

Acres IV Loan!

**LOAN AGREEMENT**

**between**

**CITY OF PLANTATION**

**and**

**COMMUNITY BANK OF BROWARD**

**Dated as of September 11, 2009**

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (this "Agreement"), dated as of September 11, 2009, by and between the **CITY OF PLANTATION, FLORIDA** (the "City"), a municipal corporation under the laws of the State of Florida, and **COMMUNITY BANK OF BROWARD**, a Florida banking corporation (the "Lender"),

### WITNESSETH:

**WHEREAS**, the City has, by adoption of Resolution No. 10664 (the "Resolution") on August 26, 2009, authorized the financing the cost of the Project defined below by a loan in an amount of not exceeding \$475,000 from the Lender;

**NOW THEREFORE**, in consideration of the premises and the respective representations and covenants herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** The following terms shall have the meaning set forth below when used in this Agreement.

"Act" means Chapters 166 and 170, Florida Statutes, and other applicable provisions of law.

"Assessments" means the special assessments levied pursuant to the Assessment Resolutions.

"Assessment Resolutions" means Resolution No. 10533 and Resolution No. 10534 adopted by the City on April 29, 2009 and Resolution No. 10663 adopted by the City on August 26, 2009, providing for special assessments to pay the costs of the Project.

"Assessment Revenues" means the proceeds of collection of the Assessments.

"Bond Year" means an annual period ending on each principal maturity date for the Loan, as set forth in the Note.

"Fiscal Year" means the then lawful fiscal year of the City, currently ending on each September 30.

"Loan" means the loan in the principal amount of \$442,200 made by the Lender to the City and evidenced by the Note.

"Non-Ad Valorem Revenues" means all legally available revenues and taxes (other than ad valorem taxes) derived from any source and legally available to pay principal of and interest on the Note.

"Note" means the Assessment Revenue Note dated as of the date hereof evidencing the Loan, in substantially the form attached as Exhibit 1 hereto.

"Pledged Revenues" means the Assessment Revenues, income on investments earned on money in the funds created hereby, and, until spent for the costs of the Project, the proceeds of the Loan in the Loan Fund.

"Project" means the project commonly known as Plantation Acres Roadway Improvement Project 2009/2010 more particularly described in the Assessment Resolutions.

"Resolution" means Resolution No. 10664 adopted by the City on August 26, 2009, authorizing the Loan.

**Section 2. Findings.** It is hereby found, determined and declared by the City that:

A. The City has determined that it is in the best interest of the City and its inhabitants to construct the Project, and to finance the construction thereof with the proceeds of the Loan, to be repaid primarily from the Assessment Revenues and, if necessary, from Non-Ad Valorem Revenues.

B. The City expects to receive Assessment Revenues from the Assessments, pursuant to the Act, which are not now pledged or encumbered in any manner.

C. The City receives Non-Ad Valorem Revenues each year, which are not presently pledged for payment of any debt, and are legally available to pay the Loan for the Project. Such Non-Ad Valorem Revenues, together with the Pledged Revenues, will be sufficient to pay all principal of and interest on the Note when due.

**Section 3. Loan.** The Lender agrees to make a Loan to the City for the purpose of financing the cost of the Project. The Loan shall be evidenced by the Note, substantially in the form attached hereto as Exhibit 1, containing the terms in the Resolution, this Agreement and the proposal of the Lender.

**Section 4. Source of Payment for Loan.** The principal of and interest on the Note and all other payments provided for in this Agreement shall be payable from and secured by a pledge of and a lien on the Pledged Revenues. Such pledge and lien shall be cumulative to the extent not paid, and shall continue until such Pledged Revenues in amounts sufficient to make all required payments under this Agreement and the Note shall have been actually paid. The Note shall not constitute a general obligation, or a pledge of the faith, credit or taxing power of the City, 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, or the City shall be obligated to pay the principal of the Note, the interest thereon, or other costs incidental thereto except from the sources described in this Section, in the manner provided in this Agreement. The Note shall not constitute a lien upon any property of the City, except the Pledged Revenues. If necessary, the principal of and interest on the Note and all other payments provided for in this Agreement shall be payable from the Non-Ad Valorem Revenues.

**Section 5. Covenants Regarding Assessment Revenues.** For as long as any of the principal of and interest on the Note shall be outstanding, the City covenants with the Lender as follows:

(A) **FLOW OF FUNDS.** The Assessment Revenues shall be deposited as received by the City into a special fund, hereby created and designated "City of Plantation Assessment Revenue Fund" (hereinafter called "Revenue Fund"). All moneys in the Revenue Fund shall be held in trust in a depository bank to be subsequently designated by the City and applied as hereinafter provided. All moneys at any time remaining on deposit in the Revenue Fund shall be applied monthly in the following manner and order of priority for the following purposes:

(1) An amount equal to the principal of and interest due on the Note for the current Bond Year and any arrearages in the payment of principal of or interest on the Note shall be deposited, from the first Assessment Revenues available for such purpose in each Bond Year, in the Sinking Fund described in Subsection 5(B) hereof. Moneys on deposit in the Sinking Fund shall be applied first to the payment of interest, and second to the payment of principal, on the Note.

(2) An amount, if any, required by Section 8(10) hereof, shall be deposited in the Rebate Fund.

(3) After all such required payments have been made, including all deficiencies in prior payments, the balance in the Revenue Fund in each Bond Year, if any, shall be used to prepay principal on the Note, if permitted pursuant to Section 6 hereof.

(B) **SINKING FUND.** There is hereby created and established a separate fund to be designated "Assessment Sinking Fund" (hereinafter called "Sinking Fund"). On each interest and principal payment date following the issuance of the Note, the City shall pay the principal of and interest due on the Note on such date from the moneys in the Sinking Fund.

(C) **INVESTMENTS AND ACCOUNTING.**

(1) Monies on deposit in the Sinking Fund shall be invested and reinvested only in lawful investments for the City, provided such investments either mature or are redeemable at not less than par at the option of the City not later than the dates on which the moneys on deposit therein will be needed for the purpose of such Fund. All income on such investments shall remain in the Sinking Fund.

(2) The cash required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single bank account, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein for the various purposes of such funds as herein provided.

(3) The designation and establishment of the various funds and accounts in and by this Agreement shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely

to constitute an earmarking of certain revenues and assets of the City for certain purposes and to establish certain priorities for application of such revenues and assets as herein provided.

(4) The City shall annually, prior to commencement of each of its Fiscal Years, prepare and adopt a detailed budget for the City, including estimated receipt of Assessment Revenues. Within thirty (30) days after adoption of the budget, the City shall provide a copy of such annual budget to the Lender. The City shall, in addition, supply the Lender with such other information and records regarding the City's revenues, expenses and trust accounts provided for in this Agreement as the Lender may reasonably request. All information given to the Lender under this paragraph (4) shall be provided at no cost to the Lender.

(5) The City will diligently enforce and collect the Assessments; will take all steps, actions and proceedings for the enforcement and collection of such Assessments as shall become delinquent to the full extent permitted or authorized by law; and will maintain accurate records with respect thereof. All such Assessment Revenues shall, as collected, be held in trust to be applied as herein provided and not otherwise.

(6) All investment earnings on money held in the funds created by this Agreement shall be credited to each such fund, respectively.

(7) The City will at all times comply with all of the requirements and conditions of the Act and take every action necessary to enable it to collect the Assessments and will not take any action which would adversely affect its ability to collect the Assessments under the Act.

**Section 6. Prepayment.** The Note may be prepaid prior to maturity in whole on any date or in part on any date in a minimum amount of \$1,000 at a prepayment price of par plus accrued interest to the date of prepayment and without premium; provided, that all interest accrued on the Note to the date of prepayment has been paid. Notice of any prepayment, identifying the Note or portion thereof to be prepaid shall be mailed by the City, first-class mail, postage prepaid, to the Lender at least five (5) days prior to the date fixed for prepayment at its Notice Address hereunder. Partial Prepayments shall be applied to reduce remaining principal installments of the Note pro rata.

**Section 7. Application of Loan Proceeds.** All proceeds received from the Loan shall be deposited in a Loan Fund to be held in trust and separately accounted for, and shall be promptly applied by the City for payment of the cost of the Project described in Section 2A hereof. Money in the Loan Fund may be invested and reinvested only in lawful investments for the City, provided that such investments either mature or are redeemable at not less than par at the option of the City not later than the dates on which the moneys on deposit therein will be needed for the purpose of such Fund. All income on such investments shall remain in the Loan Fund. Any money remaining in the Loan Fund after the Project is completed shall be applied to prepay the Note.



## **Section 8. General Covenants of the City.**

(1) The City will provide, without cost, to the Lender (a) annual financial statements of the City prepared by an independent accounting firm in accordance with generally accepted accounting principles promptly after the date such statements are available, but not later than the one hundred eightieth (180<sup>th</sup>) day following the end of each Fiscal Year and accompanied by an unqualified opinion of such accounting firm, which financial statements include specifically all receipts of and application of Assessment Revenues hereunder, and (b) a copy of the City's annual budget and any amendments thereto, within thirty (30) days after its adoption.

(2) The City shall provide to the Lender such other information as the Lender shall reasonably request from time to time to be submitted to it within a reasonable time period.

(3) The City will comply with all applicable laws and regulations of the State of Florida and the United States of America in connection with the Loan.

(4) The City will immediately give the Lender written notice of any Event of Default or an event which with the passage of time would become an Event of Default under this Agreement of which it shall have actual knowledge or written notice.

(5) The Lender shall be permitted, at all reasonable times, to examine the books and records of the City.

(6) It shall be an "Event of Default" under this Agreement if:

(i) the City shall fail to pay maturing principal and interest on the Note when due;

(ii) the City shall fail to comply with any other covenant made in this Agreement, which failure shall continue for more than thirty (30) days; or

(iii) there shall occur the filing by the City of a voluntary petition in bankruptcy, or the commission by the City of any act of bankruptcy, or the adjudication of the City as a bankrupt, or the assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceeding for its reorganization, instituted under the provisions of the Federal Bankruptcy Code, as amended, or any similar act in any jurisdiction which may now be in effect or hereinafter amended.

(7) Following an Event of Default, the Lender (a) may either at law or in equity, by suit, action, mandamus or other proceedings in any court of competent jurisdiction, protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the laws of the State of Florida, or granted and contained herein, (b) may enforce and compel the performance of all

duties required herein or by any applicable statutes to be performed by the City or by any officer thereof, and (c) if any Event of Default has occurred and is continuing may by notice in writing to the City, declare the principal of the Note then unpaid to be immediately due and payable, and upon such declaration the principal of the Note, together with interest accrued thereon, to the date of such declaration, shall become due and payable immediately at the place of payment provided therein, anything in this Agreement or in the Note to the contrary notwithstanding.

If after the principal of the Note has been so declared to be due and payable, (i) all arrears of interest upon the Note (and interest on overdue installments of interest) and overdue installments of principal, if any, are paid by the City, (ii) the City also performs all other things in respect to which it may have been in default hereunder and (iii) the City pays the reasonable charges of the Lender, including reasonable attorneys' fees, then, and in every such case, the Lender by written notice to the City, may, but shall not be required to, annul such declaration and its consequences and such annulment shall be binding upon the Lender but no such annulment shall extend to or affect any subsequent default or impair any right or remedy consequent thereon.

Nothing herein, however, shall be construed to grant to the Lender any lien on the assets of the City, except the Pledged Revenues, until spent as provided herein.

(8) The City will not issue any other obligations payable from the Assessment Revenues, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge against the Assessment Revenues, or any part thereof, except with the prior written consent of the Lender, which may be granted, withheld or made subject to conditions in the Lender's sole discretion.

(9) The City will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code") in order to ensure that the interest on the Note will be excluded from gross income from federal income tax purposes and that the Note will not be or become a "private activity bond" or an "arbitrage bond" under the Code, and that the Note will retain its status as a "qualified tax-exempt obligation" under Section 265 of the Code.

(10) (a) The City covenants that it will comply with all applicable rebate requirements of Section 148 of the Code. Unless, as of the end of any Fiscal Year, the City receives an opinion of bond counsel that the City is not required to determine the amount of any rebatable arbitrage with respect to such Fiscal Year, which opinion may be based in part upon a certificate of the City as to any reasonable expectations as to future events, the City will determine and set aside in a Rebate Fund, which is hereby created and established, the amount of rebatable arbitrage accrued for each Fiscal Year. Such deposits shall be made from Assessment Revenues and, if necessary, from Non-Ad Valorem Revenues, after required deposits into the Sinking Fund and prior to any other use, within sixty (60) days after the end of each Fiscal Year. A copy of the calculations determining the amount of rebatable arbitrage shall be provided to the Lender promptly upon acceptance thereof, by the City's Representative. If the Lender, based upon advice of counsel, a copy of which has been provided to the City, determines that the City's determination of rebatable arbitrage is insufficient to meet the requirements of the Code, the Lender may, at the City's expense, retain counsel, accountants or other qualified experts which the

Lender determines, in its sole discretion, advisable to properly determine the amount of rebatable arbitrage, due dates, and any other requirements of rebatable arbitrage and, following such determination, the City shall deposit into the Rebate Fund the additional amount so determined, unless the City shall in good faith contest the Lender's determination.

(b) If, after any determination of accrued rebatable arbitrage, the amount on deposit in the Rebate Fund exceeds such amount, the City may withdraw the excess and transfer it to the Sinking Fund.

(c) All records relating to rebatable arbitrage shall be retained by the City until six (6) years after the final payment of the Note.

(d) At the times required by the Code, the City shall pay the rebatable arbitrage to the United States of America and shall file with such payments the forms required by the Code. The Lender shall not be liable for payment of any rebatable arbitrage.

**Section 9. Covenants Regarding Non-Ad Valorem Revenues.** The City covenants and agrees to appropriate in its annual budget, by amendment, if required, and to pay when due under this Agreement, as promptly as money becomes available directly for payments due on the Loan, amounts of Non-Ad Valorem Revenues of the City or other legally available funds sufficient, after application of Assessment Revenues in the Sinking Fund, to pay the principal of and interest on the Loan when due. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues to the Sinking Fund shall be cumulative, and shall continue until such Non-Ad Valorem Revenues in amounts sufficient, after application of Assessment Revenues in the Sinking Fund, to pay the principal of and interest on the Loan when due shall have been budgeted, appropriated and actually paid to the Lender. The City further acknowledges and agrees that the obligations of the City to include the amount of payments due on the Loan in each of its annual budgets and to pay such amounts from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein.

Neither this Agreement nor the obligations of the City hereunder shall be construed as a pledge of or a lien on any legally available Non-Ad Valorem Revenues of the City.

The City reserves the right to discontinue or reduce the level of any of its activities which generate user service charges or regulatory fees, and the City shall never be required or compelled by or for the benefit of the Lender to increase, or maintain at any particular level, any user service charges or regulatory fees.

**Section 10. Waiver of Jury Trial.** WITH RESPECT TO ANY SUIT OR ACTION BETWEEN THE CITY AND THE LENDER RELATING TO THE LOAN, OR THIS AGREEMENT, THE CITY AND THE LENDER EACH EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL, AND AGREES THAT THE EXCLUSIVE VENUE FOR ANY SUCH SUIT OR ACTION SHALL BE BROWARD COUNTY, FLORIDA.

**Section 11. Qualified Tax-Exempt Obligation.** The City hereby represents and finds that it reasonably anticipates not more than \$30,000,000 of tax-exempt



obligations (other than certain private activity bonds) will be issued by the City and its subordinate governmental entities in calendar year 2009. The City hereby directs its Mayor to recertify these representations upon issuance of the Note, and the Note is hereby designated as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code.

**Section 12. Notice Address.** Notices shall be given by each party to the other at the Notice Address set forth below by first class mail, postage prepaid, or sent by facsimile transmission to the telephone number set forth below. Either party may change its Notice Address by giving notice of such change in the same manner.

***Notice Addresses***

As to the City: City of Plantation  
400 NW 73<sup>rd</sup> Avenue  
Plantation, Florida 33317  
Attention: Herbert V. Herriman  
Finance Director  
(954) 585-2335


As to the Lender: Community Bank of Broward  
2400 N. Commerce Parkway  
Suite 200  
Weston, Florida 33326  
Attention: Steven Schultz  
Vice President  
(954) 659-0000

**Section 13. No Personal Liability.** No covenant or agreement contained in this Agreement shall be deemed a covenant or agreement of the Mayor, any member of the City Council, or any official, agent or employee of the City in his or her individual capacity, and neither the Mayor, the members of the City Council of the City, nor any official executing this agreement or the Note, nor any other official or employees of the City shall be liable personally on the Note, or be subject to any personal liability or accountability by reason of the issuance of the Note or on account of the execution of any of the documents herein provided for, all such liability being released as a condition of, and as consideration for, the execution and delivery of the Note and the documents herein provided for.

**Section 14. Commitment Letter.** The Lender's commitment letter dated July 29, 2009 (the "Commitment letter") shall survive the closing of the Loan. In the event of a conflict between the Commitment letter and this Agreement, this Agreement shall control.

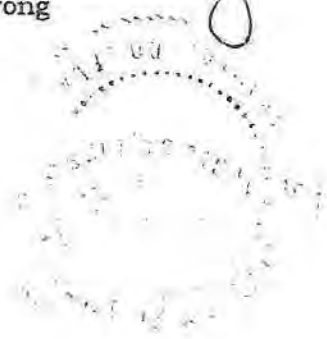
**IN WITNESS WHEREOF**, the City and the Lender have executed and delivered this Agreement as of September 11, 2009.

**CITY OF PLANTATION, FLORIDA**

By:   
Rae Carole Armstrong  
Mayor

ATTEST:

By:   
Susan K. Slattery  
City Clerk



**COMMUNITY BANK OF BROWARD**

By:   
Steven Schultz  
Vice President

Exhibit 1  
to  
Loan Agreement

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF PLANTATION  
ASSESSMENT REVENUE NOTE  
Dated September 11, 2009

\$442,200

**KNOW ALL MEN BY THESE PRESENTS**, that the City of Plantation, Florida, a municipal corporation of the State of Florida (hereinafter called "City"), for value received, hereby promises to pay to the order of Community Bank of Broward (the "Lender"), as provided herein, the aggregate Principal Amount of Four Hundred Twenty Thousand Dollars (\$442,200), solely from the revenues hereinafter mentioned, and to pay solely from such revenues, interest on said sum from the date of this Note or from the most recent interest payment date to which interest has been paid, at the Rate of Interest of Three and Nine Hundred Seventy-Five Thousandths Percent (3.975%) per annum on the unpaid balance of such Principal Amount until the payment of such Principal Amount. Interest on this Note shall be computed based upon the 360-day year, 30-day month basis.

Principal on this Note shall be payable in fifteen equal principal and interest installments, (except that the first payment of interest shall be larger or smaller than substantially equal as a result of interest accruing for more or less than one year) commencing on the first day of the month which is at least one full calendar month after the Acceptance Date (as defined in Resolution 10663 of the City of Plantation) as established by the City, and thereafter annually on the first day of the same month for a total of fifteen years after the first payment is due, but all unpaid amounts of principal of and interest on this Note shall in any event become due and payable on \_\_\_\_\_, 2025 (or 2026). Accrued but unpaid interest shall be paid on each principal payment date.

Interest on the unpaid Principal Amount shall be payable on each principal installment payment date, and at maturity.

The Rate of Interest shall be adjusted (retroactively, if necessary) to provide the Lender with the same after-tax yield on the Note if:

- (a) any amendments to existing law are adopted which adversely affect such after-tax yield;
- (b) the Note ceases to be a "qualified tax exempt obligation" under Section 265 of the Internal Revenue Code of 1986 (the "Code"); or
- (c) there occurs a final determination by the Internal Revenue Service or a court that interest on the Note is not excluded from gross income for federal income tax purposes ("Determination of Taxability").

All payments shall be applied first to interest and then to principal on this Note. The principal of and interest on this Note, when due and payable, shall be paid

by check or draft mailed to the Lender, at its address designated to the City, or by wire transfer to the domestic account of the Lender, upon written request and furnishing of wire transfer instructions to the City. All amounts due hereunder shall be payable in any coin or currency of the United States of America, which is at the time of payment legal tender for the payment of public or private debts.

If the date for payment of the principal of or interest on the Note shall be a Saturday, Sunday, legal holiday or a day on which the Lender (if a banking institution) or banking institutions in the State of Florida are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday or legal holiday or a day on which such banking institutions are authorized to close; provided, that interest shall accrue to the date of payment.

This Note evidences a Loan made pursuant to Resolution No. 10664 of the City adopted on August 26, 2009 and a Loan Agreement dated as of September 11, 2009 (the "Loan Agreement") between the City and the Lender to finance the cost of a project commonly known as the Plantation Acres Roadway Improvement Project 2009/2010 as described in the Loan Agreement, pursuant to the authority of and in full compliance with the Constitution and laws of the State of Florida, including particularly Chapters 166 and Chapter 170, Florida Statutes and other applicable provisions of law (the "Act").

All of the terms of the Loan Agreement are incorporated herein by reference. This Note is a special obligation of the City payable solely from the City's Pledged Revenues, and, if necessary, the City's Non-Ad Valorem Revenues all as provided in the Loan Agreement.

This Note does not constitute a general obligation, or a pledge of the faith, credit or taxing power of the City, the State of Florida or any political subdivision thereof, within the meaning of any constitutional or statutory provision or limitation. Neither the State of Florida nor any political subdivision thereof, nor the City, shall be obligated to pay the principal of this Note, the interest thereon or other costs incident thereto, except from the Pledged Revenues and, if necessary, the City's Non-Ad Valorem Revenues in the manner provided in the Loan Agreement. It is further agreed between the City and the Lender that this Note and the indebtedness evidenced hereby shall not constitute a lien on any property of the City, except upon the Pledged Revenues, as provided in the Loan Agreement.

This Note may, at the option of the City, be prepaid prior to maturity in whole on any date or in part in the amount of \$1,000 or more on any principal payment date at a prepayment price (plus accrued interest to the date fixed for redemption) equal to the principal amount thereof and without premium; provided, that all interest accrued on this Note to the date of prepayment has been paid. Partial prepayments shall be applied to reduce pro rata the remaining principal installments.

Notice of prepayment identifying the portion of this Note to be prepaid will be given by the City as provided in the Loan Agreement. All prepayments will cease to bear interest after the specified prepayment date provided funds for prepayment have been tendered to the Lender.



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 limitations or provisions.

IN WITNESS WHEREOF, the City of Plantation, Florida, has issued this Note and has caused the same to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its official seal or a facsimile thereof to be affixed, impressed, imprinted, lithographed or reproduced hereon, as of September 11, 2009.

**CITY OF PLANTATION, FLORIDA**

By: \_\_\_\_\_  
Rae Carole Armstrong  
Mayor

ATTEST:

By: \_\_\_\_\_  
Susan K. Slattery  
City Clerk