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## **LOAN AGREEMENT**

This LOAN AGREEMENT (the "Agreement") is made and entered into as of November 16, 2012, and is by and between Sarasota County, Florida, a political subdivision of the State of Florida, and its successors and assigns (the "County"), and Banc of America Public Capital Corp, and its successors and assigns, as holder(s) of the hereinafter defined Note (the "Bank").

The parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

### **ARTICLE I**

#### **DEFINITION OF TERMS**

Section 1.01 Definitions. The words and terms used in capitalized form in this Agreement and not otherwise defined herein shall have the following meanings:

"Act" means the Charter of the County, Chapter 125, Florida Statutes, Article VIII, Section 1, Constitution of the State of Florida, Ordinance No. 72-30, enacted by the County on July 22, 1972, as amended and supplemented, and other applicable provisions of law.

"Accountants" means the independent certified public accountant or firm of certified public accountants at the time employed by the County under the provisions of this Agreement to perform and carry out the duties imposed on the Accountants by this Agreement.

"Accounting Principles" means generally accepted accounting principles applicable to governmental entities.

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

"Bond Counsel" means any attorney at law or firm of attorneys retained by the County, of nationally recognized experience in matters pertaining to the validity of, and exclusion from gross income for federal income tax purposes of interest on, the obligations of states and their political subdivisions.

"Business Day" means any day except any Saturday or Sunday or day on which the Principal Office of the Bank is lawfully closed.

"Chief Financial Officer" means the Clerk or such other chief financial officer of the County as defined in Section 218.40, Florida Statutes.

"Clerk" means the Clerk of the Circuit Court for Sarasota County, Florida, and ex-officio Clerk of the Board of County Commissioners of the County, or such other person as may be duly authorized to act on his or her behalf, including, without limitation, any Deputy Clerk of the County.

"Code" means the Internal Revenue Code of 1986, as amended, and applicable corresponding provisions of any future laws of the United States of America relating to federal income taxation, and except as otherwise provided herein or required by the context thereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings), and applicable court rulings.

"Consulting Engineer" means one or more qualified and recognized consulting engineer or firm of consulting engineers having favorable reputé, skill and experience with respect to the planning, construction, operation and financial feasibility of facilities similar to the System, who shall be retained from time to time by the County.

"Debt Service Requirement" means, for any given Note Year, the sum of (i) the amount required to pay interest on the Note and any other Subordinate Debt, during such Note Year, plus (ii) the amount required to pay principal maturing on the Note and any other Subordinate Debt during such Note Year, including, without limitation, any mandatory redemption of principal.

"Department" means the State of Florida Department of Environmental Protection.

"Event of Default" means an event of default specified in Article VI of this Agreement.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other period of twelve consecutive months as may hereafter be designated as the fiscal year of the County by general law.

"Impact Fees" means the fees and charges levied upon and collected and received by the County from new users of the System which represent a pro-rata share of the increased capital cost of the System resulting from such additional connections to the System, together with income from investment of such amounts calculated in accordance with Accounting Principles (but excluding unrealized gains or losses from investments) which are legally available to pay debt service on the Note and other Subordinate Debt after the same have been applied to make all required deposits and payments (including, without limitation, debt service payments on Senior Bonds) under the terms of the Senior Resolution.

"Loan" means the loan by the Bank to the County contemplated hereby.

"Loan Amount" means \$15,720,000.00.

"Loan Documents" means this Agreement and the Note.

"Net Revenues" means the Net Revenues (as defined in the Senior Resolution) available to pay debt service on the Note and other Subordinate Debt after the same have been applied to make all required deposits and payments (including, without limitation, debt service payments on Senior Bonds) under the terms of the Senior Resolution.

"Note Year" means the period beginning on October 2 of each year and ending on the next succeeding October 1, provided however that the first Note Year shall commence on the date of issuance of the Note and end on October 1, 2013.

"Note" means the County's Subordinate Utility System Refunding Revenue Note, Series 2012 in the form attached hereto as Exhibit "B."

"Notice Address" means,

As to the County: Office of the County Attorney  
1660 Ringling Blvd., 2<sup>nd</sup> Floor  
Sarasota, Florida 34236

As to the Bank: Banc of America Public Capital Corp  
555 California Street, 4th Floor  
San Francisco, California 94104

Attention: Bridgett Arnold

or to such other address as either party may have specified in writing to the other using the procedures specified in Section 7.06.

"Person" means an individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organization or other judicial entity.

"Pledged Revenues" means the Net Revenues and Impact Fees.

"Principal Office" means, with respect to the Bank, the office located at 555 California Street, 4<sup>th</sup> Floor, San Francisco, California 94104, or such other office as the Bank may designate to the County in writing.

"Qualified Independent Consultant" means one or more qualified and recognized independent consultants, having favorable reputations, skill and experience with respect to the acts and duties required of a qualified independent consultant to be provided to the County, as shall from time to time be retained by the County to perform the acts and carry out the duties herein provided for such consultants. The Qualified Independent Consultant may also be the Accountant or the Consulting Engineer.

"Refunded Loans" means the Clean Water State Revolving Fund Loan Agreement CS12058734P between the Department and the County with an effective date of December 17, 2001, as supplemented and amended, and \$9,028,762.92 in principal amount of the Clean Water State Revolving Fund Loan Agreement WWG12058734L01 between Florida Water Pollution Control Financing Corporation and the County with an effective date of July 31, 2002, as supplemented and amended.

"Senior Resolution" means Resolution No. 93-011 of the County adopted on January 12, 1993, as restated, amended and supplemented, including, without limitation, as the same was amended and restated by Resolution No. 2007-062 adopted on March 21, 2007, as heretofore or hereafter supplemented and amended.

"Senior Bonds" means the County's Utility System Revenue Refunding Bonds, Series 2005A, Utility System Revenue Bonds, Series 2007, Utility System Revenue Bonds, Series 2010 (Federally Taxable - Build America Bonds - Direct Subsidy), Utility System Revenue Refunding

Bonds, Series 2011A, Utility System Revenue Refunding Bonds, Series 2011B and Utility System Revenue Refunding Note, Series 2012, and any other bonds or obligations payable on a parity therewith and issued under the Senior Resolution.

"SIFMA Rate" means, as of any date, the most recently effective index rate which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by the Securities Industry and Financial Market Association.

"SRF Loans" means the loans from the Department evidenced by Clean Water State Revolving Fund Loan Agreement WWG12058734L01, to the extent not fully refinanced with proceeds of the Note, Clean Water State Revolving Fund Loan Agreement WW58734L02 with an effective date of June 29, 2004, Clean Water State Revolving Fund Loan Agreement WW587400 with an effective date of May 23, 2007, Clean Water State Revolving Fund Loan Agreement WW580300 with an effective date of April 8, 2011 and Clean Water State Revolving Fund Loan Agreement WW580310 with an effective date of April 23, 2012.

"State" means the State of Florida.

"Subordinate Debt" means the Note, the SRF Loans and all other debt or obligations payable and secured by the Pledged Revenues on a parity with the Note.

"System" means the water and wastewater utility system (including, without limitation, any reuse or reclaimed water system), owned, operated and maintained by the County, together with any and all improvements, extensions and additions thereto hereafter constructed or acquired, together with all lands or interests therein, including plants, buildings, machinery, franchises, pipes, mains, fixtures, equipment and all property, real or personal, tangible or intangible, now or hereafter owned or used in connection therewith together with any stormwater utility system acquired or constructed by the County and combined with the water and wastewater utility system.

"Utilities Director" means the Manager of Environmental Utilities or such other officer who succeeds to the duties and responsibilities of the Manager of Environmental Utilities of the County.

Section 1.02 Titles and Headings. The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## **ARTICLE II**

### **REPRESENTATIONS OF COUNTY**

The County represents and warrants to the Bank that:

Section 2.01 Powers of County. The County is a political subdivision, duly organized and validly existing under the laws of the State. The County has the power under the Act to own

and operate the System and to collect the Net Revenues and Impact Fees, to borrow the Loan Amount provided for in this Agreement, to execute and deliver the Loan Documents, to secure this Agreement and the Note in the manner contemplated hereby and to perform and observe all the terms and conditions of the Loan Documents on its part to be performed and observed. The County may lawfully borrow funds hereunder in order to provide funds to refund the Refunded Loans, to the extent applicable, capitalize interest on the Note and to pay the costs of issuance of the Loan and the Note.

Section 2.02 Authorization of Loan. The County had, has, or will have, as the case may be, at all relevant times, full legal right, power and authority to execute and deliver the Loan Documents, to make the Note, and to carry out and consummate all other transactions contemplated hereby, and the County has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The County has duly authorized the borrowing of the Loan Amount provided for in this Agreement, the execution and delivery of this Agreement, and the making and delivery of the Note to the Bank, and to that end the County warrants that it will, subject to the terms hereof and of the Note, take all action and do all things which it is authorized by law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Note. The Note has been duly authorized, executed, issued and delivered to the Bank and constitutes the legal, valid and binding obligation of the County enforceable in accordance with the terms thereof and the terms hereof, and is entitled to the benefits and security of this Agreement, subject to the provisions of the bankruptcy laws of the United States of America and to other applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights, heretofore or hereinafter enacted, to the extent constitutionally applicable, and provided that its enforcement may also be subject to equitable principles that may affect remedies or other equitable relief, or to the exercise of judicial discretion in appropriate cases. All approvals, consents, and orders of and filings with any governmental authority or agency which would constitute a condition precedent to the issuance of the Note or the execution and delivery of or the performance by the County of its obligations under this Agreement and the Note have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect. NOTWITHSTANDING THE FOREGOING, HOWEVER, OR ANYTHING ELSE HEREIN OR IN THE NOTE TO THE CONTRARY, NEITHER THIS AGREEMENT NOR THE NOTE SHALL CONSTITUTE A GENERAL OBLIGATION OR A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES IN THE MANNER AND TO THE EXTENT PROVIDED HEREIN AND IN THE RESOLUTION. No holder or owner of the Note shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the County or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of debt service with respect thereto, nor shall any holder or owner of the Note be entitled to payment of such principal and interest from any other funds of the County other than the Pledged Revenues, all in the manner and to the extent herein and in the Resolution provided.

Section 2.03 No Violation of Law or Contract. The County is not in default in any material respect under any agreement or other instrument to which it is a party or by which it



may be bound, the breach of which could result in a material and adverse impact on the financial condition of the County or the ability of the County to perform its obligations hereunder and under the Note. The making and performing by the County of this Agreement and the Note will not violate any applicable provision of law, and will not result in a material breach of any of the terms of any agreement or instrument to which the County is a party or by which the County is bound, the breach of which could result in a material and adverse impact on the financial condition of the County or the ability of the County to perform its obligations hereunder and under the Note.

Section 2.04 Pending or Threatened Litigation. Except as has been disclosed to the Bank, there are no actions or proceedings pending against the County or affecting the County or, to the knowledge of the County, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the financial condition of the County, or which questions the validity of this Agreement or the Note or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

Section 2.05 Financial Information. The financial information regarding the County furnished to the Bank by the County in connection with the Loan is complete and accurate, and there has been no material and adverse change in the financial condition of the County from that presented in such information.

### ARTICLE III

#### COVENANTS OF THE COUNTY

Section 3.01 Affirmative Covenants. For so long as any of the principal amount of or interest or any redemption or prepayment premium on the Note is outstanding or any duty or obligation of the County hereunder or under the Note remains unpaid or unperformed, the County covenants to the Bank as follows:

(a) Payment. The County shall pay the principal of and the interest or any redemption or prepayment premium or penalty on the Note at the time and place and in the manner provided herein and in the Note, but solely from the Pledged Revenues. The County shall apply all Pledged Revenues on a pari passu basis to pay debt service on the Subordinate Debt, and to the extent that the Pledged Revenues shall not be sufficient at any time to make all debt service payments on Subordinate Debt, such Pledged Revenues shall be applied on a pro rata basis to pay as much of the debt service on the Subordinate Debt as possible.

(b) Use of Proceeds. Proceeds from the Note will be used only to pay costs of the refunding the Refunded Loans, capitalizing interest and to pay closing costs of the Loan and the Note. Prepayment of the Refunded Loans will be made on the date hereof.

(c) Connections with System. The County will require all lands, buildings and structures within the service area which can use the facilities and services of the System, to the extent economically feasible, to connect with and use the facilities and services of the System, and to cease all other means and methods for the supply of water and treatment of wastewater.

(d) Maintenance of Existence. The County will take all reasonable legal action within its control in order to maintain its existence until all amounts due and owing from the County to the Bank under this Agreement and the Note have been paid in full.

(e) Records. The County agrees that any and all records of the County with respect to the Loan shall be open to inspection by the Bank or its representatives at all reasonable times and after receipt by the County of reasonable notice from the Bank at the offices the County.

(f) Operation and Maintenance. The County will maintain or cause to be maintained the System and all parts thereof in good condition, and will operate or cause to be operated the same in an efficient and economical manner, making or causing to be made such expenditures for equipment and for renewals, repairs and replacements as may be proper for the economical operation and maintenance thereof. In furtherance of the covenant contained in this paragraph the County shall allocate and draw upon the resources of the System, including water supply and treatment resources and wastewater treatment and effluent disposal resources, in the manner deemed by the County to be most beneficial to the long-term efficient and economic operation of the System.

(g) Annual Budget. The County shall annually prepare and adopt on or prior to the beginning of such Fiscal Year, a detailed budget of the estimated income and expenditures for operation and maintenance of the System during such next succeeding Fiscal Year. The County shall make such annual budget available on its website within sixty (60) days after the adoption of the budget by the Board of County Commissioners.

(h) Rate Covenant. The County will fix, establish and maintain such rates and will collect such fees, rentals and other charges for the use of the product, services and facilities of the System and revise the same from time to time, whenever necessary, as will always meet the requirements of the Senior Resolution and as will always provide Pledged Revenues in each Note Year sufficient to pay 120% of the Debt Service Requirement for such Note Year.

(i) Accounting Records. The County shall maintain separately identifiable accounting records for the operation of the System by the use of an enterprise fund as such term is commonly used in governmental accounting, and the holder of the Note shall have the right at all reasonable times to inspect all records, accounts and data of the County relating thereto.

(j) Annual Audit. The County shall after the close of each Fiscal Year, cause the books, records and accounts relating to the System to be properly audited by a recognized Accountant, and shall require the Accountant to complete its audit report within 180 days after the close of the Fiscal Year. Such audit shall contain, but not be limited to, the statements required by generally accepted accounting principles applicable to governmental units, and a certificate by the Accountant regarding compliance with the covenants herein. The County shall make such annual audit available on its website no later than April 30<sup>th</sup> following the end of the prior fiscal year, beginning with the fiscal year ending September 30, 2012.

(k) Insurance. For so long as the Note is outstanding, the County will make adequate provision to maintain adequate fire and windstorm insurance on all buildings and structures of the works and properties of the System which are subject to loss through fire or windstorm; public liability insurance; and other insurance of such types and in such amounts as are normally



carried in the operation of similar public water and wastewater utilities within the State of Florida, for all of which insurance the County may be a self insurer to the extent permitted by law. Any such insurance shall be placed with nationally recognized and reputable insurers or under authorized self-insurance programs or any combination of both.

(l) Mandatory Cut Off. The County shall establish a written policy consistent with sound business judgment for the disconnection from the System of any customer who fails to pay for services rendered by the System, and shall enforce such policy diligently and fairly.

Section 3.02 Negative Covenants. For so long as any of the principal amount of or interest on the Note is outstanding or any duty or obligation of the County hereunder or under the Note remains unpaid or unperformed, the County covenants to the Holder of the Note as follows:

(a) No Material Impairment of Pledged Revenues. The County will not take any action which will materially impair or materially adversely affect the Pledged Revenues, or materially impair or materially adversely affect in any manner the pledge of the Pledged Revenues made herein or the rights of the holder of the Note hereunder.

(b) No Mortgage or Sale of the System. As long as the Note is outstanding, the County irrevocably covenants, binds and obligates itself not to sell, lease, encumber or in any manner dispose of the System as a whole.

The County may sell or dispose of, for fair market value, any properties or parts of the System if the Consulting Engineer certifies in writing that (1) such properties or parts of the System are not necessary for the continued operation of the System and (2) the sale or disposal of such properties or parts of the System will not materially adversely affect the Pledged Revenues to be derived to such an extent that the County will fail to comply with the covenants herein; provided, however, the County shall have and hereby expressly reserves the right to (i) sell, lease or otherwise dispose of any of the property comprising a part of the System not in excess of 10% of the value of the fixed assets of the System according to the most recent annual audit that it shall, in its sole discretion, determine to be no longer necessary or useful for the continued operation of the System, such determination to be made in writing by the Utilities Director, and (ii) sell, lease, donate or otherwise dispose of any of the property comprising a part of the System which the County shall, in its sole discretion have determined to have become unserviceable, inadequate, obsolete, worn out, or unfit to be used in the operation of the System or no longer necessary, material to, useful or profitable in such operation, such determination to be made in writing by the Utilities Director.

(c) No Free Service. The County will not render or cause to be rendered any free services of any nature by its System. The County, including its departments, agencies and instrumentalities, shall avail itself of the services provided by the System, or any part thereof, and the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged to the County and any such department, agency or instrumentality. Such charges shall be paid as they accrue, and the County shall transfer from its relevant funds sufficient sums to pay such charges.

(d) No Competing Facilities. To the full extent permitted by law, the County will not grant, or cause, consent to, or allow the granting of, any franchise or permit to any person, firm,

corporation or body, or agency or instrumentality whatsoever, for the furnishing of water or wastewater services which will materially compete with those of the System. This covenant shall not limit or prevent the County's right to grant, cause, consent or allow the granting of franchises or operation of water and wastewater facilities within or without the County which provide service to areas not served by the System or which are determined by the Qualified Independent Consultant not to materially compete with the System. In addition, the County may create, own, and operate independent self-supporting water or wastewater systems (other than and apart from the System) provided that any such separate system is determined by the Qualified Independent Consultant not to materially compete with the System.

(e) Issuance of Additional Parity Debt. The County may issue Additional Parity Bonds under the Senior Resolution as permitted and provided by the terms of the Senior Resolution. Except for such Additional Parity Bonds under the Senior Resolution issued in compliance with the terms of the Senior Resolution, and except as provided herein, the County hereby covenants and agrees not to incur any other obligations or indebtedness payable from the Pledged Revenues on a parity or senior basis to the lien on Pledged Revenues granted hereunder, but the County may issue other Subordinate Debt if the Pledged Revenues and any other revenues or funds pledged to such obligations or indebtedness, as projected in a certificate of the Chief Financial Officer of the County, who may rely upon Qualified Independent Consultants in making such projection, will equal or exceed at least 1.20 times the Debt Service Requirement on such obligations or indebtedness, the Note and all other Subordinate Debt then outstanding in each year that such obligations or indebtedness will be outstanding. (Such projection may include reasonable projections of growth in revenues that reflect (i) changes in the rates, rentals and other charges for the operation of the System and changes in the Impact Fee rates to the extent the changes have been placed into effect prior to the date of such projection, (ii) any change in Pledged Revenues caused by any new addition to or expansion of the System placed into use and operation prior to the date of such projection, and (iii) any change in Pledged Revenues to be derived following the estimated completion date of, and on account of, additions or expansions of the System underway on the date of such projection or financed with the proceeds of such obligations or indebtedness.) Notwithstanding the foregoing, however, no such certificate of the Chief Financial Officer shall be required in connection with Subordinate Debt incurred to refund or refinance existing Subordinate Debt if the annual debt service with respect to such new Subordinate Debt shall not in any year exceed that for such year for the Subordinate Debt being refinanced or refunded and the final maturity date of the new Subordinate Debt is not later than that of the Subordinate Debt being refinanced or refunded. In calculating the Debt Service Requirement for purposes of this paragraph, for any debt bearing interest at a variable interest rate, the interest rate shall be assumed to be the highest of (i) the actual interest rate on such debt on the day of calculation, or if such debt is not yet outstanding, the initial rate (if established and binding) or (ii) if the debt has been outstanding for at least twelve months, the average rate of interest borne by such debt over the twelve months preceding the date of calculation, or (iii)(A) if interest on the debt is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer 25 Revenue Bond Index (or comparable index if no longer published) plus fifty (50) basis points, or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury obligations with comparable maturities plus fifty (50) basis points. Any other obligations or indebtedness payable from the Pledged Revenues on a parity with the Note shall include provisions substantially similar to this paragraph 3.02(e) and paragraph 3.01(h) hereof.

Section 3.03 Registration and Exchange of Note. The Note shall initially be owned by the Bank. The ownership of the Note may only be transferred, and the County will transfer the ownership of the Note, upon written request of the Bank (or successor holder) to the County specifying the name, address and taxpayer identification number of the transferee, and the County will keep and maintain at all times a record setting forth the identification of the owner of the Note. The Person in whose name the Note shall be registered shall be deemed and regarded the absolute owner thereof for all purposes, and payment of principal and interest on such Note shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid. The transfer of the ownership of the Note shall be subject to the restrictions set forth in the form of the Note.

Section 3.04 Note Mutilated, Destroyed, Stolen or Lost. In case the Note shall become mutilated, or be destroyed, stolen or lost, the County shall issue and deliver a new Note, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the owner furnishing the County proof of ownership thereof, an affidavit of lost or stolen instrument and indemnity reasonably satisfactory to the County and paying such expenses as the County may reasonably incur in connection therewith.

Section 3.05 Payment of Principal and Interest; Limited Obligation. The County promises that it will promptly pay the principal of and interest on and any prepayment or redemption premium on the Note, at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and of the Note, provided that the County may be compelled to pay the principal of and interest on the Note solely from the Pledged Revenues, and nothing in the Note, this Loan Agreement or the Resolution shall be construed as pledging any other funds or assets of the County to such payment or as authorizing such payment to be made from any other source. The County is not and shall not be liable for the payment of the principal of and interest on the Note or for the performance of any pledge, obligation or agreement for payment undertaken by the County hereunder, under the Note or under the Resolution from any property other than the Pledged Revenues. The Bank shall not have any right to resort to legal or equitable action to require or compel the County to make any payment required by the Note or this Loan Agreement from any source other than the Pledged Revenues.

Section 3.06 Pledge. The payment of the principal of, premium, if any, and interest on the Note shall be secured by an irrevocable lien on the Pledged Revenues, all in the manner and to the extent provided herein and in the Resolution. The County does hereby pledge such Pledged Revenues to the principal of, premium, if any, and interest on the Note and for all other payments provided for herein.

Section 3.07 Officers and Employees of the County Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Loan Agreement or the Note or for any claim based hereon or thereon or otherwise in respect thereof, shall be had against any officer, agent or employee, as such, of the County, past, present or future, it being expressly understood (a) that the obligation of the County under this Agreement and under the Note is limited as provided herein, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the officers, agents, or employees, as such, of the County, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and



all such rights and claims against, every such officer, agent, or employee, as such, of the County under or by reason of the obligations, covenants or agreements contained in this Agreement and under the Note, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Agreement and the issuance of the Note on the part of the County.

Section 3.08 Business Days. In any case where the due date of interest on or principal of the Note is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the holder of the Note.

Section 3.09 Tax Representations, Warranties and Covenants of the County. It is the intention of the County that the interest on the Note be and remain excluded from gross income of the holders and owners of the Note for federal income tax purposes. The County hereby covenants and represents that it has taken and caused to be taken and shall make and take and cause to be made and taken all actions that may be required of it for the interest on the Note to be and remain excluded from the gross income of the registered owner and holder thereof for federal income tax purposes to the extent set forth in the Code, and that to the best of its knowledge it has not taken or permitted to be taken on its behalf, and covenants that to the best of its ability and within its control, it shall not make or take, or permit to be made or taken on its behalf, any action which, if made or taken, would adversely affect such exclusion under the provisions of the Code.

The County acknowledges that the continued exclusion of interest on the Note from gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Sections 103(b)(2) and 148 of the Code. The County hereby acknowledges responsibility to take all reasonable actions necessary to comply with these requirements. The County hereby agrees and covenants that it shall not permit at any time or times any of the proceeds of the Note or other funds of the County to be intentionally used, directly or indirectly, to acquire or to replace funds which were used directly or indirectly to acquire any higher yielding investments (as defined in Section 148 of the Code), the acquisition of which would cause the Note to be an arbitrage bond for purposes of Sections 103(b)(2) and 148 of the Code. The County further agrees and covenants that it shall do and perform all acts and things necessary in order to assure that the requirements of Section 103(b)(2) and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code are met.

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

- (1) to make or cause to be made all necessary determinations and calculations of the excess of the amount earned on all non-purpose investments (as defined in Section 148(f)(6) of the Code) over the amount which would have been earned if such non-purpose investments were invested at a rate equal to the yield on the Note, plus any income attributable to such excess, but not including any amount exempted under Section 148(f) of the Code (the "Rebate Amount");

(2) to pay the Rebate Amount to the United States of America from legally available funds of the County at the times and to the extent required pursuant to Section 148(f) of the Code;

(3) to maintain and retain all records pertaining to the Rebate Amount and required payments of the Rebate Amount for at least six years after the final maturity of the Note or such other period as shall be necessary to comply with the Code;

(4) to refrain from taking any action that would cause the Note to be classified as "private activity bond" under Section 141(a) of the Code; and

(5) to refrain from taking any action that would cause the Note to become an arbitrage bond under Section 148 of the Code.

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

#### **ARTICLE IV**

#### **CONDITIONS OF LENDING**

The obligations of the Bank to lend hereunder are subject to the following conditions precedent:

Section 4.01 Representations and Warranties. The representations and warranties set forth in this Agreement and the Note are true and correct on and as of the date hereof.

Section 4.02 No Default. On the date hereof, the County shall be in compliance with all the terms and provisions set forth in this Agreement and the Note on its part to be observed or performed, and no Event of Default or any event that, upon notice or lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing at such time.

Section 4.03 Supporting Documents. On or prior to the date hereof, the Bank shall have received the following supporting documents, all of which shall be satisfactory in form and substance to the Bank (such satisfaction to be evidenced by the purchase of the Note by the Bank):

(a) The opinion of the attorney for the County and/or bond counsel to the County, regarding the due authorization, execution, delivery, validity and enforceability of the Resolution authorizing this Agreement and the Note, this Agreement and the Note;

(b) The opinion of Bond Counsel to the County to the effect that the interest on the Note is excluded from gross income for federal income tax purposes and the Note is not an item of tax preference under Section 57 of the Code;

(c) Such additional supporting documents as the Bank may reasonably request; and

(d) A copy of a written consent from the Department to the issuance by the County of the Note.

## **ARTICLE V**

### **FUNDING THE LOAN**

Section 5.01 The Loan. The Bank hereby agrees to lend to the County the Loan Amount to provide funds to be applied to the purposes described herein upon the terms and conditions set forth in this Agreement. The County agrees to repay the principal amount borrowed plus interest thereon upon the terms and conditions set forth in this Agreement and the Note.

Section 5.02 Description and Payment Terms of the Note. To evidence the obligation of the County to repay the Loan, the County shall make and deliver to the Bank the Note in the form attached hereto as Exhibit "B."

## **ARTICLE VI**

### **EVENTS OF DEFAULT**

Section 6.01 General. An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The County shall fail to make any payment of the principal of, premium, if any, or interest on the Loan when the same shall become due and payable or within three (3) Business Days thereafter; or

(b) The County shall default in the performance of or compliance with any term or covenant contained in this Agreement or the Note, other than a term or covenant a default in the performance of which or noncompliance with which is elsewhere specifically dealt with in this Section 6.01, which default or non-compliance shall continue and not be cured within thirty (30) days after written notice thereof to the County by the Bank; or

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

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

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



(f) The County 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 the State.

Section 6.02 Effect of Event of Default. Upon the occurrence of any Event of Default, the Bank may seek enforcement of and exercise all remedies available to it under any applicable law.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01 No Waiver; Cumulative Remedies. No failure or delay on the part of the Bank in exercising any right, power, remedy hereunder or under the Note shall operate as a waiver of the Bank's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy hereunder or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 7.02 Amendments, Changes or Modifications to the Agreement. This Agreement shall not be amended, changed or modified except in writing signed by the Bank and the County. The County agrees to pay all of the Bank's costs and reasonable attorneys' fees incurred in modifying and/or amending this Agreement at the County's request or behest.

Section 7.03 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 7.04 Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

Section 7.05 Term of Agreement. Except as otherwise specified in this Agreement, this Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the County in connection herewith shall be in full force and effect from the date hereof and shall continue in effect until as long as the Note is outstanding.

Section 7.06 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service; and five days after it is sent, if mailed,

certified mail, return receipt requested, postage prepaid. In each case notice shall be sent to the Notice Address.

Section 7.07 Applicable Law; Venue. This Agreement shall be construed pursuant to and governed by the substantive laws of the State. The County and the Bank waive any objection either might otherwise have to venue in any judicial proceeding brought in connection herewith lying in Sarasota County, Florida.

Section 7.08 Acknowledgment of Amendments. By acceptance of the Note, the registered owner thereof shall be deemed to have acknowledged the amendments to the Senior Resolution provided for by Resolution No. 2010-285, adopted by the County on December 8, 2010.

Section 7.09 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The County shall have no rights to assign any of its rights or obligations hereunder without the prior written consent of the Bank.

Section 7.10 No Third Party Beneficiaries. It is the intent and agreement of the parties hereto that this Agreement is solely for the benefit of the parties hereto and no person not a party hereto shall have any rights or privileges hereunder.

Section 7.11 Attorneys Fees. To the extent legally permissible, the County and the Bank agree that in any suit, action or proceeding brought in connection with this Agreement or the Note (including any appeal(s)), the prevailing party shall be entitled to recover costs and reasonable attorneys' fees from the other party.

Section 7.12 Entire Agreement. Except as otherwise expressly provided, this Agreement and the Note embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 7.13 Further Assurances. The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of carrying out the transactions contemplated by this Agreement.

Section 7.14 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE NOTE AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

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

SARASOTA COUNTY, FLORIDA

By:   
Chair, Board of County Commissioners

ATTEST:  
By:   
Deputy Clerk

BANC OF AMERICA PUBLIC CAPITAL  
CORP

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

#11539203\_v13  
38039-87

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

SARASOTA COUNTY, FLORIDA

ATTEST:

By: \_\_\_\_\_  
Chair, Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

BANC OF AMERICA PUBLIC CAPITAL  
CORP

By: Budget A. Wall  
Title: Authorized Agent

#11539203\_v13  
38039-87

EXHIBIT "A"

FORM OF NOTE

THIS NOTE IS SUBJECT TO TRANSFER RESTRICTIONS AND MAY NOT BE TRANSFERRED EXCEPT TO AN ACCREDITED INVESTOR WITHIN THE MEANING OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933 OR TO A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933.

SUBORDINATE UTILITY SYSTEM REVENUE NOTE,  
SERIES 2012

REGISTERED  
NO. R-1

\$ \_\_\_\_\_

SARASOTA COUNTY, FLORIDA (the "County"), a political subdivision of the State of Florida created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay, but solely from the sources hereinafter provided, to the order of Banc of America Public Capital Corp, or registered assigns (together with any other registered owner of this Note, hereinafter, the "Bank"), the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) or such lesser amount as shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate of 2.20% per annum based upon a year of 360 days consisting of twelve 30-day months. This Note is issued pursuant to Resolution No. 2012-224 of the County adopted on November 13, 2012 (the "Resolution") and in conjunction with a Loan Agreement, dated of even date herewith, between the County and the Bank (the "Loan Agreement") and is subject to all the terms and conditions of the Loan Agreement. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto, or referenced, in the Loan Agreement.

Principal of and interest on this Subordinate Utility System Refunding Revenue Note, Series 2012 (the "Note") are payable in immediately available funds constituting lawful money of the United States of America at such place as the Bank may designate in writing to the County.

The County shall pay the Bank interest on the outstanding principal balance of this Note in arrears, on April 1, 2013, and on the first day of each October and April thereafter, or, if any such day is not a Business Day, on the next succeeding Business Day, and on the Maturity Date (hereinafter defined). The principal amount of this Note shall be payable in \_\_\_\_\_ ( ) installments in the amounts and payable on the date provided on Schedule A attached hereto (and if any date shown on Schedule A is not a Business Day, such payment shall be made on the next succeeding Business Day, with the final payment of principal due on October 1, 20\_\_ (the "Maturity Date")).

All payments by the County pursuant to this Note shall apply first to accrued interest, then to other charges due the Bank, and the balance thereof shall apply to the principal sum due.

This Note may be prepaid at the option of the County, in whole or in part on any date (but if in part, in minimum amounts of \$100,000), upon at least seven (7) days' notice from the County to the registered owner hereof, on or prior to April 1, 2018, at a price of 101.25% of the principal amount being prepaid, plus interest accrued thereon to the date of payment and after April 1, 2018, at a price equal to 100% of the principal amount being prepaid, plus interest accrued thereon to the date of payment and without a premium or penalty. Any prepayments in part will be applied in inverse order against the principal installment payments set forth on Schedule A hereto.

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

This Note is payable solely from the Pledged Revenues to the extent provided in the Loan Agreement and subject to the pledge of the Pledged Revenues as more specifically provided in the Resolution and the Loan Agreement. Notwithstanding any other provision of this Note, the County is not and shall not be liable for the payment of the principal of and interest on this Note or otherwise monetarily liable in connection herewith from any property other than as provided in the Loan Agreement and the Resolution.

NOTWITHSTANDING ANYTHING HEREIN OR IN THE LOAN AGREEMENT OR THE RESOLUTION TO THE CONTRARY, THIS NOTE AND THE INTEREST HEREON DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OR PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, BUT SHALL BE PAYABLE SOLELY FROM THE MONEYS AND SOURCES DESIGNATED THEREFOR PURSUANT TO THE LOAN AGREEMENT. NEITHER THE FAITH AND CREDIT NOR ANY AD VALOREM TAXING POWER OF THE COUNTY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE OR OTHER COSTS INCIDENTAL HERETO.

All terms, conditions and provisions of the Loan Agreement are by this reference thereto incorporated herein as a part of this Note.

This Note may be transferred only upon the books of the County kept by the County upon surrender thereof at the principal corporate trust office of the County with an assignment duly executed by the registered owner, but only in the manner, subject to the limitations and upon payment of a sum sufficient to cover any tax, fee or governmental charge, if any, that may be imposed in connection with any such exchange. Upon any such transfer, there shall be executed in the name of the transferee, and the County shall deliver, a new registered Note in authorized denomination and in the same aggregate principal amount, series and subseries, maturity and interest rate as this Note. This Note may only be sold, assigned or otherwise transferred to an "accredited investor" as defined in Rule 501(A)(1), (2) or (3) under Regulation D of the Securities Act of 1933, as amended, or a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended.

By acceptance hereof, the registered owner hereof shall be deemed to have acknowledged the amendments to the Senior Resolution provided for by Resolution No. 2010-285 of the County, adopted on December 8, 2010.



This Note may be exchanged or transferred but only as provided in the Loan Agreement.

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

IN WITNESS WHEREOF, the County has caused this Note to be executed in its name as of \_\_\_\_\_, 2012.

SARASOTA COUNTY, FLORIDA

(SEAL)

By: \_\_\_\_\_  
Chair, Board of County Commissioners

ATTEST:

By: \_\_\_\_\_  
Deputy Clerk

SCHEDULE A

Payment Date

Payment Amount