taxable Bonds), that it shall not use the proceeds of such Series of Bonds in any manner which would cause the interest on such Series of Bonds to be included in gross income for purposes of federal income taxation.

(B) The Issuer covenants with the Holders of each Series of Bonds (other than Taxable Bonds) that neither the Issuer nor any Person under its control or direction will make any use of the proceeds of such Series of Bonds (or amounts deemed to be proceeds under the Code) in any manner which would cause such Series of Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and neither the Issuer nor any other Person shall do any act or fail to do any act which would cause the interest on such Series of Bonds to be included in gross income for purposes of federal income taxation.

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

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

**ARTICLE VI**  
**SUBORDINATED INDEBTEDNESS AND ADDITIONAL BONDS**

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

**SECTION 6.02. ISSUANCE OF ADDITIONAL BONDS.**

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

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

(1) Except in the case of Additional Bonds issued for the purpose of refunding Outstanding Bonds, the Issuer shall certify that it is current in all deposits into the various accounts and subaccounts established hereby and all payments theretofore required to have been deposited or made by it under the provisions of this Resolution have been made and that it is in compliance with the covenants and agreements of this Resolution.

(2) The Consulting Engineers shall make a statement relating to (a) the estimated cost of the Project (or portion thereof), including contingencies therefor, (b) the estimated date such Project shall be placed in service, (c) the Net Revenues actually received by the County during any 12 consecutive months designated by the Issuer within the 18 months immediately preceding the issuance of the

Additional Bonds (the "Test Period"), as certified by the Clerk of the Circuit Court or the County Finance Director, based on actual traffic volume experienced on the Transportation Facilities during the Test Period and with adjustments for rate increases enacted and in force prior to issuance of Additional Bonds as if such rates had been in effect during the Test Period, (d) the estimated Net Revenues to be received by the Issuer in each Fiscal Year thereafter to and including the fifth complete Fiscal Year following the date of delivery and authentication of said Additional Bonds, taking into account any revisions assumed necessary during such period of the rates, fees, tolls, charges and other income for the use and services of the Transportation Facilities, and (e) the estimated amounts required by the Resolution to be deposited during each year of the aforementioned Fiscal Years into the Reserve Subaccount.

(3) The Consulting Engineers shall certify that, based on the information provided in paragraph (2) above, the Net Revenues, for the Test Period and for each Fiscal Year to and including the fifth complete Fiscal Year following the date of delivery and authentication of said Additional Bonds, shall not be less than the sum of (a) one hundred twenty percent (120%) of the Maximum Annual Debt Service on the Bonds then Outstanding and such Additional Bonds, and (b) one hundred percent (100%) of the amounts required by the Resolution to be deposited into the Reserve Subaccount during each such Fiscal Year.

(B) For the purpose of determining the Maximum Annual Debt Service under paragraph (3) of Section 6.02(A) hereof, the interest rate on Outstanding Variable Rate Bonds and on additional parity Variable Rate Bonds then proposed to be issued shall be deemed to be the Maximum Interest Rate applicable to such Bonds. If in connection with any Variable Rate Bonds, the Issuer has entered into an agreement with a Credit Bank, pursuant to which the Issuer has covenanted to reimburse such Credit Bank for amounts drawn against a Credit Facility, and the Issuer's liability for such reimbursements is not, by the terms of such agreement, junior and subordinate to the Bonds, then for the purpose of determining Maximum Annual Debt Service under paragraph (3) of Section 6.02(A) hereof, it shall be assumed that the entire available amount of the Credit Facility is drawn and the Issuer's annual reimbursement requirement shall be included in the calculation of Maximum Annual Debt Service for such Variable Rate Bonds (and the principal and interest requirements for such Variable Rate Bonds shall be ignored to eliminate any duplication of such requirements).

If any of the Outstanding Bonds or Additional Bonds to be issued constitute Balloon Bonds secured or guaranteed by a Credit Facility and the Issuer has entered into an agreement with a Credit Bank pursuant to which the Issuer has agreed to reimburse such Credit Bank for amounts drawn against the Credit Facility over a period of not less than five (5) years, then for purposes of determining the Annual Debt Service or

Maximum Annual Debt Service under paragraph (3) of Section 6.02(A) hereof, it shall be assumed that the entire available amount of the Credit Facility is drawn and the Issuer's annual reimbursement requirement shall be included in the calculation of Maximum Annual Debt Service for such Balloon Bonds (and the principal and interest requirements for such Balloon Bonds shall be ignored to eliminate any duplication of such requirements). If there is no Credit Facility and agreement for reimbursement over a period of not less than five (5) years as described in this paragraph, the actual amount of principal and interest applicable to such Balloon Bonds shall be included in the calculation of Maximum Annual Debt Service.

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

(D) In the event any Additional Bonds are issued for the purpose of refunding any Bonds then Outstanding, the conditions of paragraphs (1) through (3) of Section 6.02(A) hereof shall not apply, provided that the issuance of such Additional Bonds shall not result in an increase in the aggregate amount of principal of, Sinking Account Installments and interest on the Outstanding Bonds becoming due in the current Fiscal Year and all subsequent Fiscal Years. The conditions of paragraphs (2) and (3) of Section 6.02(A) hereof shall apply to Additional Bonds issued to refund Subordinated Indebtedness and to Additional Bonds issued for refunding purposes which cannot meet the conditions of this Section 6.02(D).

**SECTION 6.03. ACCESSION OF SUBORDINATED INDEBTEDNESS TO PARITY STATUS WITH BONDS.** The Issuer may provide for the accession of Subordinated Indebtedness to the status of Additional Bonds, if (A) the Issuer shall meet all the requirements imposed upon the issuance of Additional Bonds by paragraphs (1) through (3) of Section 6.02(A) hereof, assuming, for purposes of said requirements, that such Subordinated Indebtedness shall be Additional Bonds, (B) the facilities financed by such Subordinated Indebtedness shall be a bridge, causeway or expressway which meets the requirements provided in the definition of "Transportation Facilities" in Section 1.01 hereof, and (C) the Reserve Subaccount, upon such accession, shall contain an amount equal to the Reserve Subaccount Requirement in accordance with Section 4.05(B)(5) hereof. If the aforementioned conditions are satisfied, the Subordinated Indebtedness shall be deemed to have been issued pursuant to this Resolution the same as the

Outstanding Bonds, and such Subordinated Indebtedness shall be considered Bonds for all purposes provided in this Resolution.

**SECTION 6.04. BOND ANTICIPATION NOTES.** The Issuer may issue notes in anticipation of the issuance of Bonds which shall have such terms and details and be secured in such manner, not inconsistent with this Resolution, as shall be provided by Supplemental Resolution of the Issuer.

**ARTICLE VII  
DEFAULTS AND REMEDIES**

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

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

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

(C) Final Judgment for the payment of money shall be rendered against the Issuer as a result of the ownership, control or operation of any Transportation Facility and any such judgment shall not be discharged within ninety (90) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof and such judgment would render the Issuer incapable of paying the interest on or the principal of any of the Bonds.

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

**SECTION 7.02. REMEDIES.** Any Holder of Bonds issued under the provisions of this Resolution or any trustee or receiver acting for such Bondholders may either at law or in equity, by suit, action, mandamus or other proceedings in any court of

competent jurisdiction, protect and enforce any and all rights under the Laws of the State of Florida, or granted and contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution or by any applicable statutes to be performed by the Issuer or by any officer thereof.

The Holder or Holders of Bonds in an aggregate principal amount of not less than twenty-five per centum (25%) of the Bonds then Outstanding may by a duly executed certificate in writing appoint a trustee for Holders of Bonds issued pursuant to this Resolution with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders and such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the Clerk. Notice of such appointment, together with evidence of the requisite signatures of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding and the trust instrument under which the trustee shall have agreed to serve shall be filed with the Issuer and the trustee and notice of such appointment shall be given to all Holders of Bonds in the same manner as notices of redemption are given hereunder. After the appointment of the first trustee hereunder, no further trustees may be appointed; however, the Holders of a majority in aggregate principal amount of all the Bonds then Outstanding may remove the trustee initially appointed and appoint a successor and subsequent successors at any time.

**SECTION 7.03. DIRECTIONS TO TRUSTEE AS TO REMEDIAL PROCEEDINGS.** The Holders of a majority in principal amount of the Bonds then Outstanding (or any Insurer insuring any then Outstanding Bonds) have the right, by an instrument or concurrent instruments in writing executed and delivered to the trustee, to direct the method and place of conducting all remedial proceedings to be taken by the trustee hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions hereof, and that the trustee shall have the right to decline to follow any such direction which in the opinion of the trustee would be unjustly prejudicial to Holders of Bonds not parties to such direction.

**SECTION 7.04. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**SECTION 7.05. WAIVER OF DEFAULT.** No delay or omission of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by Section 7.02 to the

Bondholders may be exercised from time to time, and as often as may be deemed expedient.

**SECTION 7.06. APPLICATION OF MONEYS AFTER DEFAULT.** If an Event of Default shall happen and shall not have been remedied, the Issuer or a trustee or receiver appointed for the purpose shall apply all Gross Revenues and other Pledged Funds as follows and in the following order:

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

(B) To the payment of the amounts required for reasonable and necessary Operating Expenses, and for the reasonable renewals, repairs and replacements of the Transportation Facilities necessary, in the opinion of the Consulting Engineers, to prevent loss of Gross Revenues;

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

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

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

SECOND: to the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at maturity or upon mandatory redemption prior to maturity (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of Section 9.01 of this Resolution), in the order of their due dates, with interest upon such Bonds from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment first of such interest, ratably according to the amount of such interest due on such date, and then to the payment of such principal, ratably according to the amount of such principal due on such date, to the Persons entitled thereto without any discrimination or preference; and



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

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

**SECTION 7.07. CONTROL BY INSURER.** Notwithstanding any of the other provisions of this Article VII, upon the occurrence and continuance of an Event of Default, each Insurer of Outstanding Bonds, if such Insurer shall have honored all of its commitments under its bond insurance policy, shall be entitled to direct and control the enforcement of all right and remedies with respect to the Bonds it shall insure.

**ARTICLE VIII  
SUPPLEMENTAL RESOLUTIONS**

**SECTION 8.01. SUPPLEMENTAL RESOLUTION WITHOUT BONDHOLDERS' CONSENT.** The Issuer, from time to time and at any time, may adopt such Supplemental Resolutions without the consent of the Bondholders (which Supplemental Resolution shall thereafter form a part hereof) for any of the following purposes:

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

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

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

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

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

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

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

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

**SECTION 8.02. SUPPLEMENTAL RESOLUTION WITH BONDHOLDERS' AND INSURER'S CONSENT.** Subject to the terms and provisions contained in this Section 8.02 and Section 8.01 hereof, the Holder or Holders of not less

than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Resolution to the contrary notwithstanding, to consent to and approve the adoption of such Supplemental Resolution or Resolutions hereto as shall be deemed necessary or desirable by the Issuer for the purpose of supplementing, modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified Series or maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section 8.02. Any Supplemental Resolution which is adopted in accordance with the provisions of this Section 8.02 shall also require the written consent of the Insurer of any Bonds which are Outstanding at the time such Supplemental Resolution shall take effect. No Supplemental Resolution may be approved or adopted which shall permit or require (A) an extension of the maturity of the principal of or the payment of the interest on any Bond issued hereunder, (B) reduction in the principal amount of any Bond or the Redemption Price or the rate of interest thereon, (C) the creation of a lien upon or a pledge of other than the lien and pledge created by this Resolution which adversely affects any Bondholders, (D) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (E) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Resolution. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders or the Insurer of the adoption of any Supplemental Resolution as authorized in Section 8.01 hereof.

If at any time the Issuer shall determine that it is necessary or desirable to adopt any Supplemental Resolution pursuant to this Section 8.02, the Clerk shall cause the Registrar to give notice of the proposed adoption of such Supplemental Resolution and the form of consent to such adoption to be mailed, postage prepaid, to all Bondholders at their addresses as they appear on the registration books and to all Insurers of Bonds Outstanding. Such notice shall briefly set forth the nature of the proposed Supplemental Resolution and shall state that copies thereof are on file at the offices of the Clerk and the Registrar for inspection by all Bondholders and Insurers. The Issuer shall not, however, be subject to any liability to any Bondholder or Insurer by reason of its failure to cause the notice required by this Section 8.02 to be mailed and any such failure shall not affect the validity of such Supplemental Resolution when consented to and approved as provided in this Section 8.02.

Whenever the Issuer shall deliver to the Clerk an instrument or instruments in writing purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed Supplemental Resolution described in such notice and shall

specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the Issuer may adopt such Supplemental Resolution in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder shall have consented thereto.

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

Upon the adoption of any Supplemental Resolution pursuant to the provisions of this Section 8.02, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Issuer and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

**SECTION 8.03. AMENDMENT WITH CONSENT OF INSURER ONLY.**

If all of the Bonds Outstanding hereunder are insured as to payment of principal and interest by an Insurer or Insurers and the Bonds, at the time of the hereinafter described amendment, shall be rated by the rating agencies which shall have rated the Bonds at the time such Bonds were insured no lower than the ratings assigned thereto by such rating agencies on the date of being insured, the Issuer may enact one or more Supplemental Resolutions amending all or any part of Articles I, IV, V, VI and VII hereof with the written consent of said Insurer or Insurers and the acknowledgment by said Insurer or Insurers that its insurance or guaranty policy will remain in full force and effect. The consent of the Holders of any Bonds shall not be necessary. The foregoing right of amendment, however, does not apply to any amendment to Section 5.17 hereof with respect to the exclusion, if applicable, of interest on said Bonds from gross income for purposes of federal income taxation nor may any such amendment deprive the Holders of any Bond of right to payment of the Bonds from, and their lien on, the Pledged Funds. Upon filing with the Clerk of evidence of such consent of the Insurer or Insurers as aforesaid, the Issuer may adopt such Supplemental Resolution. After the adoption by the Issuer of such Supplemental Resolution, notice thereof shall be mailed in the same manner as notice of an amendment under Section 8.02 hereof.

## **ARTICLE IX MISCELLANEOUS**

**SECTION 9.01. DEFEASANCE.** If the Issuer shall pay or cause to be paid or there shall otherwise be paid to the Holders of all Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the pledge of the Pledged Funds, and all covenants, agreements and other obligations of the Issuer to the Bondholders, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Paying Agents shall pay over or deliver to the Issuer all money or securities held by them pursuant to the Resolution which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

Any Bonds or interest installments appertaining thereto, whether at or prior to the maturity or redemption date of such Bonds, shall be deemed to have been paid within the meaning of this Section 9.01 if (A) in case any such Bonds are to be redeemed prior to the maturity thereof, there shall have been taken all action necessary to call such Bonds for redemption and notice of such redemption shall have been duly given or provision shall have been made for the giving of such notice, and (B) there shall have been deposited in irrevocable trust with a banking institution or trust company by or on behalf of the Issuer either cash fully insured by the Federal Deposit Insurance Corporation in an amount which shall be sufficient, or Refunding Securities the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with such bank or trust company at the same time shall be sufficient, to pay the principal of or Redemption Price, if applicable, and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be. Except as hereafter provided, neither the Refunding Securities nor any moneys so deposited with such bank or trust company nor any moneys received by such bank or trust company on account of principal of or Redemption Price, if applicable, or interest on said Refunding Securities shall be withdrawn or used for any purpose other than, and all such moneys shall be held in trust for and be applied to, the payment, when due, of the principal of or Redemption Price, if applicable, of the Bonds for the payment or redemption of which they were deposited and the interest accruing thereon to the date of maturity or redemption; provided, however, the Issuer may substitute new Refunding Securities and moneys for the deposited Refunding Securities and moneys if the new Refunding Securities and moneys are sufficient to pay the principal of or Redemption Price, if applicable, and interest on the refunded Bonds.

For purposes of determining whether Variable Rate Bonds shall be deemed to have been paid prior to the maturity or the redemption date thereof, as the case may be, by the deposit of moneys, or specified Refunding Securities and moneys, if any, in accordance with this Section 9.01, the interest to come due on such Variable Rate Bonds

on or prior to the maturity or redemption date thereof, as the case may be, shall be calculated at the Maximum Interest Rate; provided, however, that if on any date, as a result of such Variable Rate Bonds having borne interest at less than the Maximum Interest Rate for any period, the total amount of moneys and specified Refunding Securities on deposit for the payment of interest on such Variable Rate Bonds is in excess of the total amount which would have been required to be deposited on such date in respect of such Variable Rate Bonds is in order to satisfy this Section 9.01, such excess shall be paid to the Issuer free and clear of any trust, lien, pledge or assignment securing the Bonds or otherwise existing under this Resolution.

In the event the Bonds for which moneys are to be deposited for the payment thereof in accordance with this Section 9.01 are not by their terms subject to redemption within the next succeeding sixty (60) days, the Issuer shall cause the Registrar to mail a notice to the Holders of such Bonds that the deposit required by this Section 9.01 of moneys or Refunding Securities has been made and said Bonds are deemed to be paid in accordance with the provisions of this Section 9.01 and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of or Redemption Price, if applicable, and interest on said Bonds.

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

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

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

**SECTION 9.03. SALE OF BONDS.** The Bonds shall be issued and sold at public or private sale at one time or in installments from time to time and at such price or prices as shall be consistent with the provisions of the Act, the requirements of this Resolution and other applicable provisions of law.

**SECTION 9.04. VALIDATION AUTHORIZED.** James Yaeger, Esquire, County Attorney, is hereby authorized and directed to institute appropriate proceedings for the validation of the Series 1987 Bonds in the Circuit Court for Lee County, Florida, and the proper officers of the Issuer are hereby authorized to verify on behalf of the Issuer any pleadings in such proceedings.

**SECTION 9.05. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions of this Resolution shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements and provisions of this Resolution and shall in no way affect the validity of any of the other covenants, agreements or provisions hereof or of the Bonds issued hereunder.

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