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**LOAN AGREEMENT**

**Dated as of July 8, 2010**

**By and Between**

**THE CITY OF LEESBURG, FLORIDA  
(the “City”)**

**and**

**SUNTRUST BANK  
(the “Bank”)**

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## **LOAN AGREEMENT**

**THIS LOAN AGREEMENT** (the "Agreement"), made and entered into this 8<sup>th</sup> day of July, 2010, by and between **THE CITY OF LEESBURG, FLORIDA** (the "City"), a municipal corporation of the State of Florida, and **SUNTRUST BANK**, a Georgia state banking corporation authorized to do business in Florida, and its successors and assigns (the "Bank").

### **WITNESSETH:**

**WHEREAS**, capitalized terms used in these recitals and not otherwise defined shall have the meanings specified in Article I of this Agreement;

**WHEREAS**, the City, pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, City Resolution No. 7143 adopted by the City Commission of the City on June 14, 2004, and other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Resolution No. 8673, adopted by the City on June 28, 2010, is authorized to borrow money, and more particularly issue the Note described below for the City's public purposes; and

**WHEREAS**, in response to a Request For Proposal Number 100242 by the City dated May 4, 2010, regarding an intended borrowing to refinance the City's outstanding \$8,000,000.00 Separate Utility System Revenue Bond Substitute Anticipation Note (Plantation Acquisition Project), Series 2006 (the "Refunded Note"), the Bank submitted its commitment, dated May 13, 2010, to the City (the "Commitment"); and

**WHEREAS**, following a review by the City's selection committee and recommendations by Larson Consulting Services, LLC, financial advisor to City, the City has accepted the Commitment and the Bank is willing to purchase the Note (as hereinafter defined), but only upon the terms and conditions of this Agreement;

**NOW, THEREFORE**, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITION OF TERMS**

**Section 1.01. Definitions.** Capitalized terms used in this Agreement shall have the respective meanings assigned thereto by the Original Instrument (as hereinafter defined) and the following terms not otherwise defined shall have the respective meanings as follows unless the context clearly requires otherwise:

"Act" shall have the meaning assigned to that term in the recitals hereof.

"Agreement" shall mean this Loan Agreement and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Bank" shall mean SunTrust Bank, a Georgia state banking corporation, and its successors and assigns.

“Bond Counsel” shall mean, Akerman Senterfitt, Orlando, Florida, or any other 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 hired by the City to render an opinion on such matters with regard to the Note.

“Business Day” shall mean any day other than a Saturday, a Sunday, or a day on which the office of the Holder at which payments on the Note are due or the offices of the City are lawfully closed.

“City” shall mean the City of Leesburg, Florida, a municipal corporation of the State of Florida.

“City Clerk” shall mean the City Clerk or any deputy city clerk of the City and such other person as may be duly authorized to act on his or her behalf.

“City Manager” shall mean the City Manager of the City 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 from time to time, and the applicable rules and regulations promulgated thereunder.

“Debt Service” means principal and interest, and other debt-related costs, due in connection with the Note, as applicable.

“Event of Default” shall mean an Event of Default as defined in Section 5.01 of this Agreement.

“Maturity Date” shall mean the date on which all principal and all unpaid interest accrued on the Note shall be due and payable in full, which date shall be, if not sooner due to acceleration or prepayment, October 1, 2025.

“Finance Director” shall mean the City’s Finance Director or such other person as may be duly authorized to act on his or her behalf.

“Financial Advisor” shall mean Larson Consulting Services, LLC, Orlando, Florida.

“Fiscal Year” shall mean the 12-month period commencing October 1 of each year and ending on the succeeding September 30, or such other 12-month period as the City may designate as its “fiscal year” as permitted by law.

“Loan” shall refer to an amount equal to the outstanding principal of the Note, together with unpaid interest and penalties, if any, which have accrued.

“Note” shall mean the City of Leesburg, Florida Utility System Revenue Refunding Note, Series 2010 issued by the City under the Agreement and the Resolution.

“Note Rate” shall mean the rate of interest to be borne by the Note which shall be a fixed rate equal to 3.85% per annum calculated on the basis of a 360-day year of 12, 30-day months.

“Noteholder” or “Holder” shall mean the Bank as the holder of the Note and any subsequent registered holder of the Note.

“Original Instrument” shall mean Resolution No. 7143 of the City adopted by the City Commission on June 14, 2004.

“Parity Obligations” shall mean collectively the City’s outstanding Utility System Revenue Bonds, Series 2004 and the City’s outstanding Utility System Revenue Bonds, Series 2007A and Taxable Utility System Revenue Bonds, Series 2007B.

“Payment Date” shall mean each April 1 and October 1, commencing October 1, 2010 until the Note has been paid in full.

“Pledged Revenues” means the Net Revenues, the Capacity Charges, and until applied in accordance with the provisions of the Original Instrument, all other amounts, including investments thereof, held in the funds and accounts established thereunder, except for funds held in an account in the Reserve Fund for a specific Series of Bonds or in the Composite Reserve Account.

“Refunded Note” shall have the meaning set forth in the “Whereas” clauses to this Agreement.

“Resolution” shall mean Resolution No. 8673, adopted at a meeting of the City Commission on June 28, 2010, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note.

**Section 1.02. Interpretation.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**Section 1.03. Titles and Headings.** The titles and headings of the Articles and Sections of this Agreement, which 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 AND WARRANTIES OF THE PARTIES

**Section 2.01. Representations and Warranties of City.** The City represents and warrants to the Bank as follows:

(a) Existence. The City is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full power to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Note to the Bank. The making, execution and performance of this Agreement on the part of the City and the issuance and delivery of the Note have been duly authorized by all necessary action on the part of the City and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the City or any of its material properties is bound.

(b) Validity, Etc. This Agreement, the Note and the Resolution are valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) No Financial Material Adverse Change. No material adverse change in the financial condition of the City or the Pledged Revenues has occurred since the audited financial statements of the City for its year ended September 30, 2009.

(d) Powers of City. The City has the legal power and authority to pledge the Pledged Revenues to the repayment of the Loan as described herein, it being understood that the Note has no lien on any amounts on deposit in the Composite Reserve Account or the Reserve Fund.

(e) Authorizations, etc. No authorization, consent, approval, license, exemption or registration or filing with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, has been or will be necessary for the valid execution, delivery and performance by the City of this Agreement, the Note and the related documents, except such as have been obtained, given or accomplished.

**Section 2.02. Covenants of the City.** The City covenants as follows:

The City will furnish to the Bank (i) within 210 days following the end of each Fiscal Year, a comprehensive annual financial report of the City for such Fiscal Year prepared in accordance with generally accepted accounting standards, which shall include a balance sheet and income statement as of the end of such Fiscal Year, and an audit report of an independent CPA, (ii) within 30 days of adoption in each year the current annual budget of the City, and (iii) any other information which the Bank may reasonably request.

**Section 2.03. Representations and Warranties of Bank.** The Bank represents and warrants to the City as follows:

(a) Existence. The Bank is a Georgia state banking corporation, authorized to do business in the State of Florida, with full power to enter into this Agreement, to perform its obligations hereunder and to make the Loan. The performance of this Agreement on the part of the Bank and the making of the Loan have been duly authorized by all necessary action on the part of the Bank and will not violate or conflict with applicable law or any material agreement, indenture or other instrument by which the Bank or any of its material properties is bound.

(b) Validity. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights (and specifically creditors' rights as the same relate to banks) and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) Knowledge and Experience. The Bank (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of making the Loan and investing in the Note, (ii) has received and reviewed such financial information concerning the Pledged Revenues as it has needed in order to fairly evaluate the merits and risks of making the Loan and investing in the Note; and (iii) is purchasing the Note as an investment for its own account and not with a current view toward resale to the public.

### ARTICLE III

#### THE NOTE

**Section 3.01. Purpose and Use.** On the date of this Agreement, the Bank shall make available to the City the Loan in the principal amount of Eight Million Dollars (\$8,000,000.00). The proceeds available under this Agreement shall be used solely to refinance the Refunded Note.

**Section 3.02. The Note.** The Note shall be substantially in the form set forth as **Exhibit A** to this Agreement. The general terms of the Note shall be as follows:

(a) Amount of Note. The aggregate principal amount of the Note shall be Eight Million Dollars (\$8,000,000.00).

(b) Interest. The Note shall bear interest at the Note Rate payable on each Payment Date. The Note Rate shall be subject to adjustment as provided in the Note. The Noteholder shall promptly notify the City in writing of any adjustments in the Note Rate. Notwithstanding any provision hereof to the contrary, in no event shall the interest rate on the Note exceed the maximum rate permitted by law. Interest on the Note shall be computed on the basis of 12, 30-day months and a 360-day year.

(c) Prepayments and Principal Payments. The Note shall be subject to mandatory prepayment and prepayment at the option of the City, as provided in the Note. Any prepayment shall be made on such date as shall be specified by the City in a written notice delivered to the Noteholder not less than five (5) days prior to the specified prepayment date. Any prepayment shall be applied first to accrued interest, then to other amounts owed the Bank, and finally to principal as directed by the City.

Optional Prepayments. The principal of the Note may be prepaid at par, in part, annually, in an amount not to exceed fifteen percent (15%) of the outstanding principal amount due thereon as of January 1 of the year of any such partial prepayment. Any partial prepayment of the Note shall be made only on a scheduled principal payment date.

Prepayment of the Note in excess of fifteen percent (15%) of the principal amount in any calendar year shall be subject to a Prepayment Fee. The Prepayment Fee shall be equal to the present value of the difference between (1) the amount that would have been realized by the Holder on the prepaid amount for the remaining term of the Note at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps for a term corresponding to the term of the Note, interpolated to the nearest month, if necessary, that was in effect three Business Days prior to the Date of Issuance of the Note and (2) the amount that would be realized by the Holder by reinvesting such prepaid funds for the remaining term of the Note at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps, interpolated to the nearest month, that was in effect three Business Days prior to the Note repayment date; both discounted at the same interest rate utilized in determining the applicable amount in (2). Should the present value have no value or a negative value, the City may prepay with no additional fee. Should the Federal Reserve no longer release rates for fixed-rate payers in interest rate swaps, the Holder may substitute the Federal Reserve H.15 Statistical Release with another similar index. The Holder shall provide the City with a written statement explaining the calculation of the Prepayment Fee due, which statement shall, in the absence of manifest error, be conclusive and binding.

Following an optional prepayment of the Note, the City will prepare, with assistance from its Financial Advisor, as needed, an amended Note debt service schedule and send that to the Bank within 15 business days following the prepayment. The Bank agrees to review the City's new debt service schedule and within 15 business days following receipt provide any suggested corrections thereto to the City's Finance Director. Failure of the Bank to provide any corrections in accordance with the immediately preceding sentence shall for purposes of this Agreement and the Note be evidence of the Bank's approval of the schedule prepared by the City. A copy of all agreed upon amended debt service schedules will be filed with the Registrar and Paying Agent, and copies provided to the Bank, City, Bond Counsel, City Attorney, and City's Financial Advisor.

Principal on the Note is payable on each October 1 commencing October 1, 2010 as set forth in the Note.

**Section 3.03. Conditions Precedent to Issuance of Note.** Prior to or simultaneously with the delivery of the Note, there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of legal counsel to the City substantially to the effect that (i) the Resolution has been duly adopted and this Agreement and the Note has been duly authorized, executed and delivered by the City and each constitutes a valid, binding and enforceable agreement of the City in accordance with their respective terms, except to the extent that the enforceability of the rights and remedies set forth therein may be limited by bankruptcy, insolvency, financial emergency or other laws affecting creditors' rights generally or by usual equity principles; (ii) the City's execution, delivery and performance of this Agreement and execution and issuance of the Note are not subject to any authorization, consent, approval or review of any governmental body, public officer or regulatory authority not heretofore obtained or effected; (iii) the execution, issuance and delivery of the Note has been duly and validly authorized by the City, and the Note constitutes a valid and binding special obligation of the City



enforceable in accordance with its terms; (iv) the City (A) is a municipal corporation duly organized and validly existing under the laws of the State of Florida, and (B) has power and authority to adopt the Resolution, to execute and deliver this Agreement, to execute and deliver the Note, and to consummate the transactions contemplated by such instruments; (v) the execution, delivery and performance of the Note and this Agreement, and compliance with the terms thereof and hereof, under the circumstances contemplated hereby, do not and will not in any material respect conflict with, or constitute on the part of the City a breach or default under, any indenture, mortgage, deed of trust, agreement or other instrument to which the City or to which its properties are subject or conflict with, violate or result in a breach of any existing law, administrative rule or regulation, judgment, court order or consent decree to which the City or its properties are subject; (vi) to the best of such counsel's knowledge, there is no claim, action, suit, proceeding, inquiry, investigation, litigation or other proceeding, at law or in equity, pending or threatened in any court or other tribunal, state or federal (W) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the Note, (X) in any way questioning or affecting the validity or enforceability of any provision of this Agreement, the Note, or the Resolution, (Y) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the Note, or of any provision made or authorized for the payment thereof, or (Z) questioning or affecting the organization or existence of the City or the right of any of its officers to their respective offices; (vii) the City has the legal authority to refinance the Refunded Note, to grant a lien on the Pledged Revenues as described herein and in the Resolution; and (viii) all conditions contained in the ordinances and resolutions of the City precedent to the issuance of the Note have been complied with;

(b) an opinion of Bond Counsel (who may rely on opinion of legal counsel to the City), substantially to such effect that such counsel is of the opinion that: (i) this Loan Agreement constitutes a valid and binding obligation of the City enforceable upon the City in accordance with its terms; (ii) the Note is a valid and binding special obligation of the City enforceable in accordance with its terms, payable solely from the sources provided therefor in this Loan Agreement; (iii) assuming compliance by the City with certain covenants relating to requirements contained in the Code interest on the Note is excluded from gross income for purposes of federal income taxation; and (iv) the Note is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code;

(c) a copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service by the City;

(d) the original executed Note and Agreement; and

(e) such other documents as the Bank reasonably may request (including, without limitation, appropriate executed Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (e), inclusive, of this Section shall have been filed with the Bank, and when the Note shall have been executed as required by this Agreement, and all conditions of the Resolution have been met, the City shall deliver the Note to or upon the order of the Bank upon receipt of the purchase price therefor.

**Section 3.04. Registration of Transfer; Assignment of Rights of Bank.** The City shall keep at the office of the City Clerk in the City's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. The transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the City together with an assignment duly executed by the Noteholder or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as **Exhibit A** to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the City shall execute and deliver in exchange for the Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the City shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The City may make a charge for every such registration of transfer of a Note sufficient to reimburse it for any tax or other governmental charges required to be paid with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any lawful coin or currency of the United States.

The registration of transfer of the Note on the registration books of the City shall be deemed to effect a transfer of the rights and obligations of the Bank under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Bank under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Bank. The City and the transferor shall execute and record such instruments and take such other actions as the City and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Bank under this Agreement and the Note.

The Holder of the Note is hereby granted power to transfer absolute title thereof by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against such owner's assignor or any person in the chain of title and before the maturity of the Note; provided, however, that the Note may be transferred only in whole and not in part and provided further, that no transfer shall be permitted absent the City's receipt of a certificate in form and substance similar to the one included as part of **Exhibit A** hereto from such proposed transferee. Every prior Holder of the Note shall be deemed to have waived and renounced all of such owner's equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

In the event any Note is mutilated, lost, stolen, or destroyed, the City shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the City, and in the case of any lost, stolen, or destroyed Note, there first shall be furnished to the City evidence of such loss, theft or destruction together with an indemnity satisfactory to it.

**Section 3.05. Ownership of the Note.** The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Note shall be made only to the Holder thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

**Section 3.06. Use of Proceeds of Note Permitted Under Applicable Law.** The City represents, warrants and covenants that the proceeds of the Note will be used solely to refinance the Refunded Note, and that such use is permitted by applicable law.

**Section 3.07. Authentication.** Until the Note shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A, duly executed by the manual signature of the registrar as authenticating agent, it shall not be entitled to any benefit or security under this Loan Agreement. The Note shall not be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the registrar, and such certificate of the registrar upon the Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Loan Agreement.

## **ARTICLE IV**

### **COVENANTS OF THE CITY**

**Section 4.01. Performance of Covenants.** The City covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the City relating to the Loan.

**Section 4.02. Payment of Note.**

(a) The City does hereby irrevocably pledge the Pledged Revenues as security for the repayment of the Note. The lien of the Note on the Pledged Revenues is on parity with the lien thereon of the Parity Obligations.

(b) The Note will be a special obligation of the City secured solely by the Pledged Revenues and is payable from the Pledged Revenues as provided in this Agreement. The Note will not constitute a general debt, liability or obligation of the City or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Note and the Noteholder shall never have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment. The Note shall not constitute a lien upon any property of the City except upon the Pledged Revenues.

**Section 4.03. Tax Covenant.** The City covenants to the Noteholder that the City will not make any use of the proceeds of the Note at any time during the term of such Note which, if such use had been reasonably expected on the date the Note was issued, would have caused such Note to be an "arbitrage bond" within the meaning of the Code. The City will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to insure the exclusion of interest on the Note from the gross income of the holders thereof for purposes of federal income taxation.

**Section 4.04. Application of Provisions of Original Instrument.** The Note shall for all purposes be considered to be Additional Bonds issued under the authority of Section 12.02 of the Original Instrument and shall be entitled to all the protection and security provided in and by

the Original Instrument for Additional Bonds, and the Note shall be in all respects entitled to the same security, rights and privileges enjoyed by the Parity Obligations except as otherwise provided herein. The debt service on the Note shall be payable on a parity with the Parity Obligations. The terms and provisions of the Original Instrument as supplemented hereby shall remain in full force and effect and be applicable with respect to the Note.

**Section 4.05. Compliance with Laws and Regulations.** The City shall maintain compliance with all federal, state and local laws and regulations applicable to the refinancing of the Refunded Note and the Loan.

## **ARTICLE V**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 5.01. Events of Default; Remedies.** The provisions of Article XIII of the Original Instrument shall apply for purposes of this Loan Agreement and shall be applied to the Note as though fully restated herein.

## **ARTICLE VI**

### **MISCELLANEOUS PROVISIONS**

**Section 6.01. Covenants of City, Etc.; Successors.** All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

**Section 6.02. Term of Agreement.** This Agreement shall be in full force and effect from the date hereof until the Note and all other sums payable to the Bank hereunder have been paid in full.

**Section 6.03. Amendments and Supplements.** This Agreement may be amended or supplemented from time to time only by a writing duly executed by each of the City and the Noteholders.

**Section 6.04. Notices.** Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or the Bank, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by certified mail, return receipt requested:

(a) As to the City:

City of Leesburg, Florida  
501 Meadow Street  
Leesburg, Florida 34749  
Attention: Finance Director

(b) As to the Bank:

SunTrust Bank  
200 S. Orange Ave. – Mail Code 2063  
Orlando, FL 32801  
Attention: Not-for-Profit and Governmental Banking

or at such other address as shall be furnished in writing by any such party to the other, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail.

Either party may, by notice sent to the other, designate a different or additional address to which notices under this Agreement are to be sent.

**Section 6.05. Benefits Exclusive.** Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the City and the Noteholder.

**Section 6.06. Severability.** In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent from time to time permitted by law.

**Section 6.07. Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of interest on or principal of the Note or the date fixed for prepayment of the Note shall be other than a Business Day, then payment of such interest or principal shall be made on the next succeeding Business Day with the same force and effect as if paid on the date of maturity or the date fixed for prepayment, and no interest on any such principal amount shall accrue for the period after such date of maturity or such date fixed for prepayment.

**Section 6.08. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such

counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 6.09. Applicable Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

**Section 6.10. No Personal Liability.** Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the City in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the City Commission, officer, employee or agent of the City, officer, employee or agent of a successor to the City, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the City or any successor to the City, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

**Section 6.11. Incorporation by Reference.** All of the terms and obligations of the Resolution and the Exhibit hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

*[Signature Page for LOAN AGREEMENT  
dated as of July 8, 2010 between  
the City of Leesburg, FL and SunTrust Bank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first set forth herein.

**CITY OF LEESBURG, FLORIDA**

[SEAL]

ATTEST:

By: Bill Power  
Mayor

Betty Richardson  
City Clerk

Approved as to form  
and correctness:

Paul A. Murrell  
City Attorney

**SUNTRUST BANK**

By: [Signature]  
Title: Authorized Officer

## EXHIBIT A

### FORM OF NOTE

PRIOR TO BECOMING A HOLDER, A PROPOSED PURCHASER SHALL EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED HERETO CERTIFYING, AMONG OTHER THINGS, THAT SUCH HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

**CITY OF LEESBURG, FLORIDA  
UTILITY SYSTEM REVENUE REFUNDING NOTE,  
SERIES 2010**

<u>Principal Sum</u>	<u>Maturity Date</u>	<u>Note Rate</u>	<u>Date of Issuance</u>
\$8,000,000.00	October 1, 2025	3.85%	July 8, 2010

The CITY OF LEESBURG, FLORIDA (the "City"), for value received, hereby promises to pay, solely from the sources described in the within mentioned Agreement, to the order of SUNTRUST BANK, a Georgia state banking corporation, or its assigns (the "Holder"), at 200 S. Orange Avenue – Mail Code 2063, Orlando, Fl 32801, Attention: Not-for-Profit and Government Banking, or at such place as the Holder may from time to time designate in writing, the Principal Sum, such principal to be repaid in installments due on the dates and in the amounts set forth on **Exhibit "A"** hereto, with all unpaid principal and interest due in full on the above referenced Maturity Date, and to pay interest on the outstanding principal amount hereof from the most recent date to which interest has been paid or provided for, or if no interest has been paid, from the Date of Issuance shown above, on April 1 and October 1 of each year (each, an "Interest Payment Date"), commencing on October 1, 2010, until payment of said principal sum has been made or provided for, at the above referenced Note Rate calculated on the basis of 12, 30-day months and a 360-day year. Payments due hereunder shall be payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, which payments shall be made to the Holder hereof by check mailed to the Holder at the address designated in writing by the Holder for purposes of payment or by bank wire or bank transfer as such Holder may specify in writing to the City or otherwise as the City and the Holder may agree. The original Holder is authorized to receive payments due hereunder by auto debiting from a City deposit account with such original Holder.

This Note is issued for the purpose of refinancing the City's outstanding Separate Utility System Revenue Bond Substitute Anticipation Note (Plantation Acquisition Project), Series 2006, under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including particularly Chapter 166, Florida Statutes and other applicable provisions of law, and Resolution No. 8673, adopted by the City Commission (the "Commission") on June 28, 2010, and a Loan Agreement dated July 8, 2010 by and between the City and the Holder (the "Agreement"). This Note is being issued as "Additional Bonds" within the meaning of City Resolution No. 7143 adopted by the City Commission of the City on June 14, 2004.



This Note is a limited, special obligation of the City, payable from and secured solely by a lien upon and pledge of certain Pledged Revenues, as defined and described and in the manner provided in the Agreement. The pledge of the Pledged Revenues to the payment of this Note is on a parity (except as otherwise provided in the Agreement) with the City's outstanding (a) Utility System Revenue Bonds, Series 2004; (b) Utility System Revenue Bonds, Series 2007A; and (c) Taxable Utility System Revenue Bonds, Series 2007B.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

The principal of this Note may be prepaid at par, in part, annually, in an amount not to exceed fifteen percent (15%) of the outstanding principal amount due hereon as of January 1 of the year of any such partial prepayment. Any partial prepayment of this Note shall be made only on a scheduled principal payment date.

Prepayment of this Note in excess of fifteen percent (15%) of the principal amount in any calendar year shall be subject to a Prepayment Fee. The Prepayment Fee shall be equal to the present value of the difference between (1) the amount that would have been realized by the Holder on the prepaid amount for the remaining term of the Note at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps for a term corresponding to the term of the Note, interpolated to the nearest month, if necessary, that was in effect three Business Days prior to the Date of Issuance of the Note and (2) the amount that would be realized by the Holder by reinvesting such prepaid funds for the remaining term of the Note at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps, interpolated to the nearest month, that was in effect three Business Days prior to the Note repayment date; both discounted at the same interest rate utilized in determining the applicable amount in (2). Should the present value have no value or a negative value, the City may prepay with no additional fee. Should the Federal Reserve no longer release rates for fixed-rate payers in interest rate swaps, the Holder may substitute the Federal Reserve H.15 Statistical Release with another similar index. The Holder shall provide the City with a written statement explaining the calculation of the Prepayment Fee due, which statement shall, in the absence of manifest error, be conclusive and binding.

Following an optional prepayment of this Note, the City will prepare, with assistance from its Financial Advisor, as needed, an amended Note debt service schedule and send that to the Bank within 15 business days following the prepayment. The Bank agrees to review the City's new debt service schedule and within 15 business days following receipt provide any suggested corrections thereto to the City's Finance Director. Failure of the Bank to provide any corrections in accordance with the immediately preceding sentence shall for purposes of the Agreement and this Note be evidence of the Bank's approval of the schedule prepared by the City. A copy of all agreed upon amended debt service schedules will be filed with the Registrar and Paying Agent, and copies provided to the Bank, City, Bond Counsel, City Attorney, and City's Financial Advisor.

All payments by the City pursuant to this Note shall apply first to accrued interest, then to other charges due the Holder, and the balance thereof shall apply to the principal as directed by the City.

Upon the occurrence of an Event of Default if the debt then remaining unpaid hereunder shall become immediately due and payable pursuant to the terms of the Agreement, then the City shall also be obligated to pay (but only from the Pledged Revenues) as part of the indebtedness evidenced by this Note, any Prepayment Fee due as a result of the prepayment hereof upon such acceleration.

Notice of prepayment having been given as provided in the Agreement, the principal amount to be prepaid shall become due and payable on the prepayment date stated in such notice, together with interest accrued and unpaid to the prepayment date on such principal amount; and the amount of principal and interest then due and payable shall be paid upon presentation and surrender of this Note to the office of the City. If, on the prepayment date, funds for the payment of the principal amount, together with interest to the prepayment date on such principal amount, shall have been given to the Holder, as above provided, then from and after the prepayment date interest on such principal amount of this Note shall cease to accrue.

The Note Rate, as stated above, is subject to adjustment as follows:

(a) Adjustment in the Event of a Determination of Taxability. In the event that a Determination of Taxability shall have occurred, the Note Rate shall be subject to adjustment to the Taxable Rate, effective retroactively to the date on which the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof. In addition, the Holder of this Note or any former Holders of this 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 of America by the Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the City within sixty (60) days following the Determination of Taxability and demand by the Holder.

(b) Adjustment of Rate of Interest for Partial Taxability. In the event that interest on this Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of this Note, then the Note Rate shall be increased during such period by an amount equal to:  $(A-B) \times C$  where:

(A) "A" equals the Taxable Rate (expressed as a percentage);

(B) "B" equals the Note Rate (expressed as a percentage); and

(C) "C" equals the portion of this Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Holder of this Note or any former Holder of this 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 Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the City within sixty (60) days following the Determination of Taxability and demand by the Holder.

(c) Adjustment of Rate of Interest for Change in Maximum Corporate Tax Rate. In the event that the maximum effective federal corporate tax rate (the "Maximum Corporate Tax Rate") during any period with respect to which interest shall be accruing on this Note on a tax-exempt basis, changes from the Maximum Corporate Tax Rate then in effect, the interest rate on this Note that is bearing interest on a tax-exempt basis shall be adjusted to the product obtained by multiplying the interest rate then in effect on this Note by a fraction equal to  $(1-A \text{ divided by } 1-B)$ , where A equals the Maximum Corporate Tax Rate in effect as of the date of adjustment and B equals the Maximum Corporate Tax Rate in effect immediately prior to the date of adjustment.

(d) Adjustment of Rate of Interest for Other Changes Affecting After-Tax Yield. So long as any portion of the principal amount of this Note or interest thereon remains unpaid and this Note is held by SunTrust Bank (a) if any law, rule, regulation or executive order is enacted or promulgated by any public body or governmental agency which changes the basis of taxation of interest on this Note or causes a reduction in yield on this Note (other than by reason of a change described above) to SunTrust Bank, including without limitation the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any public body or governmental agency, any payment is required to be made by, or any federal, state or local income tax deduction is denied to, SunTrust Bank (other than by reason of a change described above or by reason of any action or failure to act on the part of SunTrust Bank), including, but not limited to, loss of status as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3)(B) of the Code, by reason of the ownership of this Note, the City shall reimburse SunTrust Bank within five (5) days after receipt by the City of written demand for such payment, and the City agrees to indemnify SunTrust Bank against any loss, cost, charge or expense with respect to any such change. The determination of the after-tax yield calculation shall be verified by a firm of certified public accountants regularly employed by SunTrust Bank and acceptable to the City, and such calculation, in the absence of manifest error, shall be binding on the City and SunTrust Bank. This provision shall apply to and is included for the sole benefit of the initial Holder of this Note (SunTrust Bank), and its successors or assigns due to an acquisition, merger or any other legal combination, restructuring or disposition involving SunTrust Bank (collectively, the "Benefitted Parties"). Any Holder of this Note other than the Benefitted Parties shall not have the benefit of this provision and shall not have a claim to the payment of additional amounts under this provision as a result of their ownership of this Note.

For purposes of the foregoing:

(1) "Determination of Taxability" shall mean, with respect to this Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, which notice or notification is not contested by either the City or the Holder of the Note, or (ii) a determination by a court of competent jurisdiction that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, 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 City to the effect that interest on this Note is includable for federal income tax purposes in the gross income of the Holder hereof.

(2) "Prime Rate" shall mean a rate of interest equal to the announced prime commercial lending rate per annum of SunTrust Bank. The Prime Rate is a reference rate for the information and use of SunTrust in establishing the actual rate to be charged to the City. The Prime Rate is purely discretionary and is not necessarily the lowest or best rate charged any customer. The Prime Rate shall be adjusted from time to time without notice or demand as of the effective date of any announced change thereof.

(3) "Taxable Rate" means a rate equal to the Prime Rate times that percentage which after the Determination of Taxability will result in the same after-tax yield to the Holder of this Note as before said Determination of Taxability.

Notwithstanding any provision in this Note to the contrary, in no event shall the interest contracted for, charged or received in connection with this Note (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of nonusurious interest allowed under the State of Florida as presently in effect and to the extent an increase is allowable by such laws, but in no event shall any amount ever be paid or payable by the City greater than the amount contracted for herein. In the event the maturity of this Note is accelerated or prepaid in accordance with the provisions hereof, the Agreement or the Resolution, then such amounts that constitute payments of interest, together with any costs or considerations which constitute interest under the laws of the State of Florida, may never exceed an amount which would result in payment of interest at a rate in excess of that permitted by Section 215.84(3), Florida Statutes, as presently in effect and to the extent an increase is allowable by such laws; and excess interest, if any, shall be cancelled automatically as of the date of such acceleration, or, if theretofore paid, shall be credited on the principal amount of this Note unpaid, but such crediting shall not cure or waive any default under the Agreement or Resolution.

THIS NOTE SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE CITY OR THE STATE OF FLORIDA (THE "STATE"), WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES, AS PROVIDED IN THE AGREEMENT AND THE RESOLUTION. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST HEREON.

Upon the occurrence of an Event of Default the principal of this Note may become or be declared due and payable before the Maturity Date in the manner, with the effect and subject to the conditions set forth in the Agreement and Resolution. The Holder shall also have such other remedies as described in the Agreement.

The City hereby waives presentment, demand, protest and notice of dishonor. This Note is governed and controlled by the Agreement and reference is hereby made thereto regarding interest rate adjustments, acceleration, and other matters.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**CITY OF LEESBURG, FLORIDA**

[SEAL]

By: \_\_\_\_\_  
Mayor Pro-Tem

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to form and content:

\_\_\_\_\_  
City Attorney

FORM OF CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This Note is being delivered pursuant to the within mentioned Agreement.

**CITY OF LEESBURG, FLORIDA,**  
as Registrar

By: \_\_\_\_\_  
City Clerk

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto \_\_\_\_\_ (please print or typewrite name, address and tax identification number of assignee) \_\_\_\_\_ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder: \_\_\_\_\_

By: \_\_\_\_\_

## PURCHASER'S CERTIFICATE

---

City of Leesburg, Florida (the "City")

Ladies and Gentlemen:

The undersigned, as a purchaser of the City of Leesburg, Florida Utility System Revenue Refunding Note, Series 2010 (the "Note") dated July 8, 2010, consisting of one typewritten Note, hereby certifies that we have been provided (a) a copy of City of Leesburg Resolution No. 8673, adopted by the City on June 28, 2010, authorizing the issuance of the Note (the "Resolution"), (b) the Loan Agreement dated as of July 8, 2010, between the City and us as assignee of SunTrust Bank (the "Agreement") and (c) such financial and general information respecting the Pledged Revenues (as such term is defined in the Agreement) and the City, and the Note described above as we deem necessary to enable us to make an informed investment judgment with respect to the purchase of said Note.

We hereby make the following representations, which representations may be relied upon by the City:

- A. We are aware:
  - (i) that investment in the Note involves various risks;
  - (ii) that the Note is not a general obligation of the City; and
  - (iii) that the principal or premium, if any, and interest on the Note is payable solely from the Pledged Revenues as specified in the Resolution and the Agreement.
- B. We understand that no official statement, offering memorandum or other form of offering document was prepared or is being used in connection with the offering or sale of the Note (collectively, "Disclosure Documents"), but we have been afforded access to all information we have requested in making our decision to purchase the Note and have had sufficient opportunity to discuss the business of the City with its officers, employees and others. We have not requested any Disclosure Documents in connection with the sale of the Note. We do not require any further information or data incident to our purchase of the Note.
- C. In purchasing the Note, we have relied solely upon our own investigation, examination, and evaluation of the City, and other relevant matters.



- D. We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of our investment in the Note and have determined that we can bear the economic risk of our investment in the Note.
- E. We acknowledge the understanding that the Note is not being registered under the Securities Act of 1933, as amended (the “1933 Act”) or Chapter 517, Florida Statutes, and that the Resolution and Agreement are not being qualified under the Trust Indenture Act of 1939, as amended, and that the City shall have no obligation to effect any such registration or qualification.
- F. We are not acting as a bond house, broker or other intermediary, in our purchase of the Note. Although we retain the right to transfer the Note in the future, we understand that the Note may not be readily tradable.
- G. We have received all documents requested by us incident to our purchase of the Note.
- H. We acknowledge that we are an “accredited investor” within the meaning of Chapter 517, Florida Statutes and Regulation D of the 1933 Act.

Signed as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[ \_\_\_\_\_ ]

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

**EXHIBIT A**

**SERIES 2010 NOTE – PRINCIPAL REPAYMENT SCHEDULE**

<b><u>Date</u></b>	<b><u>Amount</u></b>
10/1/2010	\$ 10,000
10/1/2011	50,000
10/1/2012	55,000
10/1/2013	55,000
10/1/2014	525,000
10/1/2015	545,000
10/1/2016	565,000
10/1/2017	590,000
10/1/2018	610,000
10/1/2019	635,000
10/1/2020	660,000
10/1/2021	685,000
10/1/2022	710,000
10/1/2023	740,000
10/1/2024	765,000
10/1/2025	800,000