RESOLUTION NO. 14-09-63

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING THE LOAN AGREEMENT BETWEEN CAPITAL BANK, N.A. AND ISLAMORADA, VILLAGE OF ISLANDS PROVIDING FOR FINANCING FOR THE PURCHASE OF A SUTPHEN PUMPER FIRE TRUCK FOR THE VILLAGE; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE LOAN AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 26, 2014, the Village Council of Islamorada, Village of Islands (the "Village") adopted Resolution No. 14-06-39, thereby approving the purchase of a 2014 Sutphen Pumper Truck ("Pumper Truck") at a cost not to exceed $397,600.00; and

WHEREAS, Village staff requested quotes from local and national financial institutions for the financing of the Pumper Truck; and

WHEREAS, four (4) financial institutions provided quotes for such loan and Village staff has determined that the quote from Capital Bank, N.A. for a four-year term was found to best meet the needs of the Village; and

WHEREAS, Capital Bank, N.A. has prepared a Loan Agreement a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Capital Bank, N.A. has agreed to provide financing to the Village as stipulated in the Loan Agreement; and

WHEREAS, the Village Council finds that approval of the Loan Agreement between Capital Bank, N.A. and the Village attached hereto is in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:
Section 1. Recitals. The above recitals are true and correct and incorporated into this Resolution by this reference.

Section 2. Approval of Loan Agreement. The Village Council of Islamorada, Village of Islands, hereby approves the Loan Agreement between Capital Bank, N.A. and the Village to provide financing for a 2014 Sutphen Pumper Fire Truck, as set forth as Exhibit “A” attached hereto, together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

Section 3. Authorization of Village Officials. The Village Manager and/or her designee and the Village Attorney are hereby authorized to take all actions necessary to implement the terms and conditions of the Loan Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Village Manager pursuant to the Village’s Purchasing Procedures Ordinance, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Loan Agreement.

Section 5. Execution of Loan Agreement. The Mayor is authorized to execute the Loan Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Loan Agreement and to execute any extensions and/or amendments to the Loan Agreement, subject to the approval as to form and legality by the Village Attorney.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 11th day of September, 2014.

Motion to adopt by Vice Mayor Deb Gillis, second by Councilman Dave Purdo.
FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Ted Blackburn       YES
Vice Mayor Deb Gillis     YES
Councilman Mike Forster   YES
Councilman Ken Philipson  YES
Councilman Dave Purdo     YES

PASSED AND ADOPTED ON THIS 11th DAY OF SEPTEMBER, 2014.

[Signature]
TED BLACKBURN, MAYOR

ATTEST:

[Signature]
KELLY TOOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS ONLY

[Signature]
ROGET V. BRYAN, VILLAGE ATTORNEY
LOAN CLOSING STATEMENT

LENDER: CAPITAL BANK, N.A.
BORROWER: ISLAMORADA VILLAGE OF ISLANDS, FLORIDA
LOAN AMOUNT: $365,000.00
PURPOSE: PURCHASE FIRE TRUCK VEHICLE
CLOSING DATE: SEPTEMBER 16, 2014

Loan Amount: $365,000.00
Closing Costs: $0.00
Loan Fee: $260.00 (POC)
Disbursements to Borrower: $365,000.00

Borrower: Islamorada Village of Islands, Florida
By: 
Name: Ted Blackburn
Title: Mayor
UNITED STATES OF AMERICA
STATE OF FLORIDA
ISLAMORADA VILLAGE OF ISLANDS, FLORIDA
PROMISSORY NOTE

Registered Holder: Capital Bank, N.A.

Principal Amount: THREE HUNDRED SIXTY FIVE THOUSAND AND DOLLARS AND 00/100 CENTS ($365,000.00)

KNOW ALL MEN BY THESE PRESENTS, that the Islamorada Village of Islands, Florida (the "Village"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay to the Registered Holder shown above, or registered assigns (hereinafter, the "Bank" or the "Holder"), from the sources hereinafter provided, the Principal Amount specified above or so much thereof as has been advanced and is outstanding. Subject to the rights of prior prepayment and redemption described in this Note, the Note shall mature on September 16, 2018 (the "Maturity Date"). Payments due hereunder shall be made no later than 2:00 p.m. on the date due, free and clear of any defenses, set-offs, counterclaims, or withholding or deductions for taxes.

This Note is issued under authority of and in full compliance with (i) the Constitution and laws of the State of Florida, including particularly Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Village, and Resolution No. 14-06-39 adopted on June 26, 2014 and Resolution No. 14-09-63 adopted September 11, 2014 (together, the "Resolution"), for the purpose of financing the purchase of a certain vehicle to be used by the Village’s Fire Department, (the “Vehicle”), and (ii) a Loan Agreement, dated of even date herewith, between the Village and the Bank (the "Loan Agreement") and is subject to all the terms and conditions of the Loan Agreement. All terms, conditions and provisions of the Loan Agreement are by this reference incorporated herein as a part of this Note. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

Subject to adjustment as provided below, this Note shall bear interest on the outstanding principal balance at an interest rate equal to 1.95% per annum from its date of issuance through the Maturity Date. Interest on this Note shall be computed on the basis of a 360-day year based on twelve 30-day months.

This Note shall be payable in 47 principal and interest payments based on a four (4) year amortization schedule in the amount of $7,910.76 (each an “Installment Payment”), which Installment Payments shall be due on the 16th calendar day of the month, with the first Installment Payment due on October 16, 2014 and the final Installment Payment due on August 16, 2018. On the Maturity Date, all remaining sums due under this Note shall be due and payable.

A “Determination of Taxability” shall mean (i) the issuance by the Internal Revenue

(M0780537.2)
Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Holders thereof, which notice or notification is not contested with the Internal Revenue Service by either the Village or any Holders of the Note, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Holders thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Village to the effect that interest on the Note is includable for federal income tax purposes in the gross income of the Holders thereof, or (iv) receipt by the Village of an opinion of bond counsel to the Village to the effect that interest on the Note is includable for federal income tax purposes in the gross income of the Holders thereof. In the event a Determination of Taxability shall have occurred during the term of this Note, the rate of interest on the Note shall be increased to a rate per annum equal to the equivalent taxable rate, effective retroactively to the date on which the interest payable on the Note is includable for federal income tax purposes in the gross income of the Holders thereof. In addition, the Holders of the Note or any former Holders of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Holders or former Holders of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Village on the next succeeding Payment Date following the Determination of Taxability.

The principal of and interest on this Note are payable in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Holder or his legal representative at the address of the Holder as it appears on the registration books of the Village.

This Note is subject to optional prepayment, upon two (2) Business Days prior written notice to the Holders of the Note, in whole or in part at any time at par, plus accrued interest to the date of prepayment.

The Village has covenanted and agreed in the Loan Agreement to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts sufficient to pay the principal and interest due on the Note in accordance with their terms during such Fiscal Year. “Non-Ad Valorem Revenues” means all revenues of the Village derived from any source other than ad valorem taxation on real or personal property which are legally available to make the payments required under the Loan Agreement; but only after the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law. Such covenant and agreement on the part of the Village to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Village from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Village to levy and collect any particular Non-Ad
Valorem Revenues, nor does it give the Note Holders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Village. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on the Note and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated in the Loan Agreement shall have the effect of making available in the manner described in the Loan Agreement Non-Ad Valorem Revenues and placing on the Village a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under the Loan Agreement, subject, however, in all respects to the terms of the Loan Agreement; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law.

Reference is hereby made to the Loan Agreement for the provisions, among others, relating to the terms, lien and security of the Note, the custody and application of the proceeds of the Note, the rights and remedies of the Holder of the Note, and the extent of and limitations on the Village's rights, duties and obligations, to all of which provisions the Holder hereof for himself and his successors in interest assents by acceptance of this Note.

THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE VILLAGE, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS NOTE THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE VILLAGE OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE LOAN AGREEMENT.

In the event Village shall fail to make any Note Payment hereunder after the same shall become due and payable, or shall default in the performance of or compliance with any term or covenant hereunder, under the Loan Agreement or any other Loan Document, same shall constitute an Event of Default hereunder and under the Loan Agreement and other Loan Documents, entitling the Holder of the Note to any and all remedies provided in the Loan Agreement or in any of the other Loan Documents.

The original registered Holder, and each successive registered Holder of this Note shall be conclusively deemed to have agreed and consented to the following terms and conditions:

1. The Village shall keep books for the registration of the Note and for the registration of transfers of the Note as provided in the Loan Agreement. The Note may be transferred or exchanged upon the registration books kept by the Village, upon delivery to the Village, together with written instructions as to the details of the transfer or
exchange, of such Note in form satisfactory to the Village and with guaranty of
signatures satisfactory to the Village, along with the social security number or federal
employer identification number of any transferee and, if the transferee is a trust, the name
and social security or federal tax identification numbers of the settlor and beneficiaries of
the trust, the date of the trust and the name of the trustee. No transfer or exchange of any
Note shall be effective until entered on the registration books maintained by the Village.

2. The Village may deem and treat the person in whose name any Note shall
be registered upon the books of the Village as the absolute Holder of such Note, whether
such Note shall be overdue or not, for the purpose of receiving payment of, or on account
of, the principal of and interest on such Note as they become due, and for all other
purposes. 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 Note to the extent of the sum
or sums so paid.

3. In all cases in which the privilege of exchanging the Note or transferring
the Note is exercised, the Village shall execute and deliver the Note in accordance with
the provisions of the Loan Agreement. There shall be no charge for any such exchange or
transfer of the Note, but the Village may require payment of a sum sufficient to pay any
tax, fee or other governmental charge required to be paid with respect to such exchange
or transfer. The Village shall not be required to transfer or exchange the Note for a period
of fifteen (15) days next preceding a Payment Date on such Note.

4. Any Note, the principal and interest of which has been paid, either at or
prior to maturity, shall be delivered to the Village when such payment is made, and shall
thereupon be cancelled. In case part, but not all of an outstanding Note shall be prepaid,
such Note shall not be surrendered in exchange for a new Note.

It is further agreed between the Village and the Holder of this Note that neither the
members of the Governing Body of the Village nor any natural person executing the Note shall
be liable personally on the Note by reason of its issuance.

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

THE VILLAGE AND THE HOLDER OF THIS NOTE HEREBY KNOWINGLY,
VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A
TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER, OR
IN CONNECTION WITH THIS NOTE OR ANY COURSE OF CONDUCT, COURSE OF
DEALING, STATEMENTS (WHETHER WRITTEN OR ORAL) OR ACTIONS OF THE
PARTIES, AND THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER TO
PURCHASE AND ACCEPT THIS NOTE.
IN WITNESS WHEREOF, Islamorada Village of Islands, Florida has caused this Note to be executed in its name by the manual signature of its Mayor, and attested by the manual signature of its Clerk and its corporate seal or a facsimile thereof affixed hereto, all as of this 16th day of September, 2014.

Islamorada Village of Islands, Florida

By: ________________________________

   Ted Blackburn, Mayor

ATTEST:

By: ________________________________

   Kelly Roth, Village Clerk
LOAN AGREEMENT

This LOAN AGREEMENT (this “Agreement”) is made and entered into as of this 16TH day of September, 2014 and is by and between the Islamorada Village of Islands, a municipal corporation (the “Village”) and Capital Bank, N.A., a national banking association, and its successors and assigns as holder of the hereinafter defined Note (the “Bank”);

WHEREAS, on June 26, 2014, the Village Council adopted Resolution 14-06-39 (the “Resolution”) authorizing the expenditure of funds for the purchase of a certain vehicle to be used by the Village’s Fire Department (the “Vehicle”); and

WHEREAS, the Village and Bank have prepared a promissory note in the principal amount of THREE HUNDRED SIXTY FIVE AND 00/100 DOLLARS ($365,000.00) (the “Note”) for the purpose of financing the purchase of the Vehicle, and

WHEREAS, the Village desires to enter into this Agreement, and such other documents that are reasonably required by Bank in connection therewith, and pursuant thereto, whereby the Village will borrow funds from the Bank in the Promissory Note, which funds evidenced thereby, will be used for acquiring the Vehicle; and

WHEREAS, the loan evidenced by the Note (the “Loan”) is intended to be tax-exempt and will finance the Vehicle; and

WHEREAS, the Note shall be issued pursuant to the terms and provisions of the Resolution and this Agreement; and

WHEREAS, the execution and delivery of this Agreement have been duly authorized by the Resolution.

NOW THEREFORE, in consideration of the sum of $10.00, the Loan, the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows.

ARTICLE I
DEFINITION OF TERMS

Section 1.1 Definitions. The words and terms used in this Agreement shall have the meanings as set forth in the Resolution and in the recitals above, unless otherwise defined herein. Unless the context shall otherwise require, the following words and terms as used in this Agreement shall have the following meanings:

“Act” means Part II of Chapter 166, Florida Statutes, as amended, the Village Charter, the Village Code of Ordinances and other applicable provisions of law.

“Advance” means an advance under the Note.
“Agreement” means this Loan Agreement and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

“Bond Counsel” means an attorney at law, or a firm of attorneys, selected by the Village, of nationally recognized standing in matter pertaining to the tax-exempt nature of interest on debt obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of the State.

“Business Day” means any day which is not a Saturday, Sunday or other day on which the Bank is lawfully closed.

“Village Manager” means the Manager of the Village.

“Clerk” means the Clerk or any Deputy Clerk of the Village.

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

“Governing Body” means the Village Council or its successor in function.

“Holder” or “Holdere” means the registered owner(s) (or their authorized representatives) of the Note from time to time, initially the Bank.

“Loan Documents” means this Agreement, the Note, the Resolution and all other documents, agreements, certificates, schedules, notes, statements, and opinions, however described, referenced herein or executed or delivered pursuant hereto or in connection with or arising with the Loan or the transaction contemplated by this Agreement.

“Mayor” means the Mayor of the Village and such other person as may be authorized to act on his or her behalf.

“Non-Ad Valorem Revenues” means all revenues of the Village derived from any source other than ad valorem taxation on real or personal property and which are legally available to make the payments required under this Agreement; but only after the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law.

“Note” means that certain Promissory Note issued pursuant to this Agreement in an original principal amount of $365,000.00.

“Note Issuance Date” has the meaning set forth in Section 4.1(c) hereof.

“Note Payment Date” means each of the Payment Dates immediately following the first Advance hereunder.

“Person” means a natural person, firm, trust, estate, association, corporation, partnership
and public body.

"State" means the State of Florida,

"Supplemental Resolution" means any ordinance or resolution of the Village amending or supplementing the Resolution in accordance with the terms and provisions thereof.

Section 1.2 Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 1.3 Titles and Headings. The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II
REPRESENTATIONS OF VILLAGE

The Village represents and warrants to the Bank that:

Section 2.1 Powers of Village. The Village is duly organized and validly existing as a municipal corporation under the laws of the State. The Village has the power to borrow the amount provided for in this Agreement, to execute and deliver the Loan Documents, to secure the Note in the manner contemplated hereby, and to perform and observe all the terms and conditions of the Note and this Agreement on its part to be performed and observed. The Village may lawfully issue the Note in order to obtain funds to finance the Vehicle.

Section 2.2 Authorization of Loan. The Village has, had or will have, as the case may be, full legal right, power, and authority to adopt the Resolution and to execute and deliver this Agreement, to issue, sell, and deliver the Note to the Bank, and to carry out and consummate all other transactions contemplated hereby and by the Loan Documents, and the Village has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The Village, by the Resolution, has duly authorized the borrowing of the amount provided for in this Agreement, the execution and delivery of this Agreement, and the making and delivery of the Note to the Bank, and to that end the Village warrants that it will take all action and will do all things which it is authorized by law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Note. The Village has duly adopted the Resolution and authorized the execution, delivery, and performance of the Note and the Agreement and the taking of any and all other such action by such authorized persons as may be required on the part of the Village to carry out, give effect to and consummate the transactions contemplated by the Loan Documents. The Note has been duly authorized, executed, issued and delivered to the Bank and constitutes legal, valid and binding
obligations of the Village enforceable in accordance with its terms and the terms of the Resolution, and is entitled to the benefits and security of the Resolution and this Agreement. All approvals, consents, and orders of and filings with any governmental authority or agency which would constitute a condition precedent to the issuance of the Note or the execution and delivery of or the performance by the Village of its obligations under the Loan Documents have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect.

Section 2.3 **Agreements.** The Village is not in default in any material respect under any agreement or other instrument to which it is a party or by which it may be bound. The making and performing by the Village of this Agreement will not violate any provision of the Act, any ordinance or resolution of the Village, or any regulation, order or decree of any court, and will not result in a breach of any of the terms of any agreement or instrument to which the Village is a party or by which the Village is bound. The Loan Documents constitute legal, valid and binding obligations of the Village enforceable in accordance with their respective terms.

Section 2.4 **Litigation, Etc.** There are no actions or proceedings pending against the Village or affecting the Village or, to the knowledge of the Village, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the financial condition of the Village, or which question the validity of this Agreement, the Note or any of the other Loan Documents or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

Section 2.5 **Financial Information.** The financial information regarding the Village furnished to the Bank by the Village in connection with the Loan is complete and accurate, and there has been no material and adverse change in the financial condition of the Village from that presented in such information

**ARTICLE III**

**COVENANTS OF THE VILLAGE**

Section 3.1 **Affirmative Covenants.** The Village covenants, for so long as any of the principal amount of or interest on the Note is outstanding and unpaid or any duty or obligation of the Village hereunder or under any of the other Loan Documents remains unpaid or unperformed, as follows:

(a) **Use of Proceeds.** The Village covenants that the proceeds from the Note will be used only to finance the purchase of the Vehicle.

(b) **Notice of Defaults.** The Village shall promptly, but in no event later than fifteen (15) days after it acquires knowledge thereof, notify the Bank in writing upon the happening, occurrence, or existence of any Event of Default, and any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Bank with such written notice, a detailed statement by a responsible officer of the Village of all relevant facts and the action being taken or proposed to be taken by the Village with respect thereto.
(c) **Records.** The Village agrees that any and all public records of the Village shall be open to inspection by the Bank or its representatives at all reasonable times at the offices of the Village.

(d) **Maintain Existence.** The Village shall do all things lawfully within its power to maintain its existence as a municipal corporation of the State.

(e) **Comply with Laws.** The Village is in compliance with and shall comply with all applicable federal, state and local laws and regulatory requirements.

(f) **Taxes.** In the event the Note, this Agreement or any other Loan Document should be subject to the excise tax on documents or the intangible personal property tax, or any similar tax, of the State of Florida, the Village shall pay such taxes or reimburse the Bank for any such taxes paid by it.

Section 3.2 **Bank Fees and Expenses.** The Village hereby agrees to pay a Bank loan fee in the amount $250.00 in connection with the closing.

Section 3.3 **Registration and Exchange of Note; Persons Treated as Holders.** So long as the Note shall remain unpaid, the Village will keep books for the registration and transfer of the Note. The Note shall be transferable only upon such registration books. The Village will transfer the registration of the Note upon written request of the Bank specifying the name, address and taxpayer identification number of the transferee. The Person in whose name the Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Note shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.

Section 3.4 **Payment of Principal and Interest.** The Village promises that it will promptly pay the principal of and interest on the Note, as well as any applicable fees, at the place, on the dates and in the manner provided herein and therein according to the true intent and meaning hereof and thereof.

Section 3.5 **Covenant to Budget and Appropriate.** The Village hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts sufficient to pay the principal and interest due on the Note in accordance with their terms during such Fiscal Year. Such covenant and agreement on the part of the Village to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Village, the Village does not covenant to maintain any services or programs, now provided or maintained by the Village, that generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Village from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Village to levy and collect any particular Non-Ad
Valorem Revenues, nor does it give the Note Holders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Village. Such covenant to appropriate Non-Ad Valorem Revenue is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on the Note and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available in the manner described herein Non-Ad Valorem Revenues and placing on the Village a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under this Agreement, subject, however, in all respects to the terms of this Agreement; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law.

Section 3.6 Prepayment. The Village shall be entitled to prepay the Note prior to maturity in whole or in part at any time at a price of par plus accrued interest to the date of prepayment, upon written notice to the Holder given by the Village at least two (2) Business Days prior to the date fixed for prepayment.

Section 3.7 Business Days. In any case where the due date of interest on or principal of the Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Bank.

Section 3.8 Officers and Employees of the Village Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Agreement or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any Council member of the Village, or any officer, agent or employee, as such, of the Village past, present or future, it being expressly understood (a) that the obligation of the Village under this Agreement and the Note is solely a corporate one, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the Village Council, or the officers, agents, or employees, as such, of the Village, or any of them, under or by reason of the obligations, covenants or agreements contained in this Line of Credit Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and all such rights and claims against, every such Council member of the Village, and every officer, agent, or employee, as such, of the Village under or by reason of the obligations, covenants or agreements contained in this Line of Credit Agreement, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Line of Credit Agreement and the issuance of the Note on the part of the Village.

Section 3.9 Note Mutilated, Destroyed, Stolen or Lost. In case the Note shall become mutilated, or be destroyed, stolen or lost, the Village shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Holder furnishing the Village proof of ownership thereof and indemnity reasonably satisfactory to the Village and complying with such other reasonable regulations and conditions as the Village may prescribe and paying such expenses as the Village may incur. The Note so surrendered shall be canceled.
Section 3.10 **Tax Representations, Warranties and Covenants of the Village.**

The Village acknowledges that the continued exclusion of interest on the Note from gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Sections 103(b)(2) and 148 of the Code. The Village hereby acknowledges responsibility to take all reasonable actions necessary to comply with these requirements. The Village hereby agrees and covenants that it shall not permit at any time or times any of the proceeds of the Note or other funds of the Village to be intentionally used, directly or indirectly, to acquire or to replace funds which were used directly or indirectly to acquire any higher yielding investments (as defined in Section 148 of the Code), the acquisition of which would cause the Note to be an arbitrage bond for purposes of Sections 103(b)(2) and 148 of the Code. The Village further agrees and covenants that it shall do and perform all acts and things necessary in order to assure that the requirements of Sections 103(b)(2) and 148 of the Code are met.

Specifically, without intending to limit in any way the generality of the foregoing, Village covenants and agrees:

(a) to pay to the United States of America at the times required pursuant to Section 148(f) of the Code, the excess of the amount earned on all non-purpose investments (as defined in Section 148(f)(6) of the Code) (other than investments attributed to an excess described in this sentence) over the amount which would have been earned if such non-purpose investments were invested at a rate equal to the yield on the Note, plus any income attributable to such excess (the “Rebate Amount”);

(b) to maintain and retain all records pertaining to and to be responsible for making or causing to be made all determinations and calculations of the Rebate Amount and required payments of the Rebate Amount as shall be necessary to comply with the Code; and

(c) to comply with all representations and restrictions contained in any Tax Certificate executed by the Village in connection with the Note.

The Village understands that the foregoing covenants impose continuing obligations on it to comply with the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of the Code so long as such requirements are applicable.

Section 3.11 **Additional Tax Covenants of the Village.** For so long as the Note remains outstanding, the Village hereby covenants as follows;

(a) It will comply with, and timely make or cause to be made all filings required by, all effective rules, rulings or regulations promulgated by the Department of the Treasury or the Internal Revenue Service;

(b) It will not use, invest, direct or permit the investment of the proceeds of the Note or any investment earnings thereon in a manner that will result in such Note becoming a “private activity bond” within the meaning of Sections 141 and 145 of the Code;
(c) It will not use or permit to be used more than ten percent (10%) of the proceeds of the Note (including any amounts used to pay costs associated with issuing such Note), including all investment income earned on such proceeds directly or indirectly, in any trade or business carried on by any person who is not the Village or a state or political subdivision or instrumentality thereof as those terms are used in Section 103 of the Code (an “Exempt Person”);

(d) It will not use or permit the use of any portion of the proceeds of the Note, including all investment income earned on such proceeds, directly or indirectly, to make or finance loans to persons who are not Exempt Persons;

(e) It has not entered into, and will not enter into, any arrangement with any person or organization (other than an Exempt Person) which provides for such person or organization to manage, operate, or provide services with respect to more than 10% of the Vehicle financed with the proceeds of the Note (a “Service Contract”), unless the guidelines set forth in Revenue Procedure 97-13 (or the guidelines set forth in Revenue Procedure 93-19, to the extent applicable, or any new, revised or additional guidelines applicable to Service Contracts) (the “Guidelines”), are satisfied, except to the extent it obtains a private letter ruling from the Internal Revenue Service or an opinion of nationally recognized Bond Counsel which allows for a variation from the Guidelines;

(f) It will not cause the Note to be treated as “federally guaranteed” for purposes of Section 149 of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149 of the Code. For purposes of this paragraph, the Note shall be treated as “federally guaranteed” if (i) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (ii) 5% or more of the proceeds of the Note will be (A) used in making loans the payment of principal or interest with respect to which is to be guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (B) invested directly or indirectly in federally insured deposits or accounts, and (iii) such guarantee is not described in Section 149(b)(3) of the Code; and

(g) It will comply with the information reporting requirements of Section 149(e)(2) of the Code.

The terms “debt service,” “gross proceeds,” “net proceeds,” “proceeds,” and “yield” have the meanings assigned to them for purposes of Section 148 of the Code.

ARTICLE IV
CONDITIONS OF LENDING

Section 4.1 Conditions of Lending. The obligations of the Bank to lend hereunder are subject to the following conditions precedent:

(a) Supporting Documents on Date of Execution. On or prior to the date of execution of this Agreement, the Bank shall have received the following supporting
documents, all of which shall be satisfactory in form and substance to the Bank (such satisfaction to be evidenced by the purchase of the Note by the Bank):

(i) The opinion of the Village Attorney regarding the due authorization, execution, delivery, validity and enforceability of this Agreement, the Village’s power to incur the debt evidenced by the Note and the due adoption of the Resolution; and

(ii) Such additional supporting documents as the Bank may reasonably request.

**ARTICLE V**

**THE LOAN**

Section 5.1 **The Loan.** The Bank hereby agrees to loan to the Village an amount of THREE HUNDRED SIXTY FIVE THOUSAND 00/100 DOLLARS ($365,000.00) to be evidenced by the Note, to provide funds to finance the Vehicle. The Village agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in the Note and/or the Loan Documents.

Section 5.2 **Description and Payment Terms of the Note.** To evidence the Loan, the Village shall issue and deliver to the Bank the Note in the form attached hereto as Exhibit “A”.

**ARTICLE VI**

**CREATION AND USE OF FUNDS AND ACCOUNTS**

Section 6.1 **Funds.** Each of the funds and accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds and accounts respectively. The money in such funds and accounts shall be continuously secured in the same manner as deposits of Village funds are authorized to be secured by the laws of the State of Florida.

The designation and establishment of the funds and accounts in and by this Agreement 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 and assets of the Village for the purposes herein provided and to establish certain priorities for application of such revenues and assets.

Section 6.2 **Rebate Fund and Rebate Covenants.** There is hereby created and established a fund to be held by the Village, designated the “Islamorada Village of Islands Rebate Fund” (the “Rebate Fund”). The Rebate Fund shall be held by the Village separate and apart from all other funds and accounts held by the Village under this Agreement and from all other moneys of the Village.

Notwithstanding anything in this Agreement to the contrary, the Village shall transfer to the Rebate Fund the amounts required to be transferred in order to comply with the Tax Certificate or the Rebate Covenants, if any, attached as an Exhibit to the Tax Certificate to be delivered by the Village on the date of delivery of the Note (the “Rebate Covenants”), when such
amounts are so required to be transferred. The Village Manager shall make or cause to be made payments from the Rebate Fund of amounts required to be deposited therein to the United States of America in the amounts and at the times required by the Rebate Covenants. The Village covenants for the benefit of the Holders that it will comply with the Rebate Covenants. The Rebate Fund, together with all moneys and securities from time to time held therein and all investment earnings derived therefrom, shall be excluded from the pledge and lien of this Agreement. The Village shall not be required to comply with the requirements of this Section 6.3 in the event that the Village obtains an opinion of Bond Counsel that (i) such compliance is not required in order to maintain the federal income tax exemption of interest on the Note and/or (ii) compliance with some other requirement is necessary to maintain the federal income tax exemption of interest on the Note.

ARTICLE VII
SPECIAL Covenants

Section 7.1 Financial Statements. The Village shall, upon request by the Bank, provide the Holder with a printed copy of its Comprehensive Annual Financial Report and its current year operating budget, Fiscal Year-end financial statements and shall also provide to the Holder any other financial information reasonably requested by such Holder.

ARTICLE VIII
EVENTS OF DEFAULT

Section 8.1 General. An “Event of Default” shall be deemed to have occurred under this Agreement if:

(a) The Village shall fail to make any payment of the principal of or interest on the Note after the same shall become due and payable, whether by maturity, by acceleration at the discretion of the Bank as provided for in Section 8.2, or otherwise; or

(b) The Village shall default in the performance of or compliance with any term or covenant contained in the Loan Documents and that default or non-compliance shall continue and not be cured within thirty (30) days after (i) notice thereof to the Village by the Bank; or (ii) the Bank is notified of such noncompliance or should have been so notified pursuant to the provisions of Section 3.1(b) of this Agreement, whichever is earlier; provided, however, that this Section 8.1(b) shall not apply to Section 8.1(a) or (c) through (h) hereof; or

(c) Any representation or warranty made in writing by or on behalf of the Village in any Loan Document shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or

(d) The Village admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

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(e) The Village is adjudged insolvent by a court of competent jurisdiction, or it is adjudged a bankrupt on a petition in bankruptcy filed by or against the Village, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Village, a receiver or trustee of the Village or of the whole or any part of its property, and if the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(f) An event of default occurs with respect to the Prior Debt or under any loan documentation executed in connection therewith.

Section 8.2 Effect of Event of Default. Except as otherwise provided in the Note, immediately and without notice, upon the occurrence of any Event of Default, the Bank may declare all obligations of the Village under the Loan Documents to be immediately due and payable without further action of any kind and upon such declaration the Note and the interest accrued thereon shall become immediately due and payable. In addition, and regardless whether such declaration is or is not made, the Bank may also seek enforcement of and exercise all rights and remedies available to it under the Loan Documents, the Resolution, the Act and any other applicable law.

Should the Village default in any obligation created by this Agreement or the Note, the Bank may, in addition to any other rights and remedies set forth in this Agreement, the Note, or the other Loan Documents, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State of Florida, or granted or contained in this Agreement, and may enforce and compel the performance of all duties required by this Agreement or by any applicable statutes to be performed by the Village or by any officer thereof.

In the event that litigation should arise between Bank or Holder hereof and Village that is related to or on account of an Event of Default, the prevailing party shall be entitled to an award of litigation fees and costs incurred, including reasonable attorneys’ fees, including at trial, appellate, bankruptcy, and all other levels.

ARTICLE IX
MISCELLANEOUS

Section 9.1 No Waiver; Cumulative Remedies. No failure or delay on the part of the Bank in exercising any right, power or remedy hereunder, or under the Note or other Loan Documents shall operate as a waiver of the Bank's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy hereunder or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 9.2 Amendments, Changes or Modifications to the Agreement. This Agreement shall not be amended, changed or modified except by written instrument between the Bank and the Village. The Village agrees to pay all of the Bank's reasonable costs and reasonable
attorneys' fees incurred in modifying and/or amending this Agreement at the Village's request or behest.

Section 9.3  **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 9.4  **Severability.** If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

Section 9.5  **Term of Agreement.** Except as otherwise specified in this Agreement, this Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the Village in connection herewith shall be in full force and effect from the date hereof and shall continue in effect until as long as the Note is outstanding.

Section 9.6  **Notices.** All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service; and five days after it is sent, if mailed, certified mail, return receipt requested, postage prepaid. In each case notice shall be sent to:

If to the Village:  
Islamorada, Village of Islands  
86800 Overseas Highway  
Islamorada, Florida 33036  
Attention: Village Manager

If to the Bank:  
Capital Bank  
121 Alhambra Plaza, Suite 1601  
Coral Gables, Florida 33134  
Attention: Legal Department

or to such other address as either party may have specified in writing to the other using the procedures specified above in this Section 9.6.

Section 9.7  **Applicable Law.** For purposes of this Agreement, Florida law shall govern the terms of this Agreement. Venue shall be in Monroe County, Florida.

Section 9.8  **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The Village
shall have no rights to assign any of their rights or obligations hereunder without the prior written consent of the Bank.

Section 9.9 **Conflict.** In the event any conflict arises between the terms of this Agreement and the terms of any other Loan Document, the terms of this Agreement shall govern in all instances of such conflict.

Section 9.10 **No Third Party Beneficiaries.** It is the intent and agreement of the parties hereto that this Agreement is solely for the benefit of the parties hereto and their respective successors in interest and permitted assigns of the parties and no person not a party hereto shall have any rights or privileges hereunder.

Section 9.11 **Entire Agreement.** Except as otherwise expressly provided, this Agreement and the other Loan Documents embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 9.12 **Further Assurances.** The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of carrying out the transactions contemplated by this Agreement.

Section 9.13 **Waiver of Right to Trial By Jury.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR THE LOAN EVIDENCED BY THE NOTE OR ANY LOAN DOCUMENT EXECUTED IN CONNECTION HEREWITH OR IN THE FUTURE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER WRITTEN OR ORAL) OR ACTIONS OF THE PARTIES, AND THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANK ENTERING INTO THIS AGREEMENT.

[signature page follows]
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

ISLAMORADA VILLAGE OF ISLANDS, FLORIDA, a municipal corporation

By: ____________________________
    Ted Blackburn, Mayor

Attest: __________________________
    Kelly Toth, Village Clerk

Approved as to Form and Legality:

By: ____________________________
    Royce V. Bryan, Village Attorney
CAPITAL BANK, N.A.,
a national banking association

By: ____________________________

William S. Doxey
Vice President