

LOAN AGREEMENT  
between  
LEE COUNTY, FLORIDA  
and  
SUNTRUST BANK

Dated March 9, 2011

Relating to  
Lee County, Florida  
\$7,060,000  
Capital Revenue Refunding Note  
Series 2011

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## LOAN AGREEMENT

This LOAN AGREEMENT is made and entered into as of March 9, 2011, by and between the LEE COUNTY, FLORIDA (the "County"), and SunTrust, a state banking association organized and existing under the laws of the State of Georgia (the "Lender").

### WITNESSETH:

WHEREAS, the Board of County Commissioners of the County (the "Board") adopted Resolution No. 85-10-10 on October 23, 1985, as amended and supplemented from time to time (the "Master Resolution"), which provides for the issuance from time to time and the security for the County's Capital Revenue Bonds and Capital Refunding Revenue Bonds; and

WHEREAS, the County currently has outstanding pursuant to the Master Resolution its Lee County, Florida Capital Refunding Revenue Bonds, Series 1993B, its Lee County, Florida Capital Refunding Revenue Bonds, Series 1997A, its Lee County, Florida Capital Revenue Bonds, Series 2000 (the "Series 2000 Bonds"), its Lee County, Florida Capital and Transportation Facilities Refunding Revenue Bonds, Series 2003, its Lee County, Florida Capital Revenue Bonds, Series 2004 and its Capital Revenue Bonds, Series 2006 (collectively, the "Outstanding Obligations"); and

WHEREAS, the Series 2000 Bonds were issued in the original aggregate principal amount of \$18,200,000, of which \$7,460,000 currently remain outstanding (the "Outstanding Series 2000 Bonds"); and

WHEREAS, the Master Resolution provides for the issuance of Additional Parity Obligations (as defined in the Master Resolution), payable on a parity from the Pledged Revenues (as defined in the Master Resolution) with the Outstanding Obligations for the purpose of financing or refinancing capital improvements, upon meeting certain requirements set forth in the Master Resolution; and

WHEREAS, the County deems it to be in its best interest to issue its Lee County, Florida Capital Revenue Note, Series 2011 (the "Series 2011 Note") for the purpose of refunding the Outstanding Series 2000 Bonds to achieve debt service savings; and

WHEREAS, the County adopted Resolution No. 11-03-05 on March 1, 2011 (the "Supplemental Resolution" and together with the Master Resolution, the "Resolution"), which authorized the refunding of the Outstanding Series 2000 Bonds and the issuance of the Series 2011 Note pursuant to the Master Resolution to effect such refunding; and

WHEREAS, the County requested proposals from various lending institutions to refinance the Outstanding Series 2000 Bonds; and

WHEREAS, pursuant to the Lender's Proposal, a copy of which is attached hereto as Exhibit B, the Lender has agreed to lend the County the aggregate principal amount of up to \$7,150,000 to refund the Outstanding Series 2000 Bonds; and

WHEREAS, the Lender's Proposal was determined to have been the most favorable terms and to be the most responsive proposal submitted; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**Section 1. Definitions.** Capitalized terms used herein shall have the meaning ascribed to such terms in the Resolution. In addition, the following terms shall have the following meanings herein, unless the text otherwise expressly requires:

"Board" means the Board of County Commissioners of Lee County, Florida.

"Business Day" means any day of the year other than a day on which the Lender or the County are lawfully closed for business.

"Chairman" means the Chairman of the Board, or in his absence, the Vice Chair or other member of the Board designated by the Chairman.

"Clerk" means the Clerk of the Circuit Court of Lee County, Florida, as ex officio Clerk to the Board, or his designee.

"Closing Date" means March 9, 2011.

"Default" means a default as described in Section 5.05 of the Resolution.

"Disbursement Date" means the Closing Date.

"Interest Rate" means the interest rate on the Note calculated as provided on Exhibit A hereto.

"Lender" means SunTrust Bank and its successors and permitted assigns.

"Lender's Proposal" means the Proposal of the Lender, a copy of which is attached hereto as Exhibit B.

"Loan" means the loan by the Lender to the County for the purpose of refinancing the Outstanding Series 2000 Bonds.

"Maturity Date" means the date on which all outstanding principal of the Note is due as shown on Exhibit A hereto.

"Paying Agent" and/or "Registrar" means the Clerk of the County.

“Payment Date” means the dates on which principal and interest on the Series 2011 Note is due, as shown on Schedule 1 to Exhibit A, hereto.

“Person” or words importing persons, means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

“Prepayment Date” means any date of prepayment of all or a portion of the principal of the County, whether in whole or in part.

“Principal Amount” means the outstanding aggregate principal amount of the Series 2011 Note, which shall not exceed the principal amount of Seven Million Sixty Thousand Dollars (\$7,060,000).

“Refunded Bonds” means the County’s outstanding Capital Revenue Bonds Series 2000.

“Regulations” means the Income Tax Regulations promulgated by the Internal Revenue Service under Sections 103 and 141 through 150 of the Code.

“Series 2011 Note” means the Capital Revenue Refunding Note, Series 2011 of the County in substantially the form attached hereto as Exhibit A.

**Section 2. Interpretation.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof (a) have been negotiated between the County and the Lender; (b) shall not be construed strictly in favor of or against either party hereto; and (c) shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

### **Section 3. The Loan.**

A. Loan. The Lender hereby makes and the County hereby accepts the Loan, upon the terms and conditions set forth herein.

B. Disbursement of Proceeds. Proceeds of the Loan shall be made available on the Closing Date made by the Lender to the County by deposit of the amount thereof to or for the order of the County by 2 p.m. on the Closing Date in immediately available funds.

**Section 4. Description of Series 2011 Note.** The obligation of the County to repay the Loan shall be evidenced by the Series 2011 Note. The Series 2011 Note shall be dated as of the date of initial delivery thereof; shall mature as set forth in the Note; shall be in registered form; and shall bear interest from the date funds are advanced thereunder until payment of the principal amount thereof, at the Interest Rate. Interest shall be payable as set forth on Exhibit A, calculated on the basis of a 360-day year comprised of twelve 30-day months.

**Section 5. Execution of Series 2011 Note.** The Series 2011 Note shall be executed in the name of the County by the Chairman and attested by the Clerk, and its corporate seal or a facsimile thereof shall be affixed thereto or reproduced thereon. The Series 2011 Note may be signed and sealed on behalf of the County by any person who at the actual time of the execution of such Series 2011 Note shall hold the appropriate office with the County, although at the date thereof the person may not have been so authorized. The Series 2011 Note will be executed by the manual signatures of the Chairman and the Clerk. The manual attestation of the Series 2011 Note by the Clerk shall, to the extent necessary, serve as the authentication of the Series 2011 Note for purposes of the Resolution.

**Section 6. Registration and Transfer of Series 2011 Note.** The Series 2011 Note shall be and shall have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and each Registered Owner, in accepting the Series 2011 Note, shall be conclusively deemed to have agreed that such Series 2011 Note shall be and have all of the qualities and incidents of negotiable instruments thereunder.

There shall be a Registrar for the Series 2011 Note, who is hereby designated to be the Clerk, who shall be responsible for maintaining the Register. The person in whose name ownership of the Series 2011 Note is shown on the Register shall be deemed the Registered Owner thereof by the County and the Registrar, who may treat the Registered Owner as the absolute owner of the Series 2011 Note for all purposes, whether or not the Series 2011 Note shall be overdue, and any notice to the contrary shall not be binding upon the County or the Registrar.

Ownership of the Series 2011 Note may be transferred only upon the Register. Upon surrender to the Registrar for transfer or exchange of the Series 2011 Note accompanied by an assignment or written authorization for exchange, whichever is applicable, duly executed by the Registered Owner or its attorney duly authorized in writing, the Registrar shall deliver in the name of the Registered Owner or the transferee or transferees, as the case may be, a new fully registered Series 2011 Note of the same amount, maturity and interest rate as the Series 2011 Note surrendered.

The Series 2011 Note presented for transfer, exchange, redemption or payment (if so required by the County or the Registrar) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the County or the Registrar, duly executed by the Registered Owner or by his duly authorized attorney.

The County and the Registrar may charge the Registered Owner a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer following the delivery of such Series 2011 Note. The Registrar or the County may also require payment from the Registered Owner or his transferee, as the case may be, of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Series 2011 Note shall be delivered.

The new Series 2011 Note delivered upon any transfer or exchange shall be a valid obligation of the County, evidencing the same debt as the Series 2011 Note surrendered, shall be secured under this Agreement, and shall be entitled to all of the security and benefits hereof to the same extent as the Series 2011 Note surrendered.

Whenever the Series 2011 Note shall be delivered to the Registrar for cancellation, upon payment of the principal amount thereof, or for replacement, transfer or exchange, such Series 2011 Note shall be cancelled and destroyed by the Registrar, and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the County.

Notwithstanding the foregoing, the Series 2011 Note may not be transferred by the Lender without the prior written consent of the County, which consent shall not be unreasonably withheld.

**Section 7. Series 2011 Note Mutilated, Destroyed, Stolen or Lost.** In case the Series 2011 Note shall be mutilated, or be destroyed, stolen or lost, upon the Registered Owner furnishing the Registrar satisfactory indemnity and complying with such other reasonable regulations and conditions as the County may prescribe and paying such expenses as the County may incur, the Registrar shall issue and deliver a new Series 2011 Note of like tenor as the Series 2011 Note so mutilated, destroyed, stolen or lost, in lieu of or substitution for the Series 2011 Note, if any, destroyed, stolen or lost, or in exchange and substitution for such mutilated Series 2011 Note, upon surrender of such mutilated Series 2011 Note, if any, to the Registrar and the cancellation thereof; provided however, if the Series 2011 Note shall have matured or be about to mature, instead of issuing a substitute Series 2011 Note, the County may pay the same, upon being indemnified as aforesaid, and if such Series 2011 Note be lost, stolen or destroyed, without surrender thereof. Any Series 2011 Note surrendered under the terms of this Section 7 shall be cancelled by the Registrar.

Any such new Series 2011 Note issued pursuant to this shall constitute an original, additional contractual obligation on the part of the County whether or not, as to the new Series 2011 Note, the lost, stolen or destroyed Series 2011 Note be at any time found by anyone, and such new Series 2011 Note shall be entitled to equal and proportionate benefits and rights as to security for payment to the same extent as the Series 2011 Note originally issued hereunder.

**Section 8. Form of Series 2011 Note.** The Series 2011 Note shall be in substantially the form of Exhibit A hereto, with such variations, omissions and insertions as may be necessary, desirable and authorized or permitted by this Agreement.

**Section 9. Representations and Covenants.** The County represents to and covenants with the Lender that:

A. Organization. The County is a political subdivision of the State of Florida, duly organized and existing under the Act and other laws of the State of Florida.

B. Authorization of Agreement and Related Documents. The County has the power and has taken all necessary action to authorize the execution and delivery of and the performance

by the County of its obligations under, this Agreement, the Resolution and the Series 2011 Note in accordance with their respective terms. This Agreement and the Series 2011 Note have been duly executed and delivered by the County and, together with the Resolution, are valid and binding obligations of the County, enforceable against the County in accordance with their respective terms, except to the extent that such enforcement may be limited by laws regarding bankruptcy, insolvency, reorganization or moratorium applicable to the County or by general principles of equity regarding the availability of specific performance.

C. Litigation. The terms of the Series 2011 Note, the Resolution and of this Agreement do not conflict with or constitute a violation of the terms of any judgment, decree, indenture, loan agreement, debt instrument, or other agreement to which the County is a party or by which the County is bound. There is no litigation pending, or, to the best knowledge of the County, threatened, which seeks to restrain or enjoin the execution and delivery of the Series 2011 Note or this Agreement, the pledging by the County of the Pledged Revenues or the performance by the County of its obligations hereunder or under the Resolution, or the collection and application of the Pledged Revenues.

D. Delivery of Audited Financial Statements and Annual Budget. The County agrees to deliver to the Lender a copy of its audited annual financial statements within one-hundred eighty (180) days of the end of each fiscal year and shall also deliver to the Lender a copy of its annual budget within 30 days of its adoption by the Board.

#### **Section 10. Applicability of Resolution; Security for Series 2011 Note.**

Except as otherwise expressly set forth herein, all the covenants, pledges and conditions in the Resolution shall be applicable to the Series 2011 Note. The terms of this Loan Agreement shall be deemed to be supplemental to and controlling of the provisions of the Resolution with respect to the Series 2011 Note. The Series 2011 Note shall be secured on a parity with and shall rank equally as to lien on and source and security for payment from the Pledged Revenues with the Outstanding Obligations, and shall constitute "Bonds" within the meaning of the Resolution; provided, however, that County Building and Zoning Permits and Fees (as such phrase is defined in the Resolution) may be used to pay debt service on the Series 2011 Note only to the extent such payment therefrom is permissible under applicable law, and further provided that the provisions of Section 5.11(2) of the Resolution shall be applicable and shall be available for the benefit of the Lender only to the extent that such provisions are lawful under applicable law. The County is not in default in performing any of the covenants and agreements under the Resolution and all payments required by the Resolution to be made to the funds and accounts established by the Resolution have been made to the full extent required.

The Series 2011 Note shall be a limited obligation of the County, payable solely from the Pledged Revenues and the Non-Ad Valorem Funds (all as defined in the Resolution) in the manner provided in the Resolution, as supplemented hereby. The Series 2011 Note shall not constitute a general obligation, or a pledge of the faith, credit or taxing power of the County, the State of Florida, or any political subdivision thereof, within the meaning of any constitutional or statutory provisions. Neither the State of Florida, nor any political subdivision thereof, including the County shall be obligated (1) to exercise its ad valorem taxing power in any form on any real



or personal property of or in the County to pay the principal of the Series 2011 Note, the interest thereon, or other costs incidental thereto, or (2) to pay the same from any other funds of the County except from the Pledged Revenues and the Non-Ad Valorem Funds in the manner provided in the Resolution.

The County shall be permitted to make amendments to the Resolution as provided therein, provided, however, that no such amendment that affects the Lender's rights hereunder or thereunder, the covenants of the County with respect to the Series 2011 Note, or the security for the Series 2011 Note shall be effective with respect to the Lender or the Series 2011 Note unless the Lender shall consent to such amendment, which consent shall not be unreasonably withheld.

#### **Section 11. Conditions Precedent.**

A. Conditions Precedent to Loan. The obligation of the Lender to make the Loan is subject to the satisfaction of each of the following conditions precedent on or before the Closing Date:

(1) Action. The Lender shall have received a copy of the Resolution certified as complete and correct as of the closing date, together with an executed Agreement, the executed Series 2011 Note, and the customary closing certificates.

(2) Incumbency. The Lender shall have received an incumbency certificate of the County in respect of each of the officers who is authorized to sign this Agreement, the Series 2011 Note and the related financing documents on behalf of the County.

(3) Opinion of Counsel to the County. The Lender shall have received a written opinion of counsel to the County addressing matters relating to (1) the corporate existence of the County; (2) the due adoption of the Resolution; (3) the due authorization and execution and enforceability of this Agreement and the Series 2011 Note and the related financing documents; and (4) the absence of litigation against the County relating to its existence or powers, or the proceedings for the authorization and issuance of the Series 2011 Note, in form and substance satisfactory to the Lender.

(4) Opinion of Bond Counsel. The Lender shall have received an approving opinion of Bond Counsel with respect to the exclusion from gross income of interest on the Series 2011 Note or, alternatively, a letter from Bond Counsel authorizing the Lender to rely on the approving opinion of Bond Counsel delivered to the County in respect to the Series 2011 Note to the same extent as if such opinion were addressed to the Lender. The Lender shall also receive an opinion that the Refunded Bonds have been defeased.

(5) Representations and Warranties. The representations and warranties made by the County herein and in the Resolution shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date; no Default shall have occurred and be continuing as of the Closing Date or will result from the consummation of the Loan; and the Lender shall have received a certificate from the County to the foregoing effect.

(6) Other Documents. The Lender shall have received such other documents, certificates and opinions as the Lender or its counsel shall have reasonably requested.

**Section 12. Application of Proceeds of Series 2011 Note.** The proceeds derived from the Series 2011 Note shall be applied by the County as follows:

(A) an amount, together with other available moneys of the County, sufficient to pay the principal of, redemption premium, if any, and interest on the Outstanding Series 2000 Bonds shall be paid to the paying agent for the Series 2000 Bonds for deposit into a separate account within the Sinking Fund to be held in irrevocable trust by the paying agent for the sole benefit of the holders of the Series 2000 Bonds until applied by the paying agent to pay the principal of, redemption premium, if any, and interest on the Outstanding Series 2000 Bonds on the redemption date therefore as further directed by the County.

(B) the remaining proceeds of the Series 2011 Note shall be applied by the County to the payment of issuance expenses of the Series 2011 Note or other costs of refunding the Outstanding Series 2000 Bonds.

**Section 13. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, delivered by telecopier, mailed by registered or certified mail, postage prepaid, or delivered by courier service to the parties at the following addresses:

County: Lee County, Florida  
2155 Second Street  
Fort Myers, Florida 33901  
Attention: County Attorney

Lender: SunTrust Banks, Inc.  
12751 New Brittany Boulevard  
2nd Floor - Commercial Banking  
Fort Myers, FL 33907

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Communication via telecopier shall be confirmed by delivery by hand, mail, or courier, as specified above, of an original promptly after such communication by telecopier.

**Section 14. No Recourse.** No recourse shall be had for the payment of the principal of and interest on the Series 2011 Note or for any claim based on the Series 2011 Note or on this Agreement, against any present or former member or officer of the Board, the County or any person executing the Series 2011 Note or the Agreement.

**Section 15. Payments Due On Saturdays, Sundays and Holidays.** In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Agreement, shall be other than a Business Day, then such

payment or performance shall be made on the succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment.

**Section 16. Amendments, Changes and Modifications.** This Agreement may be amended only in writing signed by both parties hereto.

**Section 17. Binding Effect.** To the extent provided herein, this Agreement shall be binding upon the County and the Lender and shall inure to the benefit of the County and the Lender and their respective successors and assigns.

**Section 18. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 19. Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 20. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

In Witness Whereof, the parties hereto have duly executed this Agreement as of the date first above written.

(SEAL)

LEE COUNTY, FLORIDA

By: *John E. Manning*  
Vice Chairman of the Board of the  
County Commissioners

ATTEST:

By: *Charity Green*  
Clerk of the Circuit Court, ex-officio  
Clerk to the Board of County Commissioners



APPROVED AS TO FORM AND  
CORRECTNESS:

By: *Gregory S. Hoge*

[Lender's Signature Page to Follow]

SUNTRUST BANK

By:   
Nicholas Ayotte, Assistant Vice  
President

[End of Page]

EXHIBIT A  
FORM OF NOTE

No. R-1

\$7,060,000

LEE COUNTY, FLORIDA  
CAPITAL REVENUE  
REFUNDING NOTE  
SERIES 2011

RATE OF INTEREST  
2.135%

FINAL MATURITY DATE  
October 1, 2015

DATE OF ISSUE  
March 9, 2011

REGISTERED OWNER: SUNTRUST BANK

PRINCIPAL AMOUNT: Seven Million Sixty Thousand Dollars (\$7,060,000)

KNOW ALL MEN BY THESE PRESENTS, that Lee County, Florida (the "County"), for value received, hereby promises to pay to the Registered Owner designated above, or registered assigns, solely from the special funds hereinafter mentioned, on or before the Maturity Date specified above, the Principal Amount shown above, together with interest thereon at the Rate of Interest set forth above from the date of issue, or from the most recent Payment Date to which interest has been paid, whichever is applicable, until payment of Principal Amount. Payment of the Principal Amount shall be due and payable in annual installments accordance with Schedule 1 attached hereto, by wire transfer or other medium acceptable to the County and to such Registered Owner. Accrued interest on the outstanding principal of this Note shall be due and payable on the 1st Business Day of every April and October, beginning October 1, 2011. The principal of, premium, if any, and interest on this Note are payable in lawful money of the United States of America.

The Rate of Interest is subject to adjustment as proved in Schedule 2 attached hereto.

This Note is authorized under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including particularly, Chapter 125, Florida Statutes, and other applicable provisions of law, and a resolution duly adopted by the Board of County Commissioners of the County on October 23, 1985, as amended and supplemented, and as particularly amended and supplemented by Resolution No. 11-03-05 adopted on March 1, 2011 (collectively, the "Resolution"), and a Loan Agreement dated March 9, 2011 (the "Loan Agreement") between the County and SunTrust Bank (the "Lender"), and is subject to all the

EXHIBIT A-1

terms and conditions of such Resolution and Loan Agreement. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Resolution or the Loan Agreement, as applicable.

This Note and the interest thereon are payable solely from, and secured by a lien upon and pledge of, the Pledged Revenues on a parity with the County's outstanding Capital Refunding Revenue Bonds, Series 1993B, Capital Refunding Revenue Bonds, Series 1997A, Capital and Transportation Facilities Refunding Revenue Bonds, Series 2003, Capital Revenue Bonds, Series 2004, and Capital Revenue Bonds Series 2006, all in the manner provided in the Resolution; provided, however, that any portion of debt service on such Bonds shall be paid from Building and Zoning Permits and Fees only to the extent that such payment therefrom is legally permissible. The County may issue additional obligations secured on a parity with this Note as to the lien on and pledge of the Pledged Revenues in accordance with the provisions of the Resolution.

Pursuant to the Resolution, the County has covenanted to appropriate in its annual budget, by amendment, if necessary, such amount of its Non-Ad Valorem Funds, which are not otherwise pledged, restricted or encumbered, as shall, be necessary to make up any deficiencies in the Reserve Account existing on the first day of each Fiscal Year in the event the Pledged Revenues shall be inadequate for such purpose. Such covenant to appropriate from Non-Ad Valorem Funds is not a pledge by the County of such Non-Ad Valorem Funds and is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem heretofore or hereafter entered into (including the payment of debt service on bonds or other debt instruments) and also to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law.

This Note does not constitute a general obligation or indebtedness of the County as a "bond" within the meaning of any constitutional, statutory or charter provision or limitation, and it is expressly agreed by the Registered Owner of this Note that such Registered Owner shall never have the right to compel the exercise of the ad valorem taxing power of the County, or the taxation of any property of or in the County, for the payment of the principal of and interest on this Note or for the making of any sinking fund, reserve or other payments provided for in said Resolution and Loan Agreement.

This Note is issued to refund certain outstanding obligations of the County under the Resolution, and is subject to all the terms and conditions of the Resolution and the Loan Agreement.

The Note is issuable only as a single fully registered obligation in a denomination equal to the principal amount thereof. This Note is transferable in whole and only with the consent of the County which consent shall not be unreasonably withheld. The County and the Registrar and Paying Agent may deem and treat the Registered Owner as the absolute owner of this Note for the purpose of receiving payment of or on account of principal or interest and for all other purposes, and neither the County nor the Registrar and Paying Agent shall be affected by any notice to the contrary.

## EXHIBIT A-2

The County has entered into certain covenants with the Registered Owners of the Note, the terms of which reference is made to the Resolution and the Loan Agreement. In particular, the County has reserved the right to issue additional obligations under the Resolution payable from and secured on a parity with the Note, upon compliance with certain conditions set forth in the Resolution. The County has also reserved the right to defease the lien of the Note upon making provision for payment of the Note as provided in the Resolution.

Reference is made to the Resolution and the Loan Agreement for a more complete description of the provisions, among others, with respect to the nature and extent of the security for the Note, the rights, duties and obligations of the County, the Registrar and Paying Agent and the Registered Owners, and the terms and conditions upon which the Note is issued and secured. The Registered Owner of this Note, by acceptance hereof, assents to all of the provisions of the Resolution and the Loan Agreement.

This Note may be prepaid at anytime without penalty or premium, provided that that County provides the Registered Owners not less than five (5) Business Days written notice. Notice of such prepayment shall be given in the manner provided in the Resolution or Loan Agreement.

This Note is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code-Investment Securities Laws of the State of Florida, and the Registered Owner and each successive Registered Owner of this Note, shall be conclusively deemed by his acceptance hereof to have agreed that this Note shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Note, exist, have happened and have been performed in regular and due form and time as required by the Laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Note, does not violate any constitutional or statutory limitation.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by manual signature by the authorized representative of the Registrar and Paying Agent.



IN WITNESS WHEREOF, Lee County, Florida has issued this Note has caused the same to be executed by its Vice Chairman of the Board, either manually or with his facsimile signature, and the corporate seal of said County or a facsimile thereof to be affixed hereto or imprinted or reproduced hereon and attested by the manual or facsimile signature of the Clerk of the County, all as of the 9th day of March, 2011.

LEE COUNTY, FLORIDA

(SEAL)

By: \_\_\_\_\_  
Vice Chairman of the Board of County  
Commissioners

ATTEST:

By: \_\_\_\_\_  
Clerk of the Circuit Court, ex-officio  
Clerk of the Board of County Commissioners

EXHIBIT A-4

SCHEDULE 1 TO NOTE  
AMORTIZATION SCHEDULE

<u>Date</u>	<u>Principal</u>
10-1-2011	\$ 1,500,000
10-1-2012	1,345,000
10-1-2013	1,375,000
10-1-2014	1,405,000
10-1-2015	1,435,000

EXHIBIT A-5

## SCHEDULE 2 TO NOTE

### ADJUSTMENT TO INTEREST RATE

#### **Adjustment to Tax-Exempt Interest Rate**

(a) Change in Maximum Corporate Tax Rate. If the maximum federal corporate income tax rate for the Lender during any period in which interest is accruing, shall be other than 35%, then the interest on the Note during such period shall be modified by multiplying the interest on the Note (as adjusted) by a fraction equal to  $(1-A)/.65$  where A equals the maximum marginal corporate income tax rate then in effect.

(b) Other Change in Tax Laws. If the tax laws or regulations are amended to cause the interest on the Note to be taxable, to be subject to a minimum tax or an alternative minimum tax or to otherwise change the after tax yield on the Note to the Registered Owner (other than a change described in (a) above or because of a Determination of Taxability) then the interest rate on the Note shall be adjusted to cause the yield on the Note, after payment of any increase in tax, to equal what the yield on the Note would have been in the absence of such change or amendment in the tax laws or regulations.

The above adjustments shall be cumulative, but in no event shall the interest on the Note exceed the lesser of the maximum permitted by law or the Taxable Rate set forth below. The above adjustments to the interest rate on the Note shall be effective on the effective date of the applicable change in the tax laws or regulations. All tax rates and interest rates are expressed as annual rates. However, proper partial adjustment shall be made if the tax law change is effective after the first day of the Registered Owner's tax year or if the interest on the Note does not accrue for the entire tax year of the Registered Owner. Adjustments which create a circular calculation because the interest on the Note is affected by the calculation shall be carried out sequentially, adjusting the interest on the Note accordingly in each successive calculation using as the new value the adjusted interest rate on the Note, until the change on the interest rate on the Note caused by the next successive calculation of the adjustment is de minimis. If more than one of paragraphs (a) or (b) apply, then the interest on the Note shall be adjusted in the order in which listed above.

#### **Taxable Rate**

Notwithstanding the foregoing, in the event of (i) a "Determination of Taxability" (as hereinafter defined), or (ii) state or federal tax laws or regulations are amended to cause the interest on the Note to be taxable, to be subject to a minimum tax or an alternative minimum tax or decrease the after tax yield on the Note to the Registered Owner, the interest rate on the Note shall be adjusted to cause the yield on the Note, after payment of an increase in tax, to equal what the yield on the Note would have been in the absence of such Determination of Taxability or change or amendment in tax laws or regulations, but in no event higher than 3.07% (the "Taxable Rate"), from and after and retroactively to the date as of such event, and the Registered Owner shall be entitled to such additional interest on this Note. For purposes hereof, "Determination of Taxability" means the circumstance of the interest on the Note becoming includable for federal

income tax purposes in the gross income of the Registered Owner as a consequence of any act, omission or event whatsoever and regardless of whether the same was within or beyond the control of the County. A Determination of Taxability will be deemed to have occurred upon (i) the receipt by the County or the Registered Owner of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that the interest on the Note is includable in the gross income of the Registered Owner; (ii) the issuance of any public or private ruling of the Internal Revenue Service that the interest on the Note is includable in the gross income of the Registered Owner; or (iii) receipt by the County or Registered Owner of an opinion of a Bond Counsel that the interest on the Note has become includable in the gross income of the Registered Owner for federal income tax purposes. For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Note is deemed includable in the gross income of the Registered Owner.

In no event, however, shall interest be charged or paid in an amount in excess of the maximum interest rate permitted to be paid under applicable law.

#### **Capital Adequacy.**

If, after the issuance date of the Series 2011 Note, the Lender shall have reasonably determined that the adoption or implementation of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency having jurisdiction over the Lender (collectively, a "Change"), has the effect of reducing the rate of return to the Lender on the Series 2011 Note, as a direct consequence of its ownership of the Series 2011 Note, to a level below that which the Lender could have achieved but for such Change by an amount deemed by the Lender to be material, then, promptly upon demand by the Lender, the County hereby agrees to pay the Lender such additional amount or amounts as will compensate the Lender for such reduction.

Notwithstanding the foregoing, the following provisions shall apply and control the increased payments to the Lender hereunder: (1) no compensation shall be due the Lender for any Change enacted, adopted, implemented or announced, as applicable, prior to the date of this Agreement, (2) no compensation shall be due the Lender from the County if the Lender is not also assessing its other governmental loan customers such amounts on a non-discriminatory basis, (3) the Lender shall provide to the County a certificate of the Lender explaining in reasonably sufficient detail the basis for such claim for compensation under this subsection and setting forth the method by which the amount of such claim was calculated and (4) any request for compensation to the Lender shall be prospective only, it being the intent of the parties that the County shall always have the opportunity to prepay the Series 2011 Note in order to avoid making any payment under this provision.

EXHIBIT B  
LENDER'S PROPOSAL LETTER



Nicholas Ayotte, AVP  
Institutional & Governmental Banking  
12751 New Brittany Boulevard  
Fort Myers, Florida 33907  
Tel: 239-277-2697  
Email: [nicholas.ayotte@suntrust.com](mailto:nicholas.ayotte@suntrust.com)

**February 17, 2011**

**Mr. Jim Lewin  
Lee County Budget Services  
2115 Second Street, 4th Floor  
Fort Myers, FL 33901**

**Ms. Kelly Ryman & Craig Dunlap  
Dunlap & Associates, Inc  
1146 Keyes Avenue  
Winter Park, FL 32789**

**Re: Commitment Letter Update to the Letter of Proposal dated February 9, 2011 -  
\$7,150,000 Non Bank Qualified Capital Revenue Refunding Bank Loan, Series 2011 -  
(Series 2000)**

Dear Mr. Lewin, Mr. Dunlap and Ms. Ryman,

On behalf of SunTrust Bank (the "Bank"), I am pleased to present this commitment to the Lee County, Florida (the "Borrower") for a non-bank qualified tax exempt bank loan in the aggregate amount of up to seven million one hundred fifty thousand and 00/100 dollars (\$7,150,000.00). It is our understanding that the proceeds from the Revenue Note, Series 2011 will be used to refund the Series 2000 Bonds for level savings.

Although the following provisions, terms and conditions are intended to be comprehensive, they are not necessarily inclusive of all the anticipated terms that will be applicable to the credit nor does it purport to summarize all of the conditions, covenants, representations, warranties, events of default or other provisions that may be contained in documents required to consummate this financing. All of such terms will be set forth in the final, definitive loan documents, and all such terms must be acceptable to the Bank and its counsel. This financing proposal is contingent upon the accuracy of all facts, statements and financial information submitted to the Bank by the Borrower and is conditioned upon the terms outlined below.

**Borrower:** Lee County, Florida

**Lender:** SunTrust Bank

**Amount:** Up to \$7,150,000.00

**Facility Type:** Non-Bank Qualified Tax Exempt Bank Loan

**Maturity:** October 1, 2015

**Repayment Terms:** Principal payments payable annually on Oct 1 of each year commencing on Oct 1, 2011 and with a final payment on Oct 1, 2015.  
  
Interest payments payable semiannually on April 1 and Oct 1 of each year with the first interest payment on Oct 1, 2011.

**Prepayment:** Rates listed allow the Borrower to prepay the bonds at any time without penalty and provided the Borrower notifies SunTrust in writing with no less than 5 business days notice

**Purpose:** The proceeds of the loan will be used to refund existing Series 2000 Bonds. The Series 2000 Bonds were issued to provide funds to pay the costs of financing the (1) acquisition, construction, improve and renovate a correctional facility known as the Ortiz Correctional Facility (2) construction of the Juvenile Assessment Center, (3) expand the County's Emergency Operations and (4) and paying expenses relating to the issuance and sale of the Series 2000 Bonds. The Bonds are currently callable as of October 1, 2010 at 101%.

**Security/Collateral:** The Series 2011 Bank Loan will be secured on parity with the Capital Revenue Bonds, Series 1993B, 1997A, 2003, 2004 and 2006. This Bank Loan (as well as other outstanding parity obligations) will be secured by a pledge of specific non-ad valorem revenues sources of the County, subject to certain limitations as provided in the Resolution and Loan Agreement hereinafter discussed. They are Ambulance Service Receipts, Building and Zoning Permits and Fees, Data Processing Fees, Excess County Officer Fees, Franchise Fees, Guaranteed Entitlement Funds, Investment Earnings, License Fees, specific Pledged gas Taxes and Sales Tax.

**Proposed Pricing:** \$7,150,000.00 Tax Exempt Non-Bank Qualified Bank Loan with a rate of (30/360):

**30 Day Rate Locked:** 2.135%

**45 Day Rate Locked:** 2.156%

**Note:** Depending upon corresponding rate option chosen, this rate is locked for a period of either 30 or 45 days from the date of this proposal. The Bank reserves the right to modify, extend or completely withdraw this commitment after 30 or 45 days from February 8, 2011.

**Legal Fees:** Borrower will be responsible for Bank Counsel Fees. Subject to County approval, Bank Counsel will be Mr. Duane Draper with Bryant Miller Olive. The Bank Counsel review only fee will be \$4,000 and is due in full on or before the settlement date.

**RATINGS AS OF January 21, 2011**

	Moody's Investors	Standard & Poor's	Fitch	DBRS
<b>Corporate Ratings</b>				
<u>Long Term Debt Ratings</u>				
Senior Debt	Baa1	BBB	BBB+	A (low)
Subordinated Debt	Baa2	BBB-	BBB	BBB (high)
<u>Short Term</u>				
Commercial Paper	P-2	A-2	F2	R-1 (low)
<b>Bank Ratings</b>				
<u>Long Term Debt Ratings</u>				
Senior Debt	A3	BBB+	BBB+	A
Subordinated Debt	Baa1	BBB	BBB	A (low)
<u>Short Term</u>				
Ratings Outlook:	Stable	Stable	Stable	Stable

**SunTrust History:** Please refer to [www.suntrust.com](http://www.suntrust.com) for full details

**References:** City of Milton - \$1,542,190 - Utility Revenue Bond, Ms. DeWitt Nobles, City Clerk, 850-983-5400

City of Venice - \$1,200,000 – Stormwater and Drainage Revenue Bonds Refunding, Jeffrey Snyder, 941-486-2626



Florida State University Schools - \$18,144,000 Bond Refunding

City of Fernandina Beach, Florida - \$6,596,000 - CAPITAL IMPROVEMENT REFUNDING REVENUE NOTES, SERIES 2010, Patti Clifford, 904/277-7311

Alachua County, Florida - \$15,000,000 - 2010 Limited GO Bank Loan – Bank Qualified, Todd Hutchison, 352-374-3605

**Covenants and Conditions**

- A) All matters relating to this loan, including all instruments and documents required, are subject to the Bank's policies and procedures in effect, applicable governmental regulations and/or statutes, and approval by the Bank and the Bank's Counsel.
- B) Borrower shall submit annual financial statements within 180 days of fiscal year end, together with an annual budget within 30 days of adoption, together with any other information the Bank may reasonably request.
- C) A written opinion from Borrower's Counsel, in form and substance acceptable to the Bank and Bank's Counsel, that all documents are valid, binding and enforceable in accordance with their terms, that execution and delivery of said documents has been duly authorized, and addressing such other matters as the Bank and the Bank's Counsel deem appropriate.
- D) The interest rates quoted herein take into consideration a corporate tax rate of 35%. In the event of a change in the maximum corporate tax rate, the Bank shall have the right to adjust the interest rate in order to maintain the same after tax yield.
- E) The Bank shall have the right to adjust the tax-exempt interest rate in order to maintain the same after tax yield if any amendments to existing law are enacted which would adversely affect the Bank's after tax yield.
- F) The Borrower shall comply with and agree to such other covenants, terms, and conditions that may be reasonably required by the Bank and its counsel and are customary in taxable and/or tax exempt financings of this nature. These covenants would include, but are not to be limited to, covenants regarding compliance with laws and regulation, remedies in the event of default.
- G) The "Non-Bank-Qualified" interest rate quoted herein assumes the obligation is not a "qualified tax-exempt obligation" as defined in Section 265(b)(3) of the Internal Revenue Service Code.
- H) Security, Add Bonds Tests (as outlined in the email from Kelly Ryman dated 2/8/2011 at 10:48 AM entitled "Lee - Capital Revenue - RFP - Clarification #4" and Rate Covenants will be on parity with existing bonds obligations.

*Acceptance of*

*Commitment:*

If you are in agreement with the foregoing, please sign and return the enclosed copy of this Commitment Letter to the Bank at its office located at 12751 New Brittany Blvd., Fort Myers, FL 33907 Attention: Nicholas Ayotte. Unless the Bank receives such copy of this Commitment Letter duly executed by an authorized officer of the Borrower prior to 5:00p.m. (EST), on March 5, 2011, the Bank's obligations hereunder shall terminate on such date. In no event shall the Bank have any obligation to make the Facility available unless the closing shall have occurred on or prior to either 30 or 45 days from February 8, 2011 depending upon the rate option chose. In addition to the foregoing, this Commitment Letter may be terminated at any time by mutual agreement.

This Commitment Letter shall constitute a binding obligation of the Bank for all purposes immediately upon the acceptance hereof by the Borrower in the manner provided herein. Notwithstanding any other provision of this Commitment Letter, the Bank's commitments and undertakings as set forth herein shall not be or become effective for any purpose unless and until this Commitment Letter shall have been accepted by the Borrower in the manner specified below.

**THIS COMMITMENT LETTER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE BORROWER AND THE BANK HEREBY WAIVES JURY TRIAL IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS COMMITMENT LETTER OR ANY OTHER DOCUMENTS CONTEMPLATED HEREBY.**

This Commitment Letter may be executed in any number of separate counterparts, each of which shall collectively and separately, constitute one agreement. Upon acceptance by you as provided herein, this Commitment Letter shall supersede all understandings and agreements between the parties hereto in respect of the transactions contemplated hereby.

Sincerely,

Handwritten signature of Nicholas Ayotte in cursive script, with the initials "B&M" written below it.

SunTrust Bank

Institutional & Governmental Banking Group

Nicholas Ayotte

Assistant Vice President

**BORROWER ACCEPTS THE COMMITMENT:**

\_\_\_\_\_

\_\_\_\_\_

Date