

RESOLUTION NO. 09-R-09

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TALLAHASSEE, FLORIDA AUTHORIZING THE ISSUANCE OF CAPITAL IMPROVEMENT REFUNDING REVENUE BOND, SERIES 2009 IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$30,000,000, TO REFUND A PORTION OF CERTAIN OUTSTANDING OBLIGATIONS OF THE ISSUER; PROVIDING THAT THE BOND SHALL BE A LIMITED OBLIGATION OF THE ISSUER PAYABLE FROM PLEDGED FUNDS; DELEGATING CERTAIN RESPONSIBILITIES WITH RESPECT TO THE SALE OF THE BONDS TO THE MAYOR; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE BOND; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TALLAHASSEE, FLORIDA, as follows:

**Section 1: Authority for this Resolution.** This Resolution is adopted pursuant to the provisions of the Constitution of Florida, Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (collectively, the "Act").

**Section 2: Definitions.** The following words and phrases shall have the following meanings when used herein:

"Act" shall have the meaning ascribed thereto in Section 1 hereof.

"Authorized Denominations" means the stated amount of the Bond.

"Bond" means the not to exceed \$30,000,000 City of Tallahassee, Florida Capital Improvement Refunding Revenue Bond, Series 2009 authorized pursuant to this Resolution.

"Business Day" means any day except any Saturday or Sunday or day on which the Payment Office of the Owner (as defined in the Bond) is lawfully closed.

"Clerk" means the City Treasurer-Clerk or Deputy Treasurer-Clerk.

"Commission" means the City Commission of the City of Tallahassee, Florida.

"Debt Service Requirement" for any Fiscal Year shall mean the sum of:

- (1) The aggregate amount required to pay the interest becoming due on the Senior Bonds and the Bond during the Fiscal Year. The interest on any debt that does not bear a fixed

rate of interest to its maturity shall be calculated at the Assumed Interest Rate. "Assumed Interest Rate" means the highest of (i) the average rate of actual interest borne by such debt during the most recent complete month prior to the date as of which the Debt Service Requirement is being calculated, (ii) for tax-exempt debt, The Bond Buyer Revenue Bond Index last published in the month preceding the date as of which the Debt Service requirement is being calculated, (iii) for taxable debt, the yield on a U.S. Treasury obligation with a constant maturity closest to but not before the maturity date of such debt, as reported in Statistical Release H.15 of the Federal Reserve on the last day of the month preceding the date as of which the Debt Service Requirement is being calculated, plus three percent, provided that if the Issuer shall have entered into an interest rate swap or interest rate cap or shall have taken any other action which has the effect of fixing or capping the interest rate on such debt for the entire term thereof, then such fixed or capped rate shall be used as the Applicable Rate for the period of such swap or cap, and provided further that if The Bond Buyer Revenue Bond Index or Statistical Release H.15 of the Federal Reserve is no longer available or no longer contains the necessary data, such other comparable source of comparable data as selected by the Owner shall be utilized in the foregoing calculations.

(2) The aggregate amount required to pay the principal becoming due, whether at maturity, upon redemption or prepayment or upon acceleration of maturity, on the Senior Bonds and the Bond for such Fiscal Year. The principal due on Balloon Debt shall be calculated on the assumption that the outstanding balance of such Balloon Debt as of any date of calculation is repaid in annual payments due on each anniversary of the date such Balloon Debt was incurred from and after the date of such calculation to the date 25 years after the date the Balloon Debt was initially issued. "Balloon Debt" means any debt with a final maturity date that is at least one year after the maturity date of the Bond and the terms of which require a principal payment to be made at any time in an amount greater than 25% of the original principal amount thereof.

"Event of Default" is defined in Section 16.

"Financial Advisor" means Public Financial Management, Inc. located in Orlando, Florida and its successors or assigns.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30.

"Guaranteed Entitlement Revenues" shall mean the guaranteed entitlement revenues received by the Issuer pursuant to Chapter 218, Part II, Florida Statutes, and defined therein as the "Guaranteed Entitlement." In the event the State of Florida increases the portion of the Revenue Sharing Trust Fund guaranteed to the Issuer, the term "Guaranteed Entitlement Revenues" shall include such increased amount.

"Issuer" means the City of Tallahassee, Florida.

*"Local Communications Services Tax"* shall mean the Local Communications Services Tax authorized and collected pursuant to Section 202.19, Florida Statutes and Resolution No. 01-R-33 of the Issuer adopted on June 13, 2001.

*"Local Government Half-Cent Sales Tax"* shall mean the moneys distributed monthly to the Issuer from the Local Government Half-Cent Sales Tax Clearing Trust Fund in the State Treasury received by the Issuer pursuant to Chapter 218, Part VI, Florida Statutes.

*"Maximum Debt Service Requirement"* shall mean, as of any particular date of calculation, the greatest Debt Service Requirement for the Senior Bonds, the Bond and any other debt secured by all or any portion of the Pledged Funds for the then current or any future Fiscal Year.

*"Mayor"* means the Mayor of the Issuer or in his absence or inability to act, the Mayor Pro-Tem or such other person as may be duly authorized by the Commission to act on his behalf.

*"Original Purchaser"* means Bank of America, N.A.

*"Owner"* or *"Owners"* means the Person or Persons in whose name or names a Bond shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

*"Paying Agent"* means the Clerk.

*"Person"* mean natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies and other legal entities.

*"Pledged Funds"* mean collectively, (i) the Local Government Half-Cent Sales Tax, (ii) the Guaranteed Entitlement Revenues, and (iii) the Local Communications Service Tax. The lien on such Pledged Funds is junior and subordinate to the lien on the Senior Bonds.

*"Refunded Obligations"* shall mean the outstanding obligations evidenced by: (i) a loan agreement between the Sunshine State Governmental Financing Commission and the Issuer dated as of May 25, 2000, amended and restated on April 25, 2001, in the original principal amount of \$11,370,000 and currently outstanding in the amount of \$8,712,000, funded from the Sunshine State Governmental Financing Commission Tax Exempt Commercial Paper Revenue Notes (Governmental Financing Program), Series A, (ii) a loan agreement between the Sunshine State Governmental Financing Commission and the Issuer dated as of August 1, 2005, in the original principal amount of \$10,000,000 and currently outstanding in the amount of \$8,500,000, funded from the Sunshine State Governmental Financing Commission Tax Exempt Commercial Paper Revenue Notes (Governmental Financing Program), Series A, and (iii) a loan agreement

between the Sunshine State Governmental Financing Commission and the Issuer dated as of April 20, 2006 in the original principal amount of \$10,550,000 and currently outstanding in the amount of \$10,118,000, funded from the Sunshine State Governmental Financing Commission Tax Exempt Commercial Paper Revenue Notes (Governmental Financing Program), Series D.

"Resolution" means this Resolution, pursuant to which the Bond is authorized to be issued, including any supplemental resolution(s).

"Senior Bonds" means collectively the outstanding \$86,210,000 City of Tallahassee, Florida Capital Bonds, Series 2004 and the \$15,360,000 City of Tallahassee, Florida Capital Refunding Bonds, Series 2001 (jointly, the "Current Senior Bonds") and any debt issued on parity therewith in compliance with section 14.D. hereof.

"State" means the State of Florida.

### **Section 3: Findings.**

(A) For the benefit of the inhabitants of the Issuer, the Commission finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its inhabitants to refinance the Refunded Obligations. Issuance of the Bond to refinance the Refunded Obligations which originally funded capital projects satisfies a paramount public purpose.

(B) The Bond will be payable from Pledged Funds. The Pledged Funds available after the payment of the Senior Bonds will be sufficient to pay the Bond, as the same becomes due.

(C) Neither the Issuer nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the Bond and the Bond shall not constitute a lien upon any properties owned by or situated within the Issuer, except as provided herein with respect to the Pledged Funds, in the manner and to the extent provided herein.

(D) Because of the characteristics of the Bond, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Bond, it is in the best interest of the Issuer to purchase the Bond at a private negotiated sale from the Original Purchaser. Prior to the issuance of the Bond, the Issuer shall receive from the Original Purchaser, a Purchaser's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

**Section 4: Authorization.** The issuance of an obligation of the Issuer to be known as the "City of Tallahassee, Florida Capital Improvement Refunding Revenue Bonds, Series 2009" is

hereby approved and authorized, in the aggregate principal amount of not to exceed \$30,000,000 for the purpose of providing funds to currently refund the Refunded Obligations and to pay the costs of issuing the Bond.

**Section 5: Description of Bond.** The Bond shall be issued as a single Bond and shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the Original Purchaser, and shall have such other terms and provisions, including interest rates not exceeding the maximum interest rates permitted by the Act, principal and interest payment terms, maturity date, and prepayment provisions as stated herein and/or in the form of the Bond attached hereto as Exhibit A. The Bond is to be in substantially the form set forth on Exhibit A attached hereto, together with such changes as shall be approved by the Mayor such approval to be conclusively evidenced by the execution thereof by the Mayor. The Bond shall be executed with the manual or facsimile signature of the Mayor and the Bond shall be attested with the manual or facsimile signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Bond or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Bond so signed and sealed have been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office. The Bond may be signed and sealed by such person who at the actual time of the execution of the Bond shall hold the proper office of the Issuer, although, at the date of the Bond, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Bond shall be actually sold and delivered.

**Section 6: Registration and Exchange of Bond; Persons Treated as Owners.** The Bond will initially be registered to the Original Purchaser. So long as the Bond shall remain unpaid, the Issuer will keep books for the registration and transfer of the Bond. The Bond shall be transferable only upon such registration books and in Authorized Denominations.

The Person in whose name the Bond shall be registered shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of principal and interest on such Bond shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

**Section 7: Bond Mutilated, Destroyed, Stolen or Lost.** In case a Bond shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Bond, or in lieu of and in substitution for the Bond destroyed, stolen or lost and upon the Owner furnishing the Issuer reasonable proof of ownership thereof and indemnity

reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Bond so surrendered shall be canceled.

**Section 8: Payment of Bond; Limited Obligation.** The Issuer promises that it will promptly pay the Bond at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof. The Bond shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable from the Pledged Funds, in the manner and to the extent provided herein. No holder of any Bond issued hereunder shall ever have the right to compel the exercise of any ad valorem taxing power to pay such Bond, or be entitled to payment of such Bond from any funds of the Issuer except from the Pledged Funds, in the manner and to the extent provided herein. Nothing in this section shall be construed as to limit the Issuer's ability to use any Pledged Funds to make any payments coming due.

**Section 9. Bank Qualified.** The Issuer designates the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Issuer and any subordinate entities of the Issuer and any issuer of "tax-exempt" debt that issues "on behalf of" the Issuer do not reasonably expect during calendar year 2009 to issue more than \$30,000,000 of "tax-exempt" obligations, exclusive of any private activity bonds, as defined in Section 141(a) of the Code.

**Section 10. Security for the Bond.** The payment of the principal of and interest on the Bond shall be secured by a lien on the Pledged Funds which is junior and subordinate to the lien on the Pledged Funds securing the Senior Bonds.

**Section 11: Application of Proceeds of Bond.** At the time of delivery of the Bond, proceeds from the sale of the Bond shall be used to refinance the Refunded Obligations and to pay the costs of issuance (including but not limited to legal fees and expenses). Upon issuance of the Bond, the Clerk shall transfer funds to pay the Refunded Obligations without any further direction.

**Section 12. Application of Revenues.** For so long as any of the principal of and interest on the Bond shall be outstanding and unpaid or until the Issuer has made provision for payment of principal of and interest, with respect to the Bond, the Issuer covenants as follows:

A. **Funds.** The Issuer covenants and agrees to establish separate funds to be known as the "Revenue Fund," the "Debt Service Fund" and the "Rebate Fund." Moneys in the aforementioned funds, other than the Rebate Fund, until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Owner and for the further security of the Owner.



The Issuer may, but shall not be required to, at any time and from time to time appoint one or more depositories to hold, for the benefit of the Owner, any one or more of the funds and accounts established hereby. Such depository or depositories shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from each of such funds as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agents and employees. Any such depository shall be a qualified public depository pursuant to Chapter 280, Florida Statutes.

All deposits into the funds created by this Resolution shall be deemed to be held in trust by the Issuer for the benefit of the Owner for the purposes herein provided and used and applied only for the purposes and in the manner herein provided.

**B. Flow of Funds.**

(1) The Issuer shall credit the Pledged Funds to the Revenue Fund, after payment of all required deposits for the Senior Bonds. The moneys in the Revenue Fund shall be deposited or credited on or before the last day of each month, commencing with the month in which delivery of the Bond shall be made to the Original Purchaser or such later date as hereinafter provided, in the following manner and in the following order of priority:

(a) Debt Service Fund. The Issuer shall deposit into or credit to the Debt Service Fund the sum which, together with the balance in said fund, shall be equal to the interest and the principal amount on the Bond accrued and unpaid and to accrue to the end of the then current calendar month. Moneys in the Debt Service Fund shall be used to pay principal of and interest on the Bond as and when the same become due, whether by redemption or otherwise, and for no other purpose. In determining the amount to deposit for principal, the Issuer shall take into account that portion of the principal due on the next principal payment date which would have accrued on said Bond during the then current calendar month if such principal amounts were deemed to accrue monthly (assuming that a year consists of twelve (12) equivalent calendar months of thirty (30) days each) in equal amounts from the next preceding principal payment due date, or, if there is no such preceding principal payment due date, from a date one year preceding the due date of such principal amount. The Issuer shall adjust the amount of the deposit into the Debt Service Fund not later than the month immediately preceding any payment date so as to provide sufficient moneys in the Debt Service Fund to pay the principal of and interest on the Bond coming due on such payment date.

(b) Balance. The balance of any moneys after the deposits required by Section 12(B)(1) hereof may be transferred to any appropriate fund or account of the Issuer or may be used for any lawful purpose.

(2) The Issuer, in its discretion, may use moneys in the Debt Service Fund to prepay the principal or interest coming due in future years under the terms and conditions as provided in the Bond.

(3) On the date established for payment of any principal of or redemption price, if applicable, or interest on the Bond, the Issuer shall withdraw from the Debt Service Fund sufficient moneys to pay such principal or redemption price, if applicable, or interest and deposit such moneys with the Paying Agent.

C. Rebate Fund. Amounts on deposit in the Rebate Fund shall be held in trust by the Issuer and used solely to make required rebates to the United States (except to the extent the same may be transferred to the Revenue Fund) and the Owner shall have no right to have the same applied for debt service on the Bond. The Issuer agrees to undertake all actions required of it in its arbitrage certificate, dated the date of issuance of the Bond, relating to such Bond, including, but not limited to:

(1) making a determination in accordance with the Code of the amount, if any, required to be deposited in the Rebate Fund;

(2) depositing the amount determined in clause (1) above into the Rebate Fund;

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

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

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

**Section 13: Delegated Award and Payment for the Bond**. (A) In order to obtain the most favorable interest rates and terms, the Clerk, in conjunction with the Financial Advisor, solicited bids from interested purchasers, and has determined that the proposal submitted by the Original Purchaser is the most favorable proposal received by the Issuer. The Mayor is authorized to accept, execute and deliver the commitment letter (the "Commitment Letter") of the Original Purchaser.

(B) Subject to full satisfaction of the conditions set forth in this Section 13(B), the Issuer hereby authorizes a delegated negotiated sale of the Bond to the Original Purchaser in



accordance with the terms of the Commitment Letter, with such changes, amendments, modifications, omissions and additions thereto as shall be approved by the Commission in accordance with the provisions of this Section 13(B) upon recommendation of the Financial Advisor (including, without limitation, making the final determination concerning the structuring and marketing of the Bond to obtain the most favorable ratings and interest rates on the Bond). The Bond may provide additional provisions to comply with the Commitment Letter.

Notwithstanding the foregoing, the Bond shall not be issued until such time as all of the following conditions have been satisfied:

1. Receipt by the Mayor or Clerk of a written offer in the form of a Commitment Letter, said offer to provide for, among other things, (i) the issuance of not exceeding \$30,000,000 principal amount of the Bond, (ii) a true interest cost of not more than 5% per annum and (iii) the final maturity no later than April 1, 2031.
2. The Bond may be subject to such optional redemption provisions as provided in the Commitment Letter and the Bond.
3. Receipt by the Clerk of a disclosure statement and truth-in-bonding information complying with Section 218.385, Florida Statutes and substantially in the form attached hereto as Exhibit C.

Upon satisfaction of the conditions set forth in this Section, the Mayor is hereby authorized to execute and deliver the Bond and any other documents, agreements or certificates relating to the Bond, and is further authorized and directed to prepare and furnish to the Original Purchaser of the Bond, when the Bond are issued, certified copies of all the proceedings and records of the Issuer relating to the Bond, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the Bond as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the truth of all statements contained therein.

#### **Section 14: Covenants of the Issuer.**

A. The Issuer will, within two hundred and seventy (270) days after the end of each Fiscal Year, provide the Owner with the financial statements of the Issuer for such Fiscal Year, together with an audit report from a certified public accountant and promptly following a request therefore by the Owner, such other financial information, regarding the Issuer as may be requested.

B. Together with the financial statements for each Fiscal Year delivered pursuant to Section 14.A., the Issuer will provide the Original Purchaser with a schedule setting forth the amount of Pledged Funds received by the Issuer during such Fiscal Year and the principal and interest paid on indebtedness of the Issuer during such Fiscal Year from the Pledged Funds.

C. The Issuer represents that it has full power to irrevocably pledge the Pledged Funds to the payment of the Bond, and as long as the Bond is outstanding, it will take all lawful action required on its part to continue to collect and receive the Pledged Funds.

D. The Issuer will not incur or permit to exist any debt, other than the Current Senior Bonds and the Bond, that is secured by a lien on or pledge of any portion of the Pledged Funds, unless:

(1) The amount of the Pledged Funds received by the City for the Fiscal Year immediately preceding the date of issuance of such additional debt or for any consecutive twelve (12) months out of the eighteen (18) months immediately preceding the date of issuance of the proposed additional debt was at least one hundred twenty-five percent (125%) of the Maximum Debt Service Requirement; and

(2) No Event of Default exists.

If the Issuer is permitted to incur additional debt pursuant to this Section 14.D., such debt may be senior to, on a parity with, or junior to the Bonds, in right to payment from the Pledged Funds, as the Issuer may determine.

**Section 15: Tax-Exemption.** The Issuer covenants with the Owner of the Bond that it shall not use the proceeds of such Bond in any manner which would cause the interest on such Bond to be or become includable in the gross income of the Owner for federal income tax purposes and the Issuer further covenants with the Owner of the Bond that it will comply with all provisions of the Internal Revenue Code (the "Code") necessary to maintain the exclusion of interest on the Bond from the gross income of the Owner for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

The Issuer makes each of the representations, warranties and covenants contained in the Tax Certificate delivered with respect to the Bond. By this reference, such Tax Certificate is incorporated in and made a part of this Resolution.

**Section 16: Events of Default; Remedies of Bondholder.** The following shall constitute Events of Default: (i) if the Issuer fails to pay any payment of principal of or interest on any Bond within 15 days after the same becomes due and payable (ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution or the Bond (other than set forth in (i) above) and fails to cure the same within thirty (30) days

following written notice; or (iii) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and, in the case of a proceeding other than a voluntary proceeding commenced by the Issuer, the continuance of any such event for 90 days undismissed or undischarged; or (iv) any other default or event of default which occurs with respect to the Senior Bonds.

If any payment of principal or interest on the Bond is received by the Owner more than fifteen days after the same becomes due and payable, the Issuer will pay the Owner on demand a late fee determined by the Owner but not greater than four percent (4%) on the amount of the delinquent payment.

Upon the occurrence and during the continuation of any Event of Default, the Owner of the Bond may, (i) in addition to any remedy authorized in the Bond, either at law or in equity, by suit, action, mandamus or other proceeding (including specific performance) in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof and (ii) declare the entire indebtedness evidenced by the Bond to be immediately due and payable whereupon it shall be due immediately. In any such default, the Issuer shall also be obligated to pay as part of the indebtedness evidenced by the Bond, all costs of collection and enforcement hereof, including such reasonable attorneys' fees as may be incurred, including on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist.

During the continuance of an Event of Default, the interest rate borne by the Bond (if held by the Original Purchaser or any subsidiary of Bank of America Corporation) will be the maximum rate permitted by law.

**Section 17: Amendment.** This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Bond except with the written consent of the Owner of the Bond.

**Section 18: Impairment of Contract.** The Issuer covenants with the Owner of the Bond that it will not, without the written consent of the Owner of the Bond, adopt any resolution which repeals, impairs or amends in any manner adverse to the Owner the rights granted to the Owner of the Bond hereunder.

**Section 19: Limitation of Rights.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Bond is intended or shall be construed to give to any Person other than the Issuer and the Owner any

legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

**Section 20: Waiver of Jury Trial and Arbitration:** This Section 20 concerns the resolution of any controversies or claims between the Issuer and the Owner, whether arising in contract, tort or by statute, that arises out of or relates to: (i) this Resolution or the Bond (collectively a "Claim"). For the purposes of this arbitration provision only, the term "Parties" shall include any parent corporation, subsidiary or affiliate of the Owner involved in the servicing, management or administration of the Bond.

(b) At the request of the Issuer or Owner, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Arbitration Act"). The Arbitration Act will apply even though this Agreement provides that it is governed by the law of a specified state. The arbitration will take place on an individual basis without resort to any form of class action.

(c) Arbitration proceedings will be determined in accordance with the Arbitration Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA"), and the terms of this Section. In the event of any inconsistency, the terms of this paragraph shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the Issuer or Owner may substitute another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted, unless otherwise required by law, in the City of Tallahassee, Florida. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000), upon the request of the Issuer or Owner, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed, judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this

arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s). The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Resolution and the Bond.

(f) This Section does not limit the right of the Issuer or Owner to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(g) The filing of a court action is not intended to constitute a waiver of the right of the Issuer or Owner, including the suing party, thereafter to require submittal of the Claim to arbitration.

(h) By agreeing to binding arbitration, the Issuer and Owner irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, without intending in any way to limit this agreement to arbitrate, to the extent any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Claim.

**Section 21: Severability.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall be stricken solely to the extent of the invalidity and shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

**Section 22: Business Days.** In any case where the due date of interest on or principal of a Bond or any other action date is not a Business Day, then payment of such principal or interest need not be made or action need not be taken on such date but may be made or taken on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Owner.

**Section 23: Applicable Provisions of Law.** This Resolution shall be governed by and construed in accordance with the laws of the State.

**Section 24: Rules of Interpretation.** Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinafter," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

**Section 25: Captions.** The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

**Section 26: Members of the Commission Exempt from Personal Liability.** No recourse under or upon any obligation, covenant or agreement of this Resolution or the Bond or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Commission (the "Members"), as such, past, present or future, either directly or through the Issuer it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the Members, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Member, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution, on the part of the Issuer.

**Section 27: Authorizations.** The Mayor, the Clerk, the City Attorney and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Bond and are authorized and empowered, collectively or individually, to take all action and steps, to make such representations and certificates, and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Bond, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

**Section 28: Repealer.** All resolutions or parts thereof in conflict herewith are hereby repealed.

**Section 29: No Third Party Beneficiaries.** Except such other persons as may be expressly described in this Resolution or in the Bond, nothing in this Resolution or in the Bond, expressed or implied, is intended or shall be construed to confer upon any Person, other than the holders, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Bond, all provisions thereof being intended to be and being for the sole and exclusive benefit of the persons who shall from time to time be the holders.

**Section 30: Effective Date.** This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED by the City Commission of the City of Tallahassee this 22nd day of April, 2009.

CITY OF TALLAHASSEE

By: Andrew D. Gillum  
Andrew D. Gillum  
Mayor Pro Tem

ATTEST:

By: Gary Herndon  
Gary Herndon  
City Treasurer-Clerk

APPROVED AS TO FORM

By: James R. English  
James R. English  
City Attorney

RECEIVED  
CITY TREASURER-CLERK

2009 APR 23 PM 1:37



EXHIBIT A

[FORM OF BOND]

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

R-1

\$

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
COUNTY OF LEON  
CITY OF TALLAHASSEE  
CAPITAL IMPROVEMENT REFUNDING REVENUE BONDS  
SERIES 2009

DATED DATE:

MATURITY DATE:

April 1, 2031

KNOW ALL MEN BY THESE PRESENTS that the City of Tallahassee, Florida the "Issuer"), for value received, promises to pay from the sources hereinafter provided, to the order of Bank of America, N.A., or registered assigns (hereinafter, the "Owner"), the principal sum of \_\_\_\_\_ at a rate of interest of \_\_\_\_\_% per annum.

Interest shall be due and payable in arrears each April 1 and October 1, commencing October 1, 2009 and shall be computed on a 360 day year consisting of twelve 30 day months. Principal shall be payable on each April 1, commencing April 1, 2010, in the amounts and on the dates set forth on Schedule 1 hereto. Principal of and interest on this Bond is payable when due in lawful money of the United States of America at such place (the "Payment Office of the Owner") as the Owner may designate to the Issuer in writing and shall be paid by wire transfer or in such other means as agreed to by the Issuer and the Owner.

The principal of this Bond may be prepaid in whole, or in part, on any date, with three (3) days prior written notice to the Owner by payment in an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment plus the

Prepayment Fee. For purposes hereof, the Prepayment Fee will be the sum of fees calculated separately for each Prepaid Installment, as follows:

(i) The Owner will first determine the amount of interest which would have accrued each month at the Taxable Equivalent Rate for the Prepaid Installment had it remained outstanding until the Original Payment Date of the Bond, using the interest rate applicable to the Prepaid Installment hereof.

(ii) The Owner will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment or redemption through the Original Payment Date, using the Treasury Rate.

(iii) If (i) minus (ii) for the Prepaid Installment is greater than zero, the Owner will discount the monthly differences to the date of prepayment or redemption by the Treasury Rate. The Owner will then add together all of the discounted monthly differences for the Prepaid Installment.

The following definitions will apply to the calculation of the Prepayment Fee:

(a) "Original Payment Dates" mean the dates on which the prepaid or redeemed principal would have been paid if there had been no prepayment or redemption. If any of the principal would have been paid later than the end of the fixed rate interest period in effect at the time of prepayment or redemption, then the Original Payment Date for that amount will be the last day of the interest period.

(b) "Prepaid Installment" means the amount of the prepaid or redeemed principal which would have been paid on a single Original Payment Date.

(c) "Taxable Equivalent Rate" means the interest rate per annum derived from the following formula: interest rate on the Note divided by the difference of one minus the Maximum Corporate Income Tax Rate. The "Maximum Corporate Income Tax Rate" is the highest marginal federal income tax rate charged to U.S. corporations in effect at the time of the prepayment calculation. The "Maximum Corporate Income Tax Rate" is currently 35% (or 0.35 in numerical terms).

(d) "Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal to the Original Payment Date of the Prepaid Installment which are principal payments calculated as of the date of prepayment in accordance with accepted financial practice and rounded to the nearest quarter-year, as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Bank shall select a comparable publication to determine the Treasury Rate.

Prepayments of principal shall be applied against the scheduled payments of principal hereunder in the inverse order of their due dates.

THIS BOND DOES NOT CONSTITUTE A GENERAL INDEBTEDNESS OF THE ISSUER, WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS BOND THAT SUCH BOND HOLDER SHALL NEVER HAVE THE RIGHT TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE ISSUER OR TAXATION OF ANY REAL OR PERSONAL PROPERTY THEREIN FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND OR THE MAKING OF ANY OTHER PAYMENTS PROVIDED FOR IN THE RESOLUTION.

This Bond is issued pursuant to Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (the "Act"), and a resolution duly adopted by the Issuer on April 7, 2009 relating to this Bond, as from time to time amended and supplemented (herein referred to as the "Resolution"), and is subject to all the terms and conditions of the Act and the Resolution. All terms, conditions and provisions of the Resolution including without limitation remedies in the Event of Default are by this reference thereto incorporated herein as a part of this Bond. Payment of the Bond is secured by Pledged Funds in the manner and to the extent described in the Resolution. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

All payments by the Issuer pursuant to this Bond shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to the principal sum due.

As used in this Bond:

(1) "Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto;

(2) "Determination of Taxability" shall mean interest on this Bond is required to be included in the gross income of the Owner for federal income tax purposes under the Code.

Upon the occurrence of a Determination of Taxability, the interest rate on this Bond shall be adjusted to a rate equal to 154% of the interest rate otherwise borne hereby (the "Adjusted Interest Rate"), as of and from the date such Determination of Taxability would be applicable with respect to this Bond (the "Accrual Date"); and (i) the Issuer shall on the next interest payment date (or if this Bond shall have matured, within 30 days after demand by the Owner) hereon pay to the Owner an amount equal to the sum of (1) the difference between (A) the total interest that would have accrued on this Bond at the Adjusted Interest Rate from the Accrual Date to such next interest payment date (or maturity date if this Bond has matured), and (B) the actual interest paid by the Issuer on this Bond from the Accrual Date to such next interest payment date (or maturity date), and (2) any interest and penalties required to be paid as a result of any additional State of Florida and federal income taxes imposed upon the Owner arising as a result of such Determination of Taxability; and (ii) this Bond shall thereafter bear

interest at the Adjusted Interest Rate for the period such Determination of Taxability continues to be applicable with respect to this Bond. This adjustment shall survive payment of this Bond until such time as the federal statute of limitations under which the interest on this Bond could be declared taxable under the Code shall have expired.

Upon the occurrence of an Event of Default (as defined in the Resolution) then the Owner may declare the entire debt then remaining unpaid hereunder immediately due and payable; and in any such default and acceleration, the Issuer shall also be obligated to pay (but only from the Pledged Funds) as part of the indebtedness evidenced by this Bond, any Prepayment Fee due as a result of the prepayment hereof upon such acceleration and all costs of collection and enforcement hereof, including such fees as may be incurred on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist, including specifically but without limitation, claims, disputes and proceedings seeking adequate protection or relief from the automatic stay.

Interest at the maximum lawful rate per annum shall be payable on the entire principal balance owing hereunder from and after the occurrence of and during the continuation of a default described in the preceding paragraph, irrespective of a declaration of maturity.

The Issuer to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

This Bond is and has all the qualities and incidents of a negotiable instrument under Article 3 of the Uniform Commercial Code of Florida, Chapter 673, Florida Statutes.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Resolution until it shall have been authenticated by the execution by the Registrar of the certificate of authentication endorsed hereon.

This Bond may be exchanged or transferred by the Owner hereof but only upon the registration books maintained by the Issuer and in the manner provided in the Resolution.

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 Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, City of Tallahassee, Florida has caused this Bond to be executed in its name by the manual signature of its Mayor and attested by the manual signature of the City-Treasurer Clerk, all as of this \_\_\_\_ day of \_\_\_\_\_, 2009.

(SEAL)

CITY OF TALLAHASSEE, FLORIDA

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

ATTEST:

\_\_\_\_\_  
City Treasurer-Clerk

### CERTIFICATE OF AUTHENTICATION

This Bond is one of the bonds issued under the provisions of the within mentioned Resolution.

City Treasurer-Clerk,  
as Authenticating Agent

Date of Authentication:

\_\_\_\_\_, 2009

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

## ASSIGNMENT AND TRANSFER

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Please insert Social Security or other identifying number of transferee) \_\_\_\_\_ the attached Bond of the City of Tallahassee, Florida, and does hereby constitute and appoint, \_\_\_\_\_ attorney, to transfer the said Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date \_\_\_\_\_

Signature Guaranteed by \_\_\_\_\_

\_\_\_\_\_  
[member firm of the New York  
Stock Exchange or a commercial  
bank or a trust company.]

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

\_\_\_\_\_  
NOTICE: No transfer will be registered and no new Bond will be issued in the name of the Transferee, unless the signature to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the Transferee is supplied.

## EXHIBIT B

### FORM OF PURCHASER'S CERTIFICATE

Bank of America, N.A. (the "Purchaser") has not required the City of Tallahassee, Florida (the "Issuer") to deliver any offering document and has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Issuer in connection with the issuance of the not to exceed \$30,000,000 City of Tallahassee, Florida Capital Improvement Refunding Revenue Bonds, Series 2009 (the "Bond"), and no inference should be drawn that the Purchaser, in the acceptance of said Bond, is relying on Bryant Miller Olive P.A. ("Bond Counsel") or the City Attorney ("Issuer's Counsel") as to any such matters other than the legal opinions rendered by Bond Counsel and Issuer Counsel. Any capitalized undefined terms used herein not otherwise defined shall have the meaning set forth in a resolution adopted by the Issuer on April 22, 2009 relating to the Bond (the "Resolution").

The Purchaser acknowledges and understands that the Resolution is not being qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"), and is not being registered in reliance upon the exemption from registration under Section 3(a)(2) of the Securities Act of 1933, Section 517.051(1), Florida Statutes, and/or Section 517.061(7), Florida Statutes, and that neither the Issuer, Bond Counsel nor Issuer's Counsel shall have any obligation to effect any such registration or qualification.

The Purchaser is not acting as a broker or other intermediary, and is purchasing the Bond as an investment for its own account and not with a present view to a resale or other distribution to the public. The Purchaser understands that the Bond may not be transferred except in its entirety.

The Purchaser is a national bank. The Purchaser is not purchasing the Bond for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of Chapter 517, Florida Statutes.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

BANK OF AMERICA, N.A.

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

Name: Joe R. Miller

Title: Senior Vice President



## EXHIBIT C

### FORM OF DISCLOSURE LETTER

The undersigned, as purchaser, has negotiated with the City of Tallahassee, Florida (the "Issuer") for the private purchase of its Capital Improvement Refunding Revenue Bonds, Series 2009 (the "Bond") in the principal amount of \$\_\_\_\_\_. Prior to the award of the Bond, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to the Purchaser by Holland & Knight, LLP in connection with the issuance of the Bond (such fees and expenses to be paid by the Issuer):

Purchaser's legal fees  
\$ 4,500.00

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Purchaser in connection with the issuance of the Bond to any person not regularly employed or retained by the Purchaser (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Purchaser, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Purchaser, or to the knowledge of the Purchaser, with the Issuer, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Purchaser or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Bond.

3. The amount of the underwriting spread expected to be realized by the Purchaser is \$ -0-.

4. The management fee to be charged by the Purchaser is \$-0-.

5. Truth-in-Bonding Statement:

The Bond is being issued primarily to finance the cost of refinancing the Refunded Obligations, as defined in the Resolution. Unless earlier redeemed, the Bond is expected to be repaid at the end of approximately twenty-two (22) years. At a fixed interest rate of \_\_\_\_\_%, total interest paid over the life of the Bond is \$\_\_\_\_\_ and issuance of the Bond will result in maximum of approximately \$\_\_\_\_\_ of Pledged Funds of the Issuer not being available to finance other services of the Issuer during the life of the Bond. This information is provided pursuant to Section 218.385 Florida Statutes and does not change the terms of the Bond.

6. The name and address of the Purchaser is as follows:

Bank of America, N.A.  
100 West Garden Street  
Pensacola, Florida 32502

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Statement on behalf of the Purchaser this \_\_\_\_ day of \_\_\_\_\_, 2009.

BANK OF AMERICA, N.A.

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

Name: Joe R. Miller

Title: Senior Vice President