

**LOAN AGREEMENT**

**dated July 11, 2012**

**by and between**

**THE CITY OF OVIEDO, FLORIDA  
(the "City")**

**and**

**HANCOCK BANK  
(the "Bank")**

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The Table of Contents for this Loan Agreement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Loan Agreement.

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## EXHIBIT A - FORM OF NOTES

A-1

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (the "Agreement"), made and entered as of the 11th day of July, 2012, by and between the **CITY OF OVIEDO, FLORIDA** (the "City"), a municipal corporation and public body corporate and politic of the State of Florida duly organized and existing under the laws of the State of Florida and its successors and assigns, and **HANCOCK BANK**, a banking corporation chartered under the laws of the State of Mississippi and authorized to do business in the State of Florida, and its successors (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; and

**WHEREAS**, the City, pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the City Charter of the City, and other applicable provisions of law (collectively, the "Act") and Resolution No. 2529-12 adopted by the City Council of the City (the "City Council") on June 18, 2012 (the "Note Resolution"), is authorized to borrow money to finance the refunding of the City's outstanding Capital Improvement Refunding Revenue Note, Series 2006 and Capital Improvement Revenue Note, Series 2009 (together, the "Refunded Notes"); and

**WHEREAS**, the City desires to borrow \$2,017,000 to finance the refunding of the Refunded Notes (the "Loan") and to secure the repayment of the Loan with a pledge of and lien on the Pledged Revenues (as defined herein) on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes (as defined herein); and

**WHEREAS**, the City issued a request for proposal and received proposals from various financial institutions to provide for the Loan; and

**WHEREAS**, the Bank is willing to provide the Loan to the City as provided herein, 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 and not otherwise defined shall have the respective meanings as follows:

"2012A Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012A issued by the City under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

"2012A Note Rate" shall mean the rate of interest to be borne by the 2012A Note, which shall be 1.68%, calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months.

"2012B Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012B issued by the City under the Note Resolution and the SunTrust Loan Agreement to evidence amounts due under the SunTrust Loan Agreement.

"2012C Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012C issued by the City under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

"2012C Note Rate" shall mean the rate of interest to be borne by the 2012C Note, which shall be 2.11%, calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months.

"2012D Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012D issued by the City under the Note Resolution and the BB&T Loan Agreement to evidence amounts due under the BB&T Loan Agreement.

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

"Additional Debt" means additional obligations issued in compliance with the terms, conditions and limitations contained in Section 4.05 hereof which will have an equal lien on the Pledged Revenues, to the extent herein provided and rank equally in all other respects with the Notes, the Parity Notes, and any other Additional Debt hereafter issued.

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

"Bank" shall mean Hancock Bank, a banking corporation chartered under the laws of the State of Mississippi, and its successors or affiliates.

"BB&T Loan Agreement" shall mean the Loan Agreement dated as of the date hereof, by and between the City and Branch Banking and Trust Company.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banks in the City are authorized or required to be closed.

"City" shall mean the City of Oviedo, Florida, a municipal corporation and public body corporate and politic of the State of Florida.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the applicable regulations promulgated thereunder.

"Date of Delivery" shall mean July 11, 2012.

"Debt Service" means principal of and interest on the Notes, and other debt related costs, due in connection with the Notes and this Agreement.

"Debt Service Fund" shall mean the Debt Service Fund established pursuant to Section 3.07 hereof.

"Default Rate" shall mean the Note Rate plus three percent (3%).

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

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

"Loan" shall refer to the loan in a principal amount of Two Million Seventeen Thousand Dollars (\$2,017,000), together with the interest accrued thereon pursuant to and in accordance with this Agreement.

"Maturity Date" shall mean October 1, 2020 with respect to the 2012A Note and October 1, 2023 with respect to the 2012C Note.

"Noteholder," "Owner" or "Holder" shall mean the Bank, as the purchaser and initial holder of the Notes and any subsequent registered owner or owners of the Notes.

"Note Resolution" shall mean Resolution No. 2529-12 adopted by the City Council on June 18, 2012, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement, the SunTrust Agreement and the BB&T Agreement and the issuance of the Notes and the Parity Notes.

"Notes" shall mean, collectively, the 2012A Note and the 2012C Note.

"Parity Notes" shall mean, collectively, the 2012B Note and the 2012D Note.

"Pledged Revenues" shall mean (i) the proceeds of the Local Government Half-Cent Sales Tax received by the City from the State of Florida pursuant to the provisions of Chapter 218, Part VI, Florida Statutes, as amended; and (ii) franchise fees received by the City pursuant to Ordinance No. 784 enacted on February 26, 1990 and Ordinance No. 1217 enacted on August 5, 2002.

"Refunded Notes" shall mean, collectively, the City's outstanding Capital Improvement Refunding Revenue Note, Series 2006 and Capital Improvement Revenue Note, Series 2009.

"SunTrust Loan Agreement" shall mean the Loan Agreement dated as of the date hereof, by and between the City and SunTrust Bank.

**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. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Note Resolution. 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 and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt the Note Resolution, to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Notes to the Bank. The making, execution and performance of this Agreement on the part of the City and the issuance and delivery of the Notes 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 Notes and the Note 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.** There are no actions, proceedings or investigations pending against the City or affecting the City (or any basis therefor known to the City) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the City or in any of its properties or assets, or in any material impairment of the right or ability of the City to carry on its operations as now conducted or proposed to be conducted, or in the levy, receipt and

collection of the Pledged Revenues or in any material liability on the part of the City and none which questions the validity of this Agreement, the Notes or the Note Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Liens and Encumbrances. Upon the issuance of the Notes and the refunding of the Refunded Notes, there are no pledges of, or liens or encumbrances on, the Pledged Revenues, other than the lien of the Notes and the Parity Notes.

(e) No Litigation. There are no suits or proceedings pending or to the knowledge of the City, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the City, concerning or affecting the Pledged Revenues or which would have a material adverse affect on the ability of City to fulfill its obligations under this Agreement.

(f) Confirmation. The representations and warranties of the City contained in the Note Resolution are hereby confirmed to be true and accurate and are incorporated as a part of this Agreement.

**Section 2.02. Representations and Warranties of Bank.** The Bank represents and warrants to the City as follows:

(a) Existence. The Bank is a banking corporation chartered under the laws of the State of Mississippi and 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 Notes, (ii) has received and reviewed such financial information concerning the City as it has requested in order to fairly evaluate the merits and risks of making the Loan and investing in the Notes; (iii) is an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933; and (iv) is purchasing the Notes as an investment for its own account and not with a view toward resale to the public. The Bank will not transfer the Notes except to another accredited investor.



### ARTICLE III THE NOTES

**Section 3.01. The Loan; Purpose and Use.** On the date of this Agreement, the Bank shall provide the Loan to the City in the aggregate principal amount of Two Million Seventeen Thousand Dollars (\$2,017,000).

The proceeds of the Loan shall be used to finance the refunding of the Refunded Notes.

**Section 3.02. The Notes.** The City shall issue the Notes to the Bank to evidence and secure its obligation to repay the Loan. The Notes shall be substantially in the form set forth as Exhibit "A" to this Agreement. The general terms of the Notes shall be as follows; provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the executed Notes, the terms of the Notes shall prevail:

(a) **Principal Amount of Notes.** The principal amount of the 2012A Note shall be One Million Four Hundred Twenty-Two Thousand Dollars (\$1,422,000). The principal amount of the 2012C Note shall be Five Hundred Ninety-Five Thousand Dollars (\$595,000).

(b) **Interest.** The 2012A Note shall bear interest on the outstanding principal amount thereof at the 2012A Note Rate from the Date of Delivery until paid in full. The 2012C Note shall bear interest on the outstanding principal amount thereof at the 2012C Note Rate from the Date of Delivery until paid in full. Interest on the Notes shall be computed on the basis of twelve (12) thirty (30) day months and a 360-day year. Upon the occurrence of an Event of Default, the Notes shall bear interest at the Default Rate until such default is cured.

(c) **Payments.** Interest on the Notes shall be paid semi-annually on every April 1 and October 1, commencing April 1, 2013 until the Notes are paid in full. Principal on the Notes shall be paid in annual installments beginning October 1, 2013, and thereafter on each October 1. Debt Service on the Notes shall be paid as set forth on Schedule I attached to the respective Notes, subject to prepayment by the City prior to the respective Note's maturity as provided in subsection 3.02(d) below.

(d) **Prepayment.** The City may prepay the Notes in whole on any date with fifteen (15) days prior written notice to the Holder without a premium or prepayment penalty. The City may prepay the Notes in part on any principal payment date (October 1) with fifteen (15) days prior written notice to the Holder without a premium or prepayment penalty. Any partial prepayments shall be in multiples of \$1,000. Any prepayment shall be applied first to accrued and unpaid interest to the date of prepayment and then to the unpaid principal installments with the latest maturities in inverse order.

**Section 3.03. Compliance with Section 215.84.** The City represents, warrants, and covenants that the 2012A Note Rate and the 2012C Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

**Section 3.04. Conditions Precedent to Funding.** Prior to or simultaneously with the delivery of the Notes by the City there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the City to the effect that (i) the City is a municipal corporation duly created and validly existing under the Constitution and laws of the State of Florida, with full legal right, power and authority to enact Ordinance Nos. 784 and 1217, to adopt the Note Resolution, to issue the Notes, to authorize, execute and delivery this Agreement, to perform its obligations under the Notes, the Note Resolution and this Agreement and to consummate the transactions contemplated by such instruments; (ii) the Note Resolution has been duly adopted by the City Council at a duly convened public meeting following proper public notice, has not been amended or repealed and is in full force and effect, and constitute the legal, valid and binding obligation of the City enforceable in accordance with its terms; (iii) Ordinance Nos. 784 and 1217 were duly enacted by the City Council of the City at duly called public meetings following proper public notice, and have not otherwise been amended or repealed and are in full force and effect as of the date hereof; (iv) the Notes and this Agreement have been duly authorized, executed and delivered by the City and constitute valid and binding obligations of the City enforceable in accordance with their respective terms (subject as to enforceability of any remedies to any applicable bankruptcy or insolvency laws or other laws affecting creditors' rights generally, from time to time in effect); (v) to the best of his knowledge, the adoption of the Note Resolution, and the authorization, execution and delivery of the Notes and this Agreement, and compliance with the provisions thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the City was or is subject, as the case may be, nor will such enactment, adoption, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City, or under the terms of any law, administrative regulation, ordinance, resolution or instrument, except as expressly provided by the Note Resolution and the Loan Agreements; (vi) to the best of his knowledge, all approvals, consents, authorizations and orders of any governmental authority or agency having jurisdiction in any matter which would constitute a condition precedent to the performance by the City of its obligations under the Note Resolution, this Agreement and the Notes have been obtained and are in full force and effect; (vii) to the best of his knowledge, after reasonable inquiries, there is no litigation pending or threatened, to restrain or enjoin the issuance or sale of the Notes or in any way affecting any authority for or the validity of the Notes, the Note Resolution, this Agreement or the pledge of the Pledged Revenues; (viii) neither the corporate existence nor the title of any of the present City Council Members and officials thereof to their respective offices is being contested; and (ix) the City has complied with all conditions precedent to the issuance of the Notes.

(b) an opinion of Note Counsel (who may rely on the opinion of Counsel to the City as to certain matters), stating that such counsel is of the opinion that: (i) the Note Resolution and this Agreement constitute valid and binding obligations of the City, enforceable upon the City in accordance with their respective terms; (ii) the Notes are valid and binding special

obligations of the City, enforceable in accordance with its terms, payable solely from the sources provided therefor in the Note Resolution and this Agreement; (iii) assuming compliance by the City with certain covenants in this Agreement relating to requirements contained in the Code, interest on the Notes is excluded from gross income for purposes of federal income taxation, and interest on the Notes is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations; and (iv) the Notes are "qualified tax-exempt obligations" under Section 265(b)(3)(B) 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) a certificate of the City indicating that since September 30, 2011, there has been no material adverse change in the financial condition, operations or prospects of the City or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the City's ability to comply with its obligations hereunder and under the Notes.

(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 Notes shall have been executed as required by this Agreement, and all conditions of the Note Resolution have been met, the City shall deliver the Notes to or upon the order of the Bank, but only against the City's receipt of the proceeds of the Loan.

**Section 3.05. 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 Notes and the registration of transfers of the Notes as provided in this Agreement. The transfer of the Notes may be registered only upon the books kept for the registration of the Notes and registration of transfer thereof upon surrender thereof to the City together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Notes attached as Exhibit "A" to this Agreement; provided, however, the Notes may not be transferred in a denomination less than \$100,000 under any circumstances. In the case of any such registration of transfer, the City shall execute and deliver in exchange for the applicable Notes a new Note registered in the name of the transferee. In all cases in which the Notes 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 the Notes sufficient to reimburse it for any tax or other governmental charges required to be paid (other than a tax or other governmental charge imposed by the City) with respect to such registration of transfer, but no

other charge shall be made for registering the transfer hereinabove granted. The Notes shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Notes on the registration books of the City shall be deemed to affect 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 applicable Note.

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 such a mutilated Note, such mutilated Note shall first be surrendered to the City, and in the case of a 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 3.06. Ownership of the Notes.** The person in whose name a 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 registered owner 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.

The registered owner of a 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, the Note may not be transferred in a denomination less than \$100,000 under any circumstances. Every prior registered owner of a 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.

**Section 3.07. Debt Service Fund.** There is hereby created by the City and ordered established a Debt Service Fund to be held by the City. There shall be deposited into the Debt Service Fund the Pledged Revenues received by the City during each fiscal year until the amounts on deposit in such Debt Service Fund equal the amounts needed to pay debt service on the Notes, the Parity Notes and any Additional Debt hereafter issued in such fiscal year. Moneys in the Debt Service Fund shall be used solely to pay principal and interest on the Notes and any Additional Debt hereafter issued when due.

## 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 Notes or in any proceedings of the City relating to the Loan.

**Section 4.02. Use of Proceeds.** The proceeds of the Notes shall be wired by the Bank to the City, no later than 2:00 p.m. on the Date of Delivery of the Notes, or such later time as may be mutually agreed upon by the City and the Bank, and shall be applied by the City to finance the refunding of the Refunded Notes.

**Section 4.03. Payment of the Notes.** The City promises that it will promptly pay the Debt Service on the Notes and all other amounts due under this Agreement at the place, on the dates and in the manner provided in Section 3.02 hereof and in the Notes according to the true intent and meaning hereof and thereof. Debt Service on the Notes and all other amounts due under this Agreement shall not be or constitute a general obligation or indebtedness of the City as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Pledged Revenues, in accordance with the terms hereof and of the Notes. The holder of a Note shall never have the right to compel the exercise of any ad valorem taxing power to pay Debt Service on the Notes, or be entitled to payment of such from any funds of the City except from the Pledged Revenues, as described herein and in the Notes.

**Section 4.04. Security for Notes.** The payment of the principal of and interest on the Note and all other amounts payable under this Agreement or the Notes or in connection therewith shall be secured by a first priority pledge of and lien on the Pledged Revenues, on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes. The City does hereby create and grant to the Owners of the Notes a first priority pledge of and lien on the Pledged Revenues to provide for and secure the payment of principal of and interest on the Notes and all other obligations of the City under the Notes and this Agreement. The City shall impose, levy and use its best efforts to collect all Pledged Revenues and other amounts due to it, and shall take no action to impair the collection of the Pledged Revenues.

**Section 4.05. Additional Debt.**

(a) The City will not issue any obligations payable from the Pledged Revenues or voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the Notes and the Parity Notes upon the Pledged Revenues except under the terms and conditions and in the manner provided herein. Any obligations issued by the City other than in accordance with this Section and payable from the Pledged Revenues shall contain an express statement that such obligations are junior and subordinate in all respects to the Notes as to lien on, and source of and security for payment from, the Pledged Revenues.

(b) No Additional Debt may be issued unless the City's Finance Director shall sign and issue a certificate that shall state and certify that the Pledged Revenues for the most recently audited fiscal year of the City preceding the issuance of Additional Debt equaled at least one and twenty-five hundredths (1.25) times the maximum annual requirements for principal and interest on obligations then outstanding and payable from such Pledged Revenues and on the Additional Debt proposed to be issued. The City may not issue any Additional Debt if more than six months have passed since the end of its last fiscal year without an audit having been released by the City.

**Section 4.06. Annual Audit, Budget and Other Financial Information.** The City shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the City to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention. The annual financial statements shall be prepared in conformity with generally accepted accounting principles and shall include a separate line item showing the annual amount of the Pledged Revenues received during the subject fiscal year. A copy of the audited financial statements for each Fiscal Year shall be furnished to the Owners of the Notes within 180 days following the close of each Fiscal Year. The City will annually provide to the Owners of the Notes the City's annual budget within 30 days after the City Council's approval thereof. The City shall provide the Owners of the Notes with such other financial information with regard to the City and the Pledged Revenues as the Owners may reasonably request.

**Section 4.07. Federal Income Tax Covenants.**

(A) The City covenants with the Owners from time to time of the Notes that it shall not use the proceeds of the Notes in any manner which would cause the interest on the Notes to be or become includable in the gross income of the Owners thereof for federal income tax purposes.

(B) The City covenants with the Owners from time to time of the Notes that neither the City nor any Person under its control or direction will make any use of the proceeds of the Notes (or amounts deemed to be proceeds under the Code) in any manner which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and neither the City nor any other Person shall do any act or fail to do any act which would cause the interest on the Notes to become includable in the gross income of the Owners thereof for federal income tax purposes.

(C) The City hereby covenants with the Owners from time to time of the Notes that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Notes from the gross income of the Owners thereof 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.

## ARTICLE V EVENTS OF DEFAULT AND REMEDIES

**Section 5.01. Events of Default.** Each of the following is hereby declared an “Event of Default:”

1. payment of the principal of or interest on the Notes or other fees or amounts due thereunder or hereunder shall not be made when such amounts are due and payable and such amounts shall remain unpaid for a period of ten (10) days;

the City shall default in the due and timely performance of its covenant with regard to the imposition, levy and collection of the Pledged Revenues.

2. the City shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Notes or in this Agreement and such default shall continue for thirty (30) consecutive days after written notice shall have been given to the City by the Noteholder specifying such default and requiring the same to be remedied; provided, however, that if, in the reasonable judgment of the Noteholder, the City shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the City to diligently complete such curative action;

3. any representation or warranty of the City contained in this Agreement or in any certificate or other closing document executed and delivered by the City in connection with the closing of this Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Notes;

4. any proceedings are instituted with the consent or acquiescence of the City, for the purpose of effecting a compromise between the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted;

5. the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

6. the City is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the City, or an order, judgment or decree is

entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

7. if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control.

**Section 5.02. Exercise of Remedies.** Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the City to perform its obligations under this Agreement.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the City for principal, interest or otherwise under any of the provisions of this Agreement or of the Notes then unpaid, together with any and all costs and expenses of collection and of all proceedings hereunder and under the Notes (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), without prejudice to any other right or remedy of the Noteholders, and to recover and enforce any judgment or decree against the City, but solely as provided herein and in the Notes, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect in any manner provided by law, the monies adjudged or decreed to be payable.

The City covenants that no debt payable from or secured by the Pledged Revenues shall be subject to acceleration, whether at the option of the holder or upon an event of default or otherwise. In the event any debt payable from or secured by the Pledged Revenues is accelerated, the Bank shall have the right, upon the occurrence of an event of default hereunder, to accelerate the principal and interest of the Notes and upon the exercise of such right the principal and interest of the Notes shall become immediately due and payable.

**Section 5.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Noteholders is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.



**Section 5.04. Waivers, Etc.** No delay or omission of the Noteholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Agreement to the Noteholders may be exercised from time to time and as often as may be deemed expedient.

The Noteholders may waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

## **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 Notes and all other sums payable to the Bank hereunder have been paid in full.

**Section 6.03. Notice of Changes in Fact.** Promptly after the City becomes aware of the same, the City will notify the Bank of (a) any changes in any material fact or circumstance represented or warranted by the City in this Agreement or in connection with the issuance of the Notes, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the City has taken, is taking and/or proposes to take with respect thereto.

**Section 6.04. Amendments and Supplements.** This Agreement may be amended or supplemented from time to time only by a writing duly executed by the City and the Noteholder.

**Section 6.05. 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:

As to the City:

City of Oviedo, Florida  
400 Alexandria Boulevard  
Oviedo, Florida 32765  
Attention: Finance Director

As to the Bank:

Hancock Bank  
Public Finance Department  
113 Designer Circle  
Dothan, Alabama 36303  
Attention: Steven E. Cole

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 6.06. Waiver of Jury Trial.** To the extent permitted by applicable law, each of the City and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the Note Resolution, this Agreement, the Notes or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Agreement.

**Section 6.07. 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 6.08. Severability.** In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Notes 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 Notes, but this Agreement, any amendment or supplement hereto and the Notes 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 Notes 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 6.09. Business Days.** In any case where the date of maturity of interest on or principal of the Notes or the date fixed for prepayment of the Notes shall not be 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, but interest on any such principal amount shall accrue through the date payment is received.

**Section 6.10. 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 6.11. Applicable Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

**Section 6.12. No Personal Liability.** Notwithstanding anything to the contrary contained herein or in the Notes, 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 Council, 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 Notes 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 6.13. Incorporation by Reference.** All of the terms and obligations of the Note 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.

[Remainder of page intentionally left blank – Signatures follow]

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

**CITY OF OVIEDO, FLORIDA**

By:   
Mayor


(SEAL)

By:   
City Manager

ATTEST:

By:   
City Clerk

**HANCOCK BANK**

By:   
Name: Steven E. Cole  
Title: Senior Vice President

**EXHIBIT A**

**FORM OF NOTE**

ANY HOLDER SHALL, PRIOR TO BECOMING A HOLDER SHALL BE AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

**CITY OF OVIEDO, FLORIDA  
CAPITAL IMPROVEMENT REFUNDING REVENUE NOTE,  
SERIES 2012[A][C]**

<b>Principal Sum</b>	<b>Note Rate</b>	<b>Maturity Date</b>	<b>Date of Issuance</b>
\$	%	October 1, 20__	July 11, 2012

The **CITY OF OVIEDO, FLORIDA** (the "City"), for value received, hereby promises to pay to the order of HANCOCK BANK, a banking corporation chartered under the laws of the State of Mississippi, or its registered assigns (the "Holder"), at 113 Designer Circle, Dothan, Alabama 36303, or at such other place as the Holder may from time to time designate in writing, solely from the Pledged Revenues as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the City, dated July 11, 2012 (the "Agreement"), the Principal Sum stated above loaned to the City by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate, until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth 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.

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

This Note shall bear interest at the Note Rate indicated above, which Note Rate shall be calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months.

Interest on this Note shall be paid semi-annually on April 1 and October 1, commencing April 1, 2013 until this Note is paid in full. Principal on this Note shall be paid in annual installments beginning October 1, 2013, and on every October 1 thereafter until the Maturity Date in accordance with the amortization schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the City prior to the Note's maturity as provided below.

The City may prepay this Note in whole on any date with fifteen (15) days prior written notice to the Holder without a premium or prepayment penalty. The City may prepay this Note in part on any principal payment date (October 1) with fifteen (15) days prior written notice to the Holder without a premium or prepayment penalty. Any partial prepayments shall be in multiples of \$1,000. Any prepayment shall be applied first to accrued and unpaid interest to the date of prepayment and then to the unpaid principal installments with the latest maturities in inverse order.

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the City Charter of the City, and other applicable provisions of law and Resolution No. 2529-12 adopted by the City Council of the City on June 18, 2012 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

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 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.

THIS NOTE, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT AND THE NOTE RESOLUTION, 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 OTHER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES AS PROVIDED IN THE AGREEMENT. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST THEREON.

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Pledged Revenues, on a parity with the lien thereon and pledge thereof to secure payment of the City's (i) Capital Improvement Refunding Revenue Note, Series 2012A, (ii) Capital Improvement Refunding Revenue Note, Series 2012B, and (iii) Capital Improvement Refunding Revenue Note, Series 2012D, and any Additional Debt hereafter issued, in accordance with the terms of the Agreement.

Upon the occurrence of an Event of Default the Holder shall have such 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 Note Resolution and the Agreement and reference is hereby made thereto other matters.

**IN WITNESS WHEREOF**, the City has caused this Note to be signed by the Mayor and City Manager, and the seal of the City to be affixed hereto or imprinted or reproduced hereon, and attested by the City Clerk of the City and this Note to be dated the Date of Issuance set forth above.

**CITY OF OVIEDO, FLORIDA**

(SEAL)

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

By: \_\_\_\_\_  
City Manager

ATTEST:

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: \_\_\_\_\_



**SCHEDULE I**

**Principal Amortization Schedule**

**LOAN AGREEMENT**

**dated July 11, 2012**

**by and between**

**THE CITY OF OVIEDO, FLORIDA  
(the "City")**

**and**

**SUNTRUST BANK  
(the "Bank")**

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**EXHIBIT A - FORM OF NOTE**

A-1

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (the "Agreement"), made and entered as of the 11th day of July, 2012, by and between the **CITY OF OVIEDO, FLORIDA** (the "City"), a municipal corporation and public body corporate and politic of the State of Florida duly organized and existing under the laws of the State of Florida and its successors and assigns, and **SUNTRUST BANK**, a Georgia banking corporation authorized to do business in the State of Florida, and its successors (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; and

**WHEREAS**, the City, pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the City Charter of the City, and other applicable provisions of law (collectively, the "Act") and Resolution No. 2529-12 adopted by the City Council of the City (the "City Council") on June 18, 2012 (the "Note Resolution"), is authorized to borrow money to finance the refunding of the City's outstanding Capital Improvement Revenue Note, Series 2007 (the "Refunded Note"); and

**WHEREAS**, the City desires to borrow \$4,779,000 to finance the refunding of the Refunded Note (the "Loan") and to secure the repayment of the Loan with a pledge of and lien on the Pledged Revenues (as defined herein) on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes (as defined herein); and

**WHEREAS**, the City issued a request for proposal and received proposals from various financial institutions to provide for the Loan; and

**WHEREAS**, the Bank is willing to provide the Loan to the City as provided herein, 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 and not otherwise defined shall have the respective meanings as follows:

"2012A Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012A issued by the City under the Note Resolution and the Hancock Loan Agreement to evidence amounts due under the Hancock Loan Agreement.

"2012C Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012C issued by the City under the Note Resolution and the Hancock Loan Agreement to evidence amounts due under the Hancock Loan Agreement.

"2012D Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012D issued by the City under the Note Resolution and the BB&T Loan Agreement to evidence amounts due under the BB&T Loan Agreement.

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

"Additional Debt" means additional obligations issued in compliance with the terms, conditions and limitations contained in Section 4.05 hereof which will have an equal lien on the Pledged Revenues, to the extent herein provided and rank equally in all other respects with the Note, the Parity Notes, and any other Additional Debt hereafter issued.

"Adjusted BQ Rate" shall mean, upon a Loss of BQ Status, the interest rate per annum that shall provide the Owner with the same after tax yield that the Owner would have otherwise received had the Loss of BQ Status not occurred, taking into account the increased taxable income of the Owner as a result of such Loss of BQ Status. The Owner shall provide the City with a written statement explaining the calculation of the Adjusted BQ Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the City. The Adjusted BQ Rate shall be subject to adjustment as provided herein and in the Note.

"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 banking corporation, and its successors or affiliates.

"BB&T Loan Agreement" shall mean the Loan Agreement dated as of the date hereof, by and between the City and Branch Banking and Trust Company.

"Business Day" shall mean a day on which the Owner and the City are open for business and on which dealings in U.S. dollar deposits are carried on in the London Inter-Owner Market.

"Change in Law" means the occurrence, after the Date of Delivery, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directive thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on

Banking Supervision (or any successor or similar authority) or, pursuant to the accord commonly referred to as "Basel III" or the United States or foreign regulatory authorities, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"City" shall mean the City of Oviedo, Florida, a municipal corporation and public body corporate and politic of the State of Florida.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the applicable regulations promulgated thereunder.

"Date of Delivery" shall mean July 11, 2012.

"Debt Service" means principal of and interest on the Note, and other debt related costs, due in connection with the Note and this Agreement.

"Debt Service Fund" means the Debt Service Fund established pursuant to Section 3.08 hereof.

"Default Rate" shall mean the sum of the Prime Rate plus 3% per annum.

"Determination of Taxability" shall mean a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that interest paid or payable on the Note is or was includable in the gross income of the Owner of the Note for federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the City has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Owner of the Note, and until the conclusion of any appellate review, if sought.

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

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

"Governmental Authority" shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Hancock Loan Agreement" shall mean the Loan Agreement dated as of the date hereof, by and between the City and Hancock Bank.

"Loan" shall refer to the loan in a principal amount of Four Million Seven Hundred Seventy-Nine Thousand Dollars (\$4,779,000), together with the interest accrued thereon pursuant to and in accordance with this Agreement.

"Loss of BQ Status" shall mean a determination by the Owner that the Note is not a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code (or any successor provision).

"Margin Rate Factor" shall mean the fraction the numerator of which is equal to one (1) minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The Margin Rate Factor shall be 0.65/0.65 or 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35%, and thereafter shall increase from time to time effective as of the effective date of any decrease in the Maximum Federal Corporate Tax Rate.

"Maturity Date" shall mean October 1, 2027.

"Maximum Federal Corporate Tax Rate" means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11 (b) (1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Owner, the maximum statutory rate of federal income taxation which could apply to the Owner). The Maximum Federal Corporate Tax Rate on the Date of Delivery is 35%.

"Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012B issued by the City under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

"Noteholder," "Owner" or "Holder" shall mean the Bank, as the purchaser and initial holder of the Note and any subsequent registered owner or owners of the Note.

"Note Rate" shall mean a per annum rate equal to (a) 2.31%, multiplied, prior to the occurrence of a Determination of Taxability, by (b) the Margin Rate Factor, and both prior to and after the occurrence of a Determination of Taxability, subject to adjustment as provided herein and in the Note.

"Note Resolution" shall mean Resolution No. 2529-12 adopted by the City Council on June 18, 2012, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement, the Hancock Agreement and the BB&T Agreement and the issuance of the Note and the Parity Notes.

"Parity Notes" shall mean, collectively, the 2012A Note, 2012C Note and the 2012D Note.



"Pledged Revenues" shall mean (i) the proceeds of the Local Government Half-Cent Sales Tax received by the City from the State of Florida pursuant to the provisions of Chapter 218, Part VI, Florida Statutes, as amended; and (ii) franchise fees received by the City pursuant to Ordinance No. 784 enacted on February 26, 1990 and Ordinance No. 1217 enacted on August 5, 2002.

"Prime Rate" shall mean the per annum rate which the Bank announces from time to time to be its prime rate, as in effect from time to time. The Bank's prime rate is a reference or benchmark rate, is purely discretionary and does not necessarily represent the lowest or best rate charged to borrowing customers. The Bank may make commercial loans or other loans at rates of interest at, above or below the Bank's prime rate. Each change in the Bank's prime rate shall be effective from and including the date such change is announced as being effective.

"Refunded Note" shall mean the City's outstanding Capital Improvement Revenue Note, Series 2007.

"Taxable Period" shall mean the period of time between (a) the date that interest on the Note is deemed to be includable in the gross income of the owner thereof for federal income tax purposes as a result of a Determination of Taxability, and (b) the date of the Determination of Taxability.

"Taxable Rate" shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Owner with the same after tax yield that the Owner would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Owner as a result of such Determination of Taxability. The Owner shall provide sufficient evidence supporting such rate calculation to the City, which statement shall, in the absence of manifest error, be conclusive and binding on the City.

**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. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Note Resolution. 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 and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt the Note Resolution, 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 Note 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. There are no actions, proceedings or investigations pending against the City or affecting the City (or any basis therefor known to the City) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the City or in any of its properties or assets, or in any material impairment of the right or ability of the City to carry on its operations as now conducted or proposed to be conducted, or in the levy, receipt and collection of the Pledged Revenues or in any material liability on the part of the City and none which questions the validity of this Agreement, the Note or the Note Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Liens and Encumbrances. Upon the issuance of the Note and the refunding of the Refunded Note, there are no pledges of, or liens or encumbrances on, the Pledged Revenues, other than the lien of the Note and the Parity Notes.

(e) No Litigation. There are no suits or proceedings pending or to the knowledge of the City, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the City, concerning or affecting the Pledged Revenues or which would have a material adverse affect on the ability of City to fulfill its obligations under this Agreement.

(f) Confirmation. The representations and warranties of the City contained in the Note Resolution are hereby confirmed to be true and accurate and are incorporated as a part of this Agreement.

**Section 2.02. Representations and Warranties of Bank.** The Bank represents and warrants to the City as follows:

(a) **Existence.** The Bank is a Georgia 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.

### **ARTICLE III THE NOTE**

**Section 3.01. The Loan; Purpose and Use.** On the date of this Agreement, the Bank shall provide the Loan to the City in the aggregate principal amount of Four Million Seven Hundred Seventy-Nine Thousand Dollars (\$4,779,000).

The proceeds of the Loan shall be used to finance the refunding of the Refunded Note.

**Section 3.02. The Note.** The City shall issue the Note to the Bank to evidence and secure its obligation to repay the Loan. 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; provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the executed Note, the terms of the Note shall prevail:

(a) **Principal Amount of Note.** The principal amount of the Note shall be Four Million Seven Hundred Seventy-Nine Thousand Dollars (\$4,779,000).

(b) **Interest.** The Note shall bear interest on the outstanding principal amount thereof at the Note Rate from the Date of Delivery until paid in full. Interest on the Note shall be computed on the basis of twelve (12) thirty (30) day months and a 360-day year.

(c) **Payments.** Interest on the Note shall be paid semi-annually on every April 1 and October 1, commencing April 1, 2013 until the Note is paid in full. Principal on the Note shall be paid in annual installments beginning October 1, 2013, and thereafter on each October 1. Debt Service on the Note shall be paid as set forth on Schedule I attached to the Note, subject to prepayment by the City prior to the Note's maturity as provided in subsection 3.02(d) below.

(d) Prepayment. The Note shall be subject to prepayment at the option of the City in whole or in part at any time without penalty, upon two (2) Business Days' prior written notice to the Owner. Such prepayment notice shall specify the amount of the prepayment which is to be made.

### **Section 3.03. Adjustments to Note Rate.**

(a) Adjustment of Note Rate in the Event of a Determination of Taxability. Upon the occurrence of a Determination of Taxability and for as long as the Note remains outstanding, the Interest Rate on the Note shall be converted to the Taxable Rate. In addition, upon a Determination of Taxability, the City shall pay to the Owner (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Note during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had the Note borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Owner as a result of the Determination of Taxability.

(b) Adjustment of Note Rate for Change in Law. If, after the Date of Delivery, the Owner shall have reasonably determined that a Change in Law shall have occurred that has or would have the effect of materially reducing the rate of return on the Owner's capital, on the Note or otherwise, as a consequence of its ownership of the Note to a level below that which the Owner could have achieved but for such adoption, change or compliance (taking into consideration the Owner's policies with respect to capital adequacy) by an amount deemed by the Owner to be material, then from time to time, promptly upon demand by the Owner, the Issuer hereby agrees to pay the Owner such additional amount or amounts as will compensate the Owner for such reduction. A certificate of the Owner claiming compensation under this paragraph and setting forth the additional amount or amounts to be paid to it under the Note shall be conclusive absent manifest error. In determining any such amount, the Owner may use any reasonable averaging and attribution methods. The Owner shall notify the Issuer in writing of any adjustments pursuant to this paragraph.

(c) Adjustment of Note Rate for Loss of BQ Status. So long as no Determination of Taxability shall have occurred, upon the occurrence of a Loss of BQ Status and for as long as the Note remains outstanding, the Note Rate shall be converted to the Adjusted BQ Rate. In addition, upon a Loss of BQ Status, the City shall pay to the Owner (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Note during the period of time from the date of issuance of the Note and the next succeeding interest payment date, and (B) the amount of interest that would have been paid during the period in clause (A) had the Note borne interest at the Adjusted BQ Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Owner as a result of the Loss of BQ Status.

(d) Adjustment upon Event of Default. Upon an Event of Default, the Note Rate shall be increased to the Default Rate.

**Section 3.04. Compliance with Section 215.84.** The City represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

**Section 3.05. Conditions Precedent to Funding.** Prior to or simultaneously with the delivery of the Note by the City there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the City to the effect that (i) the City is a municipal corporation duly created and validly existing under the Constitution and laws of the State of Florida, with full legal right, power and authority to enact Ordinance Nos. 784 and 1217, to adopt the Note Resolution, to issue the Note, to authorize, execute and delivery this Agreement, to perform its obligations under the Note, the Note Resolution and this Agreement and to consummate the transactions contemplated by such instruments; (ii) the Note Resolution has been duly adopted by the City Council at a duly convened public meeting following proper public notice, has not been amended or repealed and is in full force and effect, and constitute the legal, valid and binding obligation of the City enforceable in accordance with its terms; (iii) Ordinance Nos. 784 and 1217 were duly enacted by the City Council of the City at duly called public meetings following proper public notice, and have not otherwise been amended or repealed and are in full force and effect as of the date hereof; (iv) the Note and this Agreement have been duly authorized, executed and delivered by the City and constitute valid and binding obligations of the City enforceable in accordance with their respective terms (subject as to enforceability of any remedies to any applicable bankruptcy or insolvency laws or other laws affecting creditors' rights generally, from time to time in effect); (v) to the best of his knowledge, the adoption of the Note Resolution, and the authorization, execution and delivery of the Note and this Agreement, and compliance with the provisions thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the City was or is subject, as the case may be, nor will such enactment, adoption, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City, or under the terms of any law, administrative regulation, ordinance, resolution or instrument, except as expressly provided by the Note Resolution; (vi) to the best of his knowledge, all approvals, consents, authorizations and orders of any governmental authority or agency having jurisdiction in any matter which would constitute a condition precedent to the performance by the City of its obligations under the Note Resolution and this Agreement have been obtained and are in full force and effect; (vii) to the best of his knowledge, after reasonable inquiries, there is no litigation pending or threatened, to restrain or enjoin the issuance or sale of the Note or in any way affecting any authority for or the validity of the Note, the Note Resolution, this Agreement or the pledge of the Pledged Revenues; (viii) neither the corporate existence nor the title of any of the present City Council Members and officials thereof to their respective offices is being contested; and (ix) the City has complied with all conditions precedent to the issuance of the Note.

(b) an opinion of Note Counsel (who may rely on the opinion of Counsel to the City), stating that such counsel is of the opinion that: (i) the Note Resolution and this Agreement constitute valid and binding obligations of the City, enforceable upon the City in accordance with their respective 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 the Note Resolution and this Agreement; (iii) assuming compliance by the City with certain covenants in this Agreement relating to requirements contained in the Code, interest on the Note is excluded from gross income for purposes of federal income taxation, and interest on the Note is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations; and (iv) the Note is a "qualified tax-exempt obligation" under Section 265(b)(3)(B) 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; and

(d) a certificate of the City indicating that since September 30, 2011, there has been no material adverse change in the financial condition, operations or prospects of the City or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the City's ability to comply with its obligations hereunder and under the Note.

(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 Note Resolution have been met, the City shall deliver the Note to or upon the order of the Bank, but only against the City's receipt of the proceeds of the Loan.

**Section 3.06. 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 Bank 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, the Note may not be transferred in a denomination less than \$100,000 under any circumstances. In the case of any such registration of transfer, the City shall execute and deliver in exchange for the Note a new Note or Notes 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 the Note sufficient to reimburse it for any tax or other governmental charges required to be paid (other than a tax or other governmental charge imposed by the City) 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 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 affect 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.

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 such a mutilated Note, such mutilated Note shall first be surrendered to the City, and in the case of a 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 3.07. 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 registered owner 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.

The registered owner 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, the Note may not be transferred in a denomination less than \$100,000 under any circumstances. Every prior registered owner 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.

**Section 3.08. Debt Service Fund.** There is hereby created by the City and ordered established a Debt Service Fund to be held by the City. There shall be deposited into the Debt Service Fund the Pledged Revenues received by the City during each fiscal year until the amounts on deposit in such Debt Service Fund equal the amounts needed to pay debt service on the Note, the Parity Notes and any Additional Debt hereafter issued in such fiscal year. Moneys in the Debt Service Fund shall be used solely to pay principal and interest on the Note, the Parity Notes and any Additional Debt hereafter issued when due.

## 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. Use of Proceeds.** The proceeds of the Note shall be wired by the Bank to the City, no later than 2:00 p.m. on the Date of Delivery of the Note, or such later time as may be mutually agreed upon by the City and the Bank, and shall be applied by the City to finance the refunding of the Refunded Note.

**Section 4.03. Payment of the Note.** The City promises that it will promptly pay the Debt Service on the Note and all other amounts due under this Agreement at the place, on the dates and in the manner provided in Section 3.02 hereof and in the Note according to the true intent and meaning hereof and thereof. Debt Service on the Note and all other amounts due under this Agreement shall not be or constitute a general obligation or indebtedness of the City as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Pledged Revenues, in accordance with the terms hereof and of the Note. The holder of the Note shall never have the right to compel the exercise of any ad valorem taxing power to pay Debt Service on the Note, or be entitled to payment of such from any funds of the City except from the Pledged Revenues, as described herein and in the Note.

**Section 4.04. Security for Note.** The payment of the principal of and interest on the Note and all other amounts payable under this Agreement or the Note or in connection therewith shall be secured by a first priority pledge of and lien on the Pledged Revenues, on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes. The City does hereby create and grant to the Owner of the Note a first priority pledge of and lien on the Pledged Revenues to provide for and secure the payment of principal of and interest on the Note and all other obligations of the City under the Note and this Agreement.

**Section 4.05. Additional Debt.**

(a) The City will not issue any obligations payable from the Pledged Revenues or voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the Note and the Parity Notes upon the Pledged Revenues except under the terms and conditions and in the manner provided herein. Any obligations issued by the City other than in accordance with this Section and payable from the Pledged Revenues shall contain an express statement that such obligations are junior and subordinate in all respects to the Note as to lien on, and source of and security for payment from, the Pledged Revenues.

(b) No Additional Debt may be issued unless the City's Finance Director shall sign and issue a certificate that shall state and certify that the Pledged Revenues for the most recently audited fiscal year of the City preceding the issuance of Additional Debt equaled at least one



and twenty-five hundredths (1.25) times the maximum annual requirements for principal and interest on obligations then outstanding and payable from such Pledged Revenues and on the Additional Debt proposed to be issued. The City may not issue any Additional Debt if more than six months have passed since the end of its last fiscal year without an audit having been released by the City.

**Section 4.06. Annual Audit, Budget and Other Financial Information.** The City shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the City to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention. The annual financial statements shall be prepared in conformity with generally accepted accounting principles and shall include a separate line item showing the annual amount of the Pledged Revenues received during the subject fiscal year. A copy of the audited financial statements for each Fiscal Year shall be furnished to the Owner of the Note within 270 days following the close of each Fiscal Year. The City will annually provide to the Owner of the Note the City's annual budget within 30 days after the City Council's approval thereof. The City shall provide the Owner of the Note with such other financial information with regard to the City and the Pledged Revenues as the Owner may reasonably request.

**Section 4.07. Federal Income Tax Covenants.**

(A) The City covenants with the Owners from time to time of the Note that it shall not use the proceeds of the Note in any manner which would cause the interest on the Note to be or become includable in the gross income of the Owners thereof for federal income tax purposes.

(B) The City covenants with the Owners from time to time of the Note that neither the City nor any Person under its control or direction will make any use of the proceeds of the Note (or amounts deemed to be proceeds under the Code) in any manner which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and neither the City nor any other Person shall do any act or fail to do any act which would cause the interest on the Note to become includable in the gross income of the Owners thereof for federal income tax purposes.

(C) The City hereby covenants with the Owners from time to time of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owners thereof 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.

**Section 4.08. Automatic Debt.** The City covenants with the Bank that the payment of Debt Service on the Note shall be provided by automatic debit from a bank account of the City's choosing.

**Section 4.09. Notice of Event of Default.** The City shall, within five (5) days after it acquires knowledge thereof, provide the owner with written notice of the occurrence of an Event of Default under the Note or this Agreement.

## **ARTICLE V EVENTS OF DEFAULT AND REMEDIES**

**Section 5.01. Events of Default.** Each of the following is hereby declared an "Event of Default:"

1. payment of the principal of or interest on the Note;
2. payment of any other fees or amounts due thereunder or hereunder shall not be made when such amounts are due and payable and such amounts shall remain unpaid for a period of ten (10) days;
3. the City shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Note or in this Agreement (excluding Section 4.06 hereof) and such default shall continue for thirty (30) consecutive days after written notice shall have been given to the City by the Noteholder specifying such default and requiring the same to be remedied or should have been given by the City to the Noteholder pursuant to Section 4.09 hereof; provided, however, that if, in the reasonable judgment of the Noteholder, the City shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the City to diligently complete such curative action; provided, further that such 30 day cure period shall not apply to a default under Section 4.06 hereof;
4. any representation or warranty of the City contained in this Agreement or in any certificate or other closing document executed and delivered by the City in connection with the closing of this Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note;
5. any proceedings are instituted with the consent or acquiescence of the City, for the purpose of effecting a compromise between the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted;
6. the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors,

declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

7. the City is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the City, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

8. if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control.

**Section 5.02. Exercise of Remedies.** Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the City to perform its obligations under Article IV of this Agreement.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the City for principal, interest or otherwise under any of the provisions of this Agreement or of the Note then unpaid, together with any and all costs and expenses of collection and of all proceedings hereunder and under the Note (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), without prejudice to any other right or remedy of the Noteholders, and to recover and enforce any judgment or decree against the City, but solely as provided herein and in the Note, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect in any manner provided by law, the monies adjudged or decreed to be payable.

The City covenants that no debt payable from or secured by the Pledged Revenues shall be subject to acceleration, whether at the option of the holder or upon an event of default or otherwise. In the event any debt payable from or secured by the Pledged Revenues is accelerated, the Bank shall have the right, upon the occurrence of an event of default hereunder,

to accelerate the principal and interest of the Note and upon the exercise of such right the principal and interest of the Note shall become immediately due and payable.

**Section 5.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Noteholders is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

**Section 5.04. Waivers, Etc.** No delay or omission of the Noteholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Agreement to the Noteholders may be exercised from time to time and as often as may be deemed expedient.

The Noteholders may waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

## 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. Notice of Changes in Fact.** Promptly after the City becomes aware of the same, the City will notify the Bank of (a) any changes in any material fact or circumstance represented or warranted by the City in this Agreement or in connection with the issuance of the Note, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the City has taken, is taking and/or proposes to take with respect thereto.

**Section 6.04. Amendments and Supplements.** This Agreement may be amended or supplemented from time to time only by a writing duly executed by the City and the Noteholder.

**Section 6.05. 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:

As to the City:

City of Oviedo, Florida  
400 Alexandria Boulevard  
Oviedo, Florida 32765  
Attention: Finance Director

As to the Bank:

SunTrust Bank  
Mail Code: FL-Orlando-2063  
200 S. Orange Avenue, SOAB 6<sup>th</sup> Floor  
Orlando, Florida 32801  
Attention: William C. Jones

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 6.06. 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 6.07. 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 6.08. Business Days.** 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 not be 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, but interest on any such principal amount shall accrue through the date payment is received.

**Section 6.09. 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 6.10. Applicable Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

**Section 6.11. 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 Council, 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 6.12. Incorporation by Reference.** All of the terms and obligations of the Note 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.

[Remainder of page intentionally left blank – Signatures follow]

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

**CITY OF OVIEDO, FLORIDA**

By:   
Mayor

(SEAL)

By:   
City Manager

ATTEST:

By:   
City Clerk

**SUNTRUST BANK**

By:   
Name: William C. Jones  
Title: First Vice President

**EXHIBIT A**

**FORM OF NOTE**

ANY HOLDER SHALL BE AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

**CITY OF OVIEDO, FLORIDA  
CAPITAL IMPROVEMENT REFUNDING REVENUE NOTE,  
SERIES 2012B**

**Principal Sum:** \$4,779,000

**Note Rate:** A per annum rate equal to (a) 2.31%, multiplied, prior to the occurrence of a Determination of Taxability (as defined herein), by (b) the Margin Rate Factor (as defined herein), and both prior to and after the occurrence of a Determination of Taxability, subject to adjustment as provided herein.

**Maturity Date:** October 1, 2027

**Date of Issuance:** July 11, 2012

The **CITY OF OVIEDO, FLORIDA** (the "City"), for value received, hereby promises to pay to the order of SUNTRUST BANK, a Georgia banking corporation, or its registered assigns (the "Holder"), at 200 South Orange Avenue, SOAB 6<sup>th</sup> Floor, Orlando, FL 32801, or at such other place as the Holder may from time to time designate in writing, solely from the Pledged Revenues as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the City, dated July 11, 2012 (the "Agreement"), the Principal Sum stated above loaned to the City by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate, as such Note Rate may be subject to adjustment as herein provided, until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth 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.

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

This Note shall bear interest at the Note Rate indicated above, which Note Rate shall be subject to adjustment as provided herein and in the Loan Agreement and which Note Rate shall



be calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months. The Holder shall provide to the City such documentation to evidence any adjustment to the Note Rate and the calculations made in connection therewith. All calculations and determinations by the Holder of the amounts payable pursuant to the following Note Rate adjustment provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

Interest on this Note shall be paid semi-annually on April 1 and October 1, commencing April 1, 2013 until this Note is paid in full. Principal on this Note shall be paid in annual installments beginning October 1, 2013, and on every October 1 thereafter until the Maturity Date in accordance with the amortization schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the City prior to the Note's maturity as provided below.

This Note shall be subject to prepayment at the option of the City in whole or in part at any time without penalty, upon two (2) Business Days' prior written notice to the Holder. Such prepayment notice shall specify the amount of the prepayment which is to be made.

The Note Rate may be adjusted as follows; provided, however, the Note Rate shall not exceed the maximum rate permitted by law:

Upon the occurrence of a Determination of Taxability and for as long as this Note remains outstanding, the Note Rate shall be converted to the Taxable Rate. In addition, upon a Determination of Taxability, the City shall pay to the Holder (i) an additional amount equal to the difference between (A) the amount of interest actually paid on this Note during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had this Note borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Holder as a result of the Determination of Taxability.

So long as no Determination of Taxability shall have occurred, upon the occurrence of a Loss of BQ Status and for as long as this Note remains outstanding, the Note Rate shall be converted to the Adjusted BQ Rate. In addition, upon a Loss of BQ Status, the City shall pay to the Holder (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Note during the period of time from the date of issuance of the Note and the next succeeding interest payment date, and (B) the amount of interest that would have been paid during the period in clause (A) had the Note borne interest at the Adjusted BQ Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Holder as a result of the Loss of BQ Status.

Upon an Event of Default, the Note Rate shall be increased to the Default Rate.

If, after the Date of Issuance, the Owner shall have reasonably determined that a Change in Law shall have occurred that has or would have the effect of materially reducing the rate of return on the Owner's capital, on this Note or otherwise, as a consequence of its ownership of this Note to a level below that which the Owner could have achieved but for such adoption, change or compliance (taking into consideration the Owner's policies with respect to capital adequacy) by an amount deemed by the Owner to be material, then from time to time, promptly upon demand by the Owner, the Issuer hereby agrees to pay the Owner such additional amount or amounts as will compensate the Owner for such reduction. A certificate of the Owner claiming compensation under this paragraph and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive absent manifest error. In determining any such amount, the Owner may use any reasonable averaging and attribution methods. The Owner shall notify the Issuer in writing of any adjustments pursuant to this paragraph.

For purposes of the foregoing, the following terms shall have the following meanings:

"Adjusted BQ Rate" shall mean, upon a Loss of BQ Status, the interest rate per annum that shall provide the Holder with the same after tax yield that the Holder would have otherwise received had the Loss of BQ Status not occurred, taking into account the increased taxable income of the Holder as a result of such Loss of BQ Status. The Holder shall provide the City with a written statement explaining the calculation of the Adjusted BQ Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the City. The Adjusted BQ Rate shall be subject to adjustment as provided in the Loan Agreement and herein.

"Change in Law" means the occurrence, after the Date of Issuance, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directive thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or, pursuant to the accord commonly referred to as "Basel III" or the United States or foreign regulatory authorities, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Default Rate" shall mean the sum of the Prime Rate plus 3% per annum.

"Determination of Taxability" shall mean a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that interest paid or payable on this Note is or was includable in the gross income of the Holder of this Note for federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this

purpose, however, unless the City has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Holder of this Note, and until the conclusion of any appellate review, if sought.

“Governmental Authority” shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Loss of BQ Status” shall mean a determination by the Holder that this Note is not a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code (or any successor provision).

“Margin Rate Factor” shall mean the fraction the numerator of which is equal to one (1) minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The Margin Rate Factor shall be 0.65/0.65 or 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35%, and thereafter shall increase from time to time effective as of the effective date of any decrease in the Maximum Federal Corporate Tax Rate.

“Maximum Federal Corporate Tax Rate” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11 (b) (1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Owner, the maximum statutory rate of federal income taxation which could apply to the Owner). The Maximum Federal Corporate Tax Rate on the date of execution of this Note is 35%.

“Prime Rate” shall mean the per annum rate which the Holder announces from time to time to be its prime rate, as in effect from time to time. The Holder's prime rate is a reference or benchmark rate, is purely discretionary and does not necessarily represent the lowest or best rate charged to borrowing customers. The Holder may make commercial loans or other loans at rates of interest at, above or below the Holder's prime rate. Each change in the Holder's prime rate shall be effective from and including the date such change is announced as being effective.

“Taxable Period” shall mean the period of time between (a) the date that interest on the Note is deemed to be includable in the gross income of the owner thereof for federal income tax purposes as a result of a Determination of Taxability, and (b) the date of the Determination of Taxability.

“Taxable Rate” shall mean, upon a Determination of Taxability, the interest rate per annum that shall provide the Owner with the same after tax yield that the Owner would have otherwise received had the Determination of Taxability not occurred, taking into account the

increased taxable income of the Owner as a result of such Determination of Taxability. The Owner shall provide sufficient evidence supporting such rate calculation to the City, which statement shall, in the absence of manifest error, be conclusive and binding on the City.

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the City Charter of the City, and other applicable provisions of law and Resolution No. 2529-12 adopted by the City Council of the City on June 18, 2012 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

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 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.

THIS NOTE, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT AND THE NOTE RESOLUTION, 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 OTHER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES AS PROVIDED IN THE AGREEMENT. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST THEREON.

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Pledged Revenues, on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes and any Additional Debt hereafter issued, in accordance with the terms of the Agreement.

Upon the occurrence of an Event of Default the Holder shall have such 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 Note Resolution and the Agreement and reference is hereby made thereto other matters.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City has caused this Note to be signed by the Mayor and City Manager, and the seal of the City to be affixed hereto or imprinted or reproduced hereon, and attested by the City Clerk of the City and this Note to be dated the Date of Issuance set forth above.

**CITY OF OVIEDO, FLORIDA**

(SEAL)

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

By: \_\_\_\_\_  
City Manager

ATTEST:

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: \_\_\_\_\_

**SCHEDULE I**

**Principal Amortization Schedule**

<b>MATURITY DATE</b> <b><u>(OCTOBER 1)</u></b>	<b>MATURITY</b> <b><u>AMOUNT</u></b>
2013	\$ 248,000
2014	278,000
2015	284,000
2016	291,000
2017	298,000
2018	304,000
2019	311,000
2020	319,000
2021	326,000
2022	334,000
2023	341,000
2024	349,000
2025	357,000
2026	365,000
2027	374,000

**LOAN AGREEMENT**

**dated July 11, 2012**

**by and between**

**THE CITY OF OVIEDO, FLORIDA  
(the "City")**

**and**

**BRANCH BANKING AND TRUST COMPANY  
(the "Bank")**



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**EXHIBIT A - FORM OF NOTE**

A-1

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (the "Agreement"), made and entered as of the 11<sup>th</sup> day of July, 2012, by and between the **CITY OF OVIEDO, FLORIDA** (the "City"), a municipal corporation and public body corporate and politic of the State of Florida duly organized and existing under the laws of the State of Florida and its successors and assigns, and **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation authorized to do business in the State of Florida, and its successors (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; and

**WHEREAS**, the City, pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the City Charter of the City, and other applicable provisions of law (collectively, the "Act") and Resolution No. 2529-12 adopted by the City Council of the City (the "City Council") on June 18, 2012 (the "Note Resolution"), is authorized to borrow money to finance the refunding of the City's outstanding Capital Improvement Revenue Note, Series 2011 (the "Refunded Note"); and

**WHEREAS**, the City desires to borrow \$1,194,000 to finance the refunding of the Refunded Note (the "Loan") and to secure the repayment of the Loan with a pledge of and lien on the Pledged Revenues (as defined herein) on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes (as defined herein); and

**WHEREAS**, the City issued a request for proposal and received proposals from various financial institutions to provide for the Loan; and

**WHEREAS**, the Bank is willing to provide the Loan to the City as provided herein, 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 and not otherwise defined shall have the respective meanings as follows:

"2012A Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012A issued by the City under the Note Resolution and the Hancock Loan Agreement to evidence amounts due under the Hancock Loan Agreement.

"2012B Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012B issued by the City under the Note Resolution and the SunTrust Loan Agreement to evidence amounts due under the SunTrust Loan Agreement.

"2012C Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012C issued by the City under the Note Resolution and the Hancock Loan Agreement to evidence amounts due under the Hancock Loan Agreement.

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

"Additional Debt" means additional obligations issued in compliance with the terms, conditions and limitations contained in Section 4.05 hereof which will have an equal lien on the Pledged Revenues, to the extent herein provided and rank equally in all other respects with the Note, the Parity Notes, and any other Additional Debt hereafter issued.

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

"Bank" shall mean Branch Banking and Trust company, a North Carolina banking corporation, and its successors or affiliates.

"Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banks in the City are authorized or required to be closed.

"City" shall mean the City of Oviedo, Florida, a municipal corporation and public body corporate and politic of the State of Florida.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the applicable regulations promulgated thereunder.

"Date of Delivery" shall mean July 11, 2012.

"Debt Service" means principal of and interest on the Note, and other debt related costs, due in connection with the Note and this Agreement.

"Debt Service Fund" shall mean the Debt Service Fund established pursuant to Section 3.08 hereof.

"Determination of Taxability" shall mean the circumstance of the interest on the Note becoming includable for federal income tax purposes in the gross income of the Owner, or the Note not being a "qualified tax-exempt obligation" under section 265(b)(3)(B) of the Code, regardless of whether caused by or within the control of the City.

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

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

"Hancock Loan Agreement" shall mean the Loan Agreement dated as of the date hereof, by and between the City and Hancock Bank.

"Loan" shall refer to the loan in a principal amount of One Million One Hundred Ninety-Four Thousand Dollars (\$1,194,000), together with the interest accrued thereon pursuant to and in accordance with this Agreement.

"Maximum Corporate Tax Rate" means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11 (b) (1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Owner, the maximum statutory rate of federal income taxation which could apply to the Owner). The Maximum Federal Corporate Tax Rate on the Date of Delivery is 35%.

"Maturity Date" shall mean October 1, 2025.

"Note" shall mean the City of Oviedo, Florida Capital Improvement Refunding Revenue Note, Series 2012D issued by the City under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

"Noteholder," "Owner" or "Holder" shall mean the Bank, as the purchaser and initial holder of the Note and any subsequent registered owner or owners of the Note.

"Note Rate" shall mean 2.36%, subject to adjustment as provided herein and in the Note.

"Note Resolution" shall mean Resolution No. 2529-12 adopted by the City Council on June 18, 2012, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement, the Hancock Agreement and the SunTrust Agreement and the issuance of the Note and the Parity Notes.

"Parity Notes" shall mean, collectively, the 2012A Note, 2012B Note and the 2012C Note.

"Pledged Revenues" shall mean (i) the proceeds of the Local Government Half-Cent Sales Tax received by the City from the State of Florida pursuant to the provisions of Chapter 218, Part VI, Florida Statutes, as amended; and (ii) franchise fees received by the City pursuant to Ordinance No. 784 enacted on February 26, 1990 and Ordinance No. 1217 enacted on August 5, 2002.

"Refunded Note" shall mean the City's outstanding Capital Improvement Revenue Note, Series 2011.

“SunTrust Loan Agreement” shall mean the Loan Agreement dated as of the date hereof, by and between the City and SunTrust Bank.

**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. Any capitalized terms used in this Agreement not herein defined shall have the meaning ascribed to such terms in the Note Resolution. 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 and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt the Note Resolution, 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 Note 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.** There are no actions, proceedings or investigations pending against the City or affecting the City (or any basis therefor known to the City) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the City or in any of its properties or assets, or in any material impairment of the right or ability of the City to carry on its operations as now conducted or proposed to be conducted, or in the levy, receipt and

collection of the Pledged Revenues or in any material liability on the part of the City and none which questions the validity of this Agreement, the Note or the Note Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Liens and Encumbrances. Upon the issuance of the Note and the refunding of the Refunded Note, there are no pledges of, or liens or encumbrances on, the Pledged Revenues, other than the lien of the Note and the Parity Notes.

(e) No Litigation. There are no suits or proceedings pending or to the knowledge of the City, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the City, concerning or affecting the Pledged Revenues or which would have a material adverse affect on the ability of City to fulfill its obligations under this Agreement.

(f) Confirmation. The representations and warranties of the City contained in the Note Resolution are hereby confirmed to be true and accurate and are incorporated as a part of this Agreement.

**Section 2.02. Representations and Warranties of Bank.** The Bank represents and warrants to the City as follows:

(a) Existence. The Bank is a North Carolina 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 City as it has requested in order to fairly evaluate the merits and risks of making the Loan and investing in the Note; (iii) is an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933; and (iv) is purchasing the Notes as an investment for its own account and not with a view toward resale to the public. The Bank will not transfer the Note except to another accredited investor.

### ARTICLE III THE NOTE

**Section 3.01. The Loan; Purpose and Use.** On the date of this Agreement, the Bank shall provide the Loan to the City in the aggregate principal amount of One Million One Hundred Ninety-Four Hundred Thousand Dollars (\$1,194,000).

The proceeds of the Loan shall be used to finance the refunding of the Refunded Note.

**Section 3.02. The Note.** The City shall issue the Note to the Bank to evidence and secure its obligation to repay the Loan. 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; provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the executed Note, the terms of the Note shall prevail:

(a) **Principal Amount of Note.** The principal amount of the Note shall be One Million One Hundred Ninety-Four Thousand Dollars (\$1,194,000).

(b) **Interest.** The Note shall bear interest on the outstanding principal amount thereof at the Note Rate from the Date of Delivery until paid in full. Interest on the Note shall be computed on the basis of twelve (12) thirty (30) day months and a 360-day year.

(c) **Payments.** Interest on the Note shall be paid semi-annually on every April 1 and October 1, commencing April 1, 2013 until the Note is paid in full. Principal on the Note shall be paid in annual installments beginning October 1, 2013, and thereafter on each October 1. Debt Service on the Note shall be paid as set forth on Schedule I attached to the Note, subject to prepayment by the City prior to the Note's maturity as provided in subsection 3.02(d) below.

(d) **Prepayment.** The Loan may be prepaid in whole, but not in part, on any October 1, by the City with two (2) business 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 a prepayment fee of 1% of the amount of the Loan to be prepaid.

**Section 3.03. Adjustments to Note Rate.** If the tax laws or regulations are amended to decrease the Maximum Corporate Tax Rate or to cause the interest on the Note to become taxable or be subject to a minimum tax or an alternative minimum tax to the extent not otherwise taxable or subject on the date of issuance, or to decrease the yield on the Note to the Owner or if the Note shall be determined not to be a "qualified tax-exempt obligation" within the meaning and contemplation of Section 265(b) of the Code, or a Determination of Taxability shall occur, or any other event shall occur which would (directly or indirectly) cause the foregoing decrease in the yield to the Owner, then the Note Rate shall be adjusted to cause the yield on the Note to equal what the yield on the Note would have been in the absence of such Determination of Taxability or change or amendment in the tax laws or regulations. Any such Note Rate adjustment shall be calculated by the Owner and shall be conclusive and binding upon the City absent manifest error.



**Section 3.04. Compliance with Section 215.84.** The City represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

**Section 3.05. Conditions Precedent to Funding.** Prior to or simultaneously with the delivery of the Note by the City there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the City to the effect that (i) the City is a municipal corporation duly created and validly existing under the Constitution and laws of the State of Florida, with full legal right, power and authority to enact Ordinance Nos. 784 and 1217, to adopt the Note Resolution, to issue the Note, to authorize, execute and delivery this Agreement, to perform its obligations under the Note, the Note Resolution and this Agreement and to consummate the transactions contemplated by such instruments; (ii) the Note Resolution has been duly adopted by the City Council at a duly convened public meeting following proper public notice, has not been amended or repealed and is in full force and effect, and constitute the legal, valid and binding obligation of the City enforceable in accordance with its terms; (iii) Ordinance Nos. 784 and 1217 were duly enacted by the City Council of the City at duly called public meetings following proper public notice, and have not otherwise been amended or repealed and are in full force and effect as of the date hereof; (iv) the Note and this Agreement have been duly authorized, executed and delivered by the City and constitute valid and binding obligations of the City enforceable in accordance with their respective terms (subject as to enforceability of any remedies to any applicable bankruptcy or insolvency laws or other laws affecting creditors' rights generally, from time to time in effect); (v) to the best of his knowledge, the adoption of the Note Resolution, and the authorization, execution and delivery of the Note and this Agreement, and compliance with the provisions thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the City was or is subject, as the case may be, nor will such enactment, adoption, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City, or under the terms of any law, administrative regulation, ordinance, resolution or instrument, except as expressly provided by the Note Resolution; (vi) to the best of his knowledge, all approvals, consents, authorizations and orders of any governmental authority or agency having jurisdiction in any matter which would constitute a condition precedent to the performance by the City of its obligations under the Note Resolution and this Agreement have been obtained and are in full force and effect; (vii) to the best of his knowledge, after reasonable inquiries, there is no litigation pending or threatened, to restrain or enjoin the issuance or sale of the Note or in any way affecting any authority for or the validity of the Note, the Note Resolution, this Agreement or the pledge of the Pledged Revenues; (viii) neither the corporate existence nor the title of any of the present City Council Members and officials thereof to their respective offices is being contested; and (ix) the City has complied with all conditions precedent to the issuance of the Note.

(b) an opinion of Note Counsel (who may rely on the opinion of Counsel to the City), stating that such counsel is of the opinion that: (i) the Note Resolution and this Agreement constitute valid and binding obligations of the City, enforceable upon the City in accordance with their respective 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 the Note Resolution and this Agreement; (iii) assuming compliance by the City with certain covenants in this Agreement relating to requirements contained in the Code, interest on the Note is excluded from gross income for purposes of federal income taxation, and interest on the Note is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations; and (iv) the Note is a "qualified tax-exempt obligation" under Section 265(b)(3)(B) 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; and

(d) a certificate of the City indicating that since September 30, 2011, there has been no material adverse change in the financial condition, operations or prospects of the City or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the City's ability to comply with its obligations hereunder and under the Note.

(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 Note Resolution have been met, the City shall deliver the Note to or upon the order of the Bank, but only against the City's receipt of the proceeds of the Loan.

**Section 3.06. 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 Bank 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, the Note may not be transferred in a denomination less than \$100,000 under any circumstances. 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 the Note sufficient to reimburse it for any tax or other governmental charges required to be paid (other than a tax or other governmental charge imposed by the City) 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 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 affect 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.

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 such a mutilated Note, such mutilated Note shall first be surrendered to the City, and in the case of a 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 3.07. 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 registered owner 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.

The registered owner 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, the Note may not be transferred in a denomination less than \$100,000 under any circumstances. Every prior registered owner 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.

**Section 3.08. Debt Service Fund.** There is hereby created by the City and ordered established a Debt Service Fund to be held by the City. There shall be deposited into the Debt Service Fund the Pledged Revenues received by the City during each fiscal year until the amounts on deposit in such Debt Service Fund equal the amounts needed to pay debt service on the Note, the Parity Notes and any Additional Debt hereafter issued in such fiscal year. Moneys in the Debt Service Fund shall be used solely to pay principal and interest on the Notes and any Additional Debt hereafter issued when due.

## 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. Use of Proceeds.** The proceeds of the Note shall be wired by the Bank to the City, no later than 2:00 p.m. on the Date of Delivery of the Note, or such later time as may be mutually agreed upon by the City and the Bank, and shall be applied by the City to finance the refunding of the Refunded Note.

**Section 4.03. Payment of the Note.** The City promises that it will promptly pay the Debt Service on the Note and all other amounts due under this Agreement at the place, on the dates and in the manner provided in Section 3.02 hereof and in the Note according to the true intent and meaning hereof and thereof. Debt Service on the Note and all other amounts due under this Agreement shall not be or constitute a general obligation or indebtedness of the City as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Pledged Revenues, in accordance with the terms hereof and of the Note. The holder of the Note shall never have the right to compel the exercise of any ad valorem taxing power to pay Debt Service on the Note, or be entitled to payment of such from any funds of the City except from the Pledged Revenues, as described herein and in the Note.

**Section 4.04. Security for Note.** The payment of the principal of and interest on the Note and all other amounts payable under this Agreement or the Note or in connection therewith shall be secured by a first priority pledge of and lien on the Pledged Revenues, on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes. The City does hereby create and grant to the Owner of the Note a first priority pledge of and lien on the Pledged Revenues to provide for and secure the payment of principal of and interest on the Note and all other obligations of the City under the Note and this Agreement.

**Section 4.05. Additional Debt.**

(a) The City will not issue any obligations payable from the Pledged Revenues or voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the Note and the Parity Notes upon the Pledged Revenues except under the terms and conditions and in the manner provided herein. Any obligations issued by the City other than in accordance with this Section and payable from the Pledged Revenues shall contain an express statement that such obligations are junior and subordinate in all respects to the Note as to lien on, and source of and security for payment from, the Pledged Revenues.

(b) No Additional Debt may be issued unless the City's Finance Director shall sign and issue a certificate that shall state and certify that the Pledged Revenues for the most recently audited fiscal year of the City preceding the issuance of Additional Debt equaled at least one

and twenty-five hundredths (1.25) times the maximum annual requirements for principal and interest on obligations then outstanding and payable from such Pledged Revenues and on the Additional Debt proposed to be issued. The City may not issue any Additional Debt if more than six months have passed since the end of its last fiscal year without an audit having been released by the City.

**Section 4.06. Annual Audit, Budget and Other Financial Information.** The City shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the City to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention. The annual financial statements shall be prepared in conformity with generally accepted accounting principles and shall include a separate line item showing the annual amount of the Pledged Revenues received during the subject fiscal year. A copy of the audited financial statements for each Fiscal Year shall be furnished to the Owner of the Note within 210 days following the close of each Fiscal Year. The City will annually provide to the Owner of the Note the City's annual budget within 30 days after the City Council's approval thereof. The City shall provide the Owner of the Note with such other financial information with regard to the City and the Pledged Revenues as the Owner may reasonably request.

**Section 4.07. Federal Income Tax Covenants.**

(A) The City covenants with the Owners from time to time of the Note that it shall not use the proceeds of the Note in any manner which would cause the interest on the Note to be or become includable in the gross income of the Owners thereof for federal income tax purposes.

(B) The City covenants with the Owners from time to time of the Note that neither the City nor any Person under its control or direction will make any use of the proceeds of the Note (or amounts deemed to be proceeds under the Code) in any manner which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and neither the City nor any other Person shall do any act or fail to do any act which would cause the interest on the Note to become includable in the gross income of the Owners thereof for federal income tax purposes.

(C) The City hereby covenants with the Owners from time to time of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owners thereof 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.

**ARTICLE V**  
**EVENTS OF DEFAULT AND REMEDIES**

**Section 5.01. Events of Default.** Each of the following is hereby declared an "Event of Default:"

1. payment of the principal of or interest on the Note or other fees or amounts due thereunder or hereunder shall not be made when such amounts are due and payable and such amounts shall remain unpaid for a period of ten (10) days;

2. the City shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Note or in this Agreement and such default shall continue for thirty (30) consecutive days after written notice shall have been given to the City by the Noteholder specifying such default and requiring the same to be remedied; provided, however, that if, in the reasonable judgment of the Noteholder, the City shall proceed to take such curative action which, if begun and prosecuted with due diligence, cannot be completed within a period of thirty (30) days, then such period shall be increased to such extent as shall be necessary to enable the City to diligently complete such curative action;

3. any representation or warranty of the City contained in this Agreement or in any certificate or other closing document executed and delivered by the City in connection with the closing of this Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note;

4. any proceedings are instituted with the consent or acquiescence of the City, for the purpose of effecting a compromise between the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted;

5. the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

6. the City is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the City, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

7. if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control.

**Section 5.02. Exercise of Remedies.** Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the City to perform its obligations under Article IV of this Agreement.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the City for principal, interest or otherwise under any of the provisions of this Agreement or of the Note then unpaid, together with any and all costs and expenses of collection and of all proceedings hereunder and under the Note (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), without prejudice to any other right or remedy of the Noteholders, and to recover and enforce any judgment or decree against the City, but solely as provided herein and in the Note, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect in any manner provided by law, the monies adjudged or decreed to be payable.

**Section 5.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Noteholders is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

**Section 5.04. Waivers, Etc.** No delay or omission of the Noteholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Agreement to the Noteholders may be exercised from time to time and as often as may be deemed expedient.

The Noteholders may waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and

no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

## 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. Notice of Changes in Fact.** Promptly after the City becomes aware of the same, the City will notify the Bank of (a) any changes in any material fact or circumstance represented or warranted by the City in this Agreement or in connection with the issuance of the Note, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the City has taken, is taking and/or proposes to take with respect thereto.

**Section 6.04. Amendments and Supplements.** This Agreement may be amended or supplemented from time to time only by a writing duly executed by the City and the Noteholder.

**Section 6.05. 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:

As to the City:

City of Oviedo, Florida  
400 Alexandria Boulevard  
Oviedo, Florida 32765  
Attention: Finance Director



As to the Bank:

Branch Banking and Trust Company  
5130 Parkway Plaza Boulevard  
Building 9  
Charlotte, North Carolina 28217  
Attention: Account Administration/Municipal

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 6.06. Waiver of Jury Trial.** To the extent permitted by applicable law, each of the City and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the Note Resolution, this Agreement, the Note or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Agreement.

**Section 6.07. 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 6.08. 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 6.09. Business Days.** 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 not be 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, but interest on any such principal amount shall accrue through the date payment is received.

**Section 6.10. 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 6.11. Applicable Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

**Section 6.12. 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 Council, 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 6.13. Incorporation by Reference.** All of the terms and obligations of the Note 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.

[Remainder of page intentionally left blank – Signatures follow]

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

CITY OF OVIEDO, FLORIDA

By:   
Mayor

(SEAL)

By:   
City Manager

ATTEST:

By:   
City Clerk

BRANCH BANKING AND TRUST  
COMPANY

By:   
Name: Michael C. Smith  
Title: Assistant Vice President

## EXHIBIT A

### FORM OF NOTE

ANY HOLDER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A LENDER'S CERTIFICATE IN THE FORM ATTACHED TO THE NOTE RESOLUTION (HEREIN DEFINED) 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 OVIEDO, FLORIDA  
CAPITAL IMPROVEMENT REFUNDING REVENUE NOTE,  
SERIES 2012D**

**Principal Sum:**           \$1,194,000

**Note Rate:**             2.36%, subject to adjustment as provided herein

**Maturity Date:**       October 1, 2025

**Date of Issuance:**     July 11, 2012

The **CITY OF OVIEDO, FLORIDA** (the "City"), for value received, hereby promises to pay to the order of BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, or its registered assigns (the "Holder"), at 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217, Attention: Account Administration/Municipal, or at such other place as the Holder may from time to time designate in writing, solely from the Pledged Revenues as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the City, dated July 11, 2012 (the "Agreement"), the Principal Sum stated above loaned to the City by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate, as such Note Rate may be subject to adjustment as herein provided, until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth 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.

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

This Note shall bear interest at the Note Rate indicated above, which Note Rate shall be subject to adjustment as provided herein and in the Loan Agreement and which Note Rate shall

be calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months. The Holder shall provide to the City such documentation to evidence any adjustment to the Note Rate and the calculations made in connection therewith. All calculations and determinations by the Holder of the amounts payable pursuant to the following Note Rate adjustment provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

Interest on this Note shall be paid semi-annually on April 1 and October 1, commencing April 1, 2013 until this Note is paid in full. Principal on this Note shall be paid in annual installments beginning October 1, 2013, and on every October 1 thereafter until the Maturity Date in accordance with the amortization schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the City prior to the Note's maturity as provided below.

This Note may be prepaid in whole, but not in part on any October 1 by the City, with two (2) business days prior written notice to the Holder by payment in an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment plus a prepayment fee of 1% of the amount of the Note to be prepaid.

The Note Rate may be adjusted as follows; provided, however, the Note Rate shall not exceed the maximum rate permitted by law:

If the tax laws or regulations are amended to decrease the Maximum Corporate Tax Rate or to cause the interest on this Note to become taxable or be subject to a minimum tax or an alternative minimum tax to the extent not otherwise taxable or subject on the date of issuance, or to decrease the yield on this Note to the Owner or if this Note shall be determined not to be a "qualified tax-exempt obligation" within the meaning and contemplation of Section 265(b) of the Code, or a Determination of Taxability shall occur, or any other event shall occur which would (directly or indirectly) cause the foregoing decrease in the yield to the Owner, then this Note Rate shall be adjusted to cause the yield on this Note to equal what the yield on this Note would have been in the absence of such Determination of Taxability or change or amendment in the tax laws or regulations. "Determination of Taxability" shall mean the circumstance of the interest on this Note becoming includable for federal income tax purposes in the gross income of the Owner, or this Note not being a "qualified tax-exempt obligation" under section 265(b)(3)(B) of the Code, regardless of whether caused by or within the control of the City.

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the City Charter of the City, and other applicable provisions of law and Resolution No. 2529-12 adopted by the City Council of the City on June 18, 2012 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

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 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.

THIS NOTE, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT AND THE NOTE RESOLUTION, 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 OTHER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES AS PROVIDED IN THE AGREEMENT. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST THEREON.

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Pledged Revenues, on a parity with the lien thereon and pledge thereof to secure payment of the Parity Notes and any Additional Debt hereafter issued, in accordance with the terms of the Agreement.

Upon the occurrence of an Event of Default the Holder shall have such 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 Note Resolution and the Agreement and reference is hereby made thereto other matters.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the City has caused this Note to be signed by the Mayor and City Manager, and the seal of the City to be affixed hereto or imprinted or reproduced hereon, and attested by the City Clerk of the City and this Note to be dated the Date of Issuance set forth above.

**CITY OF OVIEDO, FLORIDA**

(SEAL)

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

By: \_\_\_\_\_  
City Manager

ATTEST:

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: \_\_\_\_\_



**SCHEDULE I**

**Principal Amortization Schedule**

<b>MATURITY DATE (OCTOBER 1)</b>	<b>MATURITY AMOUNT</b>
2013	\$ 74,000
2014	82,000
2015	84,000
2016	86,000
2017	88,000
2018	90,000
2019	92,000
2020	94,000
2021	96,000
2022	98,000
2023	101,000
2024	103,000
2025	106,000