



VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council

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Village Manager

Genaro "Chip" Iglesias

Date: July 2nd, 2008

To: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager

RE: Awarding Sale of Water and Sewer Revenue Notes to Wachovia Bank

RECOMMENDATION

It is recommended that the Village Council approve the attached resolution awarding the sale of Water and Sewer Revenue Notes, Series 2008, to Wachovia Bank.

BACKGROUND

The Village has adopted an ordinance that authorizes the issuances of notes not to exceed \$5,000,000 that would allow the Village to borrow interim financing until the Village can secure long term financing from the State Revolving Fund Program. A competitive bid process was conducted and it is recommended that Wachovia Bank be awarded the sale of the Water and Sewer Revenue Notes, Series 2008.

RESOLUTION NO. R 2008-_____

A RESOLUTION OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE NOTES, SERIES 2008 OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$5,000,000 FOR THE PURPOSE OF FINANCING A PORTION OF THE COSTS OF WATER AND SEWER SYSTEM IMPROVEMENTS WITHIN THE VILLAGE, FINANCING ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LEGAL AND OTHER PLANNING COSTS RELATED THERETO, AND PAYING COSTS OF ISSUANCE OF THE NOTES; AWARDED THE SALE OF THE NOTES TO WACHOVIA BANK, NATIONAL ASSOCIATION; PROVIDING FOR SECURITY FOR THE NOTES; CONTAINING OTHER PROVISIONS RELATING TO THE NOTES; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 8, 2008, the Village Council (the "Council") of the Village of Key Biscayne, Florida (the "Village") adopted Ordinance No. 2008-__ (the "Ordinance") authorizing the issuance of not exceeding \$5,000,000 of notes for the purpose of financing a portion of the costs of water and sewer system improvements within the Village, financing architectural, engineering, environmental, legal and other planning costs related thereto, and paying costs of issuance of the notes (collectively, the "Project"); and

WHEREAS, pursuant to the Ordinance, the Village has solicited proposals for the financing of the Project; and

WHEREAS, the Council hereby determines to accept a commitment (the "Commitment") from Wachovia Bank, National Association (the "Bank") to purchase the Notes (as defined herein); and

WHEREAS, the Council desires to set forth the details of the Notes in this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA:

SECTION 1. AUTHORIZATION OF NOTES. Pursuant to the provisions of this Resolution and the Ordinance, revenue notes of the Village to be designated "Village of Key Biscayne, Florida, Water and Sewer Revenue Notes, Series 2008" (the "Notes"), are hereby authorized to be issued in an aggregate principal amount of Five Million Dollars (\$5,000,000) for

the purpose of financing the Project.

The Notes shall be payable only from the sources identified in this Resolution and from proceeds of revenue bonds or notes issued to refund the Notes, or from any other loan entered into by the Village to finance the Project (when, as and if such bonds or notes are issued or such loan is closed). The Village intends to enter into a loan with the Florida Department of Environmental Protection to finance the Project, or to issue revenue bonds or notes at or prior to the date of maturity of the Notes in order to refund the Notes. The issuance of such bonds or notes in a principal amount not to exceed the principal amount of the Notes for the purpose of paying the principal of the Notes is hereby authorized; however, such authorization shall not obligate the Village to issue such bonds or notes or to issue bonds or notes in any specific amount.

SECTION 2. TERMS OF THE NOTES.

(a) General Provisions. The Notes shall be issued in fully registered form without coupons. The principal of and interest on the Notes shall be payable when due in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Owners of the Notes ("Owners") or their legal representatives at the addresses of the Owners as they appear on the registration books of the Village.

The Notes shall be dated the date of their issuance and delivery and shall be initially issued as one Note in the denomination of \$5,000,000. The Notes shall mature on August 12, 2009. Principal of the Notes is payable in full on their maturity date.

THE NOTES SHALL NOT BE DEEMED TO CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OF THE VILLAGE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION, BUT SHALL BE PAYABLE FROM AND SECURED SOLELY BY LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE VILLAGE, AS DEFINED IN THIS RESOLUTION, AND AS OTHERWISE PROVIDED IN THIS RESOLUTION. THE ISSUANCE OF THE NOTES SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE VILLAGE TO LEVY OR TO PLEDGE ANY FORM OF AD VALOREM TAXATION WHATEVER THEREFOR NOR SHALL THE NOTES CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE VILLAGE, AND THE HOLDERS OF THE NOTES SHALL HAVE NO RECOURSE TO THE POWER OF AD VALOREM TAXATION.

(b) Interest Rate. Subject to adjustment as provided below, the Notes shall bear interest on the outstanding principal balance from their date of issuance payable on February 12, 2009 and upon maturity, at an interest rate equal to 2.69% per annum.

Interest on the Notes shall be computed on the basis of a 360-day year for the actual number of days elapsed.

Adjustment of Interest Rate For Full Taxability. In the event a Determination of Taxability shall have occurred, the rate of interest on the Notes shall be increased to 4.02% per annum (the "Taxable Rate"), effective retroactively to the date on which the interest payable on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof. In addition, the Owners of the Notes or any former Owners of the Notes, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owners or former Owners of the Notes as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Village on the next succeeding interest payment date following the Determination of Taxability. A "Determination of Taxability" shall mean means the circumstance of the interest on the Notes becoming includable for federal income tax purposes in the gross income of the Owners thereof, or the Notes not being "qualified tax-exempt obligations" as defined in Section 265(b)(3)(B) of the Internal Revenue Code, regardless of whether caused by or within the control of the Village. A Determination of Taxability will be deemed to have occurred upon (i) the issuance by the Internal Revenue Service of a technical advice memorandum or statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof, which memorandum, notice or notification is not contested by either the Village or any Owners of the Notes, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Village to the effect that interest on Notes is includable for federal income tax purposes in the gross income of the Owners thereof, or (iv) receipt by the Village or any Owners of the Notes of an opinion of bond counsel to the Village to the effect that interest on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof or that the Notes are not "qualified tax-exempt obligations".

Adjustment of Interest Rate for Other Changes Affecting After-Tax Yield. So long as any portion of the principal amount of the Notes or interest thereon remains unpaid (a) if any law, rule, regulation or executive order is enacted or promulgated by any public body or governmental agency which changes the basis of taxation of interest on the Notes or causes a reduction in yield on the Notes (other than by reason of a change described above) to the Owners or any former Owners of the Notes, including without limitation, a change in the maximum effective corporate tax rate in effect on the date of issuance of the Notes (35%), the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any public body or governmental agency, any payment is required to be made by, or any federal, state or local income tax deduction is denied to, the Owners or any former Owners of the Notes (other than by reasons of change described above or by reason of any action or failure to act on the part of any Owner or any former Owner of the Notes) by reason of the ownership of the Notes, (i) the interest rate on the Notes will be adjusted to cause the yield on the Notes, after payment of any increase in tax, to equal what the yield on the Notes would have been in the absence of such change in law, rule, regulation or executive order, or such action by any public body or governmental agency, and (ii) the Village shall reimburse any such Owner within five (5) days after receipt by the Village of written demand for such payment, and the Village agrees to indemnify each such Owner against any loss,

cost, charge or expense with respect to any such change.

Adjustment of Interest Rate Upon an Event of Default. If an “event of default” occurs under Section 18 of this Resolution, the interest rate on the Notes shall immediately be adjusted to a rate equal to the per annum interest rate announced by Wachovia Bank, National Association, from time to time, as its “Prime Rate,” plus two percent (2%).

(c) Optional Prepayment. The Notes are subject to optional prepayment as follows in whole or in part at any time at a price of par, plus accrued interest to the date of prepayment, plus a premium equal to the “Prepayment Penalty” described in Exhibit “B” attached hereto, upon written notice to the Owners thereof given by the Village at least five (5) days prior to the date fixed for prepayment.

In the event that there is more than one Owner of the Notes, (A) the Village shall determine the amount of each Note to be redeemed, and (B) the Village shall give notice to each Owner of the Notes at least five (5) days prior to the date of redemption of the amount of each Note to be redeemed.

SECTION 3. EXECUTION OF NOTES. The Notes shall be signed in the name of the Village by the Mayor or the Vice Mayor (or, in their absence, any other member of the Council) and the Village Clerk, and its seal shall be affixed thereto or imprinted or reproduced thereon. The signatures of the Mayor, Vice Mayor, any member of the Council and the Village Clerk on the Notes may be manual or facsimile signatures, provided that the signature of one of such officers shall be a manual signature. In case any one or more of the officers who shall have signed or sealed any of the Notes shall cease to be such officer of the Village before the Notes so signed and sealed shall have been actually sold and delivered, such Notes may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed and sealed such Notes had not ceased to hold such office. Any Notes may be signed and sealed on behalf of the Village by such person as at the actual time of the execution of such Notes shall hold the proper office, although at the date of issuance of such Notes such person may not have held such office or may not have been so authorized.

SECTION 4. NEGOTIABILITY, REGISTRATION AND CANCELLATION. The Village shall serve as Registrar and as such shall keep books for the registration of Notes and for the registration of transfers of Notes. Notes may be transferred or exchanged upon the registration books kept by the Village, upon delivery to the Village, together with written instructions as to the details of the transfer or exchange, of such Notes in form satisfactory to the Village and with guaranty of signatures satisfactory to the Village, along with the social security number or federal employer identification number of any transferee and, if the transferee is a trust, the name and social security or federal tax identification numbers of the settlor and beneficiaries of the trust, the date of the trust and the name of the trustee. Notes may be exchanged for one or more Notes of the same aggregate principal amount and maturity and in denominations in integral multiples of \$250,000 (except that an odd lot is permitted to complete the outstanding principal balance). No transfer or exchange of any Note shall be effective until entered on the registration books maintained by the Village.

The Village may deem and treat the person in whose name any Note shall be registered upon the books kept by the Village as the absolute Owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note as they become due and for all other purposes. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

In all cases in which Notes are transferred or exchanged in accordance with this Section, the Village shall execute and deliver Notes in accordance with the provisions of this Resolution. All Notes surrendered in any such exchanges or transfers shall forthwith be canceled by the Village. There shall be no charge for any such exchange or transfer of Notes, but the Village may require the payment of a sum sufficient to pay any tax, fee or other governmental charge (other than a tax, fee or charge imposed by the Village) required to be paid with respect to such exchange or transfer. The Village shall not be required to transfer or exchange Notes for a period of fifteen (15) days next preceding an interest payment date on such Notes.

All Notes, the principal and interest of which has been paid, either at or prior to maturity, shall be delivered to the Village within thirty (30) days of when such payment is made, and shall thereupon be canceled.

In case part but not all of an outstanding Note shall be prepaid, such Note shall not be surrendered in exchange for a new Note, but the Village shall make a notation indicating the remaining outstanding principal of the Notes upon the registration books. The Note so redesignated shall have the remaining principal as provided on such registration books and shall be deemed to have been issued in the denomination of the outstanding principal balance, which shall be an authorized denomination.

SECTION 5. NOTES MUTILATED, DESTROYED, STOLEN OR LOST. In case any Note shall become mutilated or be destroyed, stolen or lost, the Village may in its discretion issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in the case of a mutilated Note, in exchange and substitution for such mutilated Note upon surrender of such mutilated Note or in the case of a destroyed, stolen or lost Note in lieu of and substitution for the Note destroyed, stolen or lost, upon the Owner furnishing the Village proof of his ownership thereof, satisfactory proof of loss or destruction thereof and satisfactory indemnity, complying with such other reasonable regulations and conditions as the Village may prescribe and paying such expenses as the Village may incur. The Village shall cancel all mutilated Notes that are surrendered. If any mutilated, destroyed, lost or stolen Note shall have matured or be about to mature, instead of issuing a substitute Note, the Village may pay the principal of and interest on such Note upon the Owner complying with the requirements of this paragraph.

Any such duplicate Notes issued pursuant to this section shall constitute original contractual obligations of the Village whether or not the lost, stolen or destroyed Notes be at any time found by anyone, and such duplicate Notes shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the funds, as hereinafter pledged, to the extent as all other Notes issued hereunder.

SECTION 6. FORM OF NOTES. The text of the Notes shall be of substantially the tenor set forth in Exhibit “A” hereto, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution.

SECTION 7. COVENANT TO BUDGET AND APPROPRIATE. The Village hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Legally Available Non-Ad Valorem Revenues lawfully available in each fiscal year, amounts sufficient to pay the principal and interest due on the Notes in accordance with their terms during such fiscal year. “Legally Available Non-Ad Valorem Revenues” means all revenues of the Village derived from any source other than ad valorem taxation on real or personal property which are legally available to make the payments required under the Note Ordinance; but only after provision has been made by the Village for the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law. Such covenant and agreement on the part of the Village to budget and appropriate such amounts of Legally Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Legally Available Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Village, the Village does not covenant to maintain any services or programs, now provided or maintained by the Village, which generate non-ad valorem revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Legally Available Non-Ad Valorem Revenues, and, subject to Section 15 hereof, does not preclude the Village from pledging in the future its Legally Available Non-Ad Valorem Revenues, nor does it require the Village to levy and collect any particular non-ad valorem revenues. Such covenant to budget and appropriate Legally Available Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of one or more sources of such Legally Available Non-Ad Valorem Revenues heretofore or hereinafter entered into (including the payment of debt service on notes and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated in the Note Ordinance shall have the effect of making available in the manner described herein Legally Available Non-Ad Valorem Revenues and placing on the Village a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under the Note Ordinance, subject, however, in all respects to the terms of the Note Ordinance and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law.

SECTION 8. NOTE FUND. There is hereby created a fund, entitled “Village of Key Biscayne, Florida Water and Sewer Revenue Notes, Series 2008 Note Fund” (the “Note Fund”). There shall be deposited into the Note Fund on each Interest Payment Date sufficient amounts of Legally Available Non-Ad Valorem Revenues as specified in Section 7 hereof which, together with the amounts already on deposit therein, will enable the Village to pay the principal

of and interest on the Notes on each Interest Payment Date. Moneys in the Note Fund shall be applied on each Interest Payment Date to the payment of principal of and interest on the Notes coming due on each such date.

SECTION 9. INVESTMENT OF NOTE FUND. Subject to Section 12 hereof, funds in the Note Fund may be invested in the following investments, maturing at or before the time such funds may be needed to pay principal of or interest on Notes, to the extent such investments are legal for investment of municipal funds (“Authorized Investments”):

- (a) The Local Government Surplus Funds Trust Fund;
- (b) Negotiable direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;
- (c) Interest-bearing time deposits or savings accounts in banks organized under the laws of the State of Florida (the “State”), in national banks organized under the laws of the United States and doing business and situated in the State, in savings and loan associations which are under State supervision, or in federal savings and loan associations located in the State and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;
- (d) Obligations of the federal farm credit banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks or obligations guaranteed by the Government National Mortgage Association;
- (e) Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association; or
- (f) Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations and provided such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.

SECTION 10. APPLICATION OF NOTE PROCEEDS. The proceeds received upon the sale of the Notes shall be applied simultaneously with the delivery of the Notes, as follows:

1. The Village shall first use the moneys to pay costs of the issuance of the Notes.

2. The remainder of the proceeds of the sale of the Notes shall be deposited in a separate account (hereinafter referred to as the "Project Fund") maintained by the Village.

Pending their use, the proceeds in the Project Fund may be invested in Authorized Investments, maturing not later than the date or dates on which such proceeds will be needed for the purposes of this Resolution. Subject to Section 12 hereof, any income received upon such investment shall be deposited in the Project Fund and applied to costs of the Project or, at the option of the Village, deposited in the Note Fund and used to pay interest on the Notes until completion of the Project. Subject to Section 12 hereof, after the completion of the Project, any remaining balance of proceeds of the Notes shall be deposited into the Note Fund and used solely to pay principal of the Notes.

The Project Fund shall be kept separate and apart from all other funds of the Village and the moneys on deposit therein shall be withdrawn, used and applied by the Village solely for the purposes set forth herein. Pending such application, the Project Fund shall be subject to the lien of the Owners of the Notes for the payment of the principal of and interest on the Notes.

The registered Owners shall have no responsibility for the use of the proceeds of the Notes, and the use of such Note proceeds by the Village shall in no way affect the rights of such registered Owners. The Village shall be obligated to apply the proceeds of the Notes solely for financing costs of the Project. However, the Village shall be irrevocably obligated to continue to pay the principal of and interest on the Notes notwithstanding any failure of the Village to use and apply such Note proceeds in the manner provided herein.

SECTION 11. FUNDS. Each of the funds and accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds and accounts respectively. The money in such funds and accounts shall be continuously secured in the same manner as deposits of Village funds are authorized to be secured by the laws of the State of Florida. Except as otherwise provided in Section 10 hereof, earnings on any investments in any amounts on any of the funds and accounts herein established and created shall be credited to such respective fund or account.

The designation and establishment of the funds and accounts in and by this Resolution 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 Village for the purposes herein provided and to establish certain priorities for application of such revenues and assets.

SECTION 12. INVESTMENTS AND USE OF PROCEEDS TO COMPLY WITH INTERNAL REVENUE CODE OF 1986. The Village covenants to the Owners of the Notes that it will take all actions and do all things necessary and desirable in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Notes, and shall refrain from taking any actions that would cause interest on the Notes to be included in gross income for

federal income tax purposes. In particular, the Village will not make or direct the making of any investment or other use of the proceeds of the Notes which would cause such Notes to be “private activity bonds” as that term is defined in Section 141 (or any successor provision thereto) of the Code or “arbitrage bonds” as that term is defined in Section 148 (or any successor provision thereto) of the Code, and all applicable regulations promulgated under the Code, and that it will comply with the applicable requirements of Sections 141 and 148 of the Code and the aforementioned regulations throughout the term of the Notes.

SECTION 13. DESIGNATION UNDER SECTION 265(b)(3) OF THE CODE. The Village hereby designates the Notes as qualified tax-exempt obligations under Section 265(b)(3)(B) of the Code, and shall make all necessary filings in order to effectuate such election. The Village represents that neither the Village nor any subordinate entities or entities issuing tax-exempt obligations on behalf of the Village within the meaning of Section 265(b)(3) of the Code have issued tax-exempt obligations during calendar year 2008 and neither the Village nor any such entities expect to issue tax-exempt obligations during calendar year 2008.

SECTION 14. ARBITRAGE REBATE COVENANTS. There is hereby created and established a fund to be held by the Village, designated the “Village of Key Biscayne Water and Sewer Revenue Notes, Series 2008 Rebate Fund” (the “Rebate Fund”). The Rebate Fund shall be held by the Village separate and apart from all other funds and accounts held by the Village under this Resolution and from all other moneys of the Village.

Notwithstanding anything in this Resolution to the contrary, the Village shall transfer to the Rebate Fund the amounts required to be transferred in order to comply with the Tax Certificate or the Rebate Covenants, if any, attached as an Exhibit to the Tax Certificate to be delivered by the Village on the date of delivery of the Notes (the “Rebate Covenants”), when such amounts are so required to be transferred. The Village Administrator shall make or cause to be made payments from the Rebate Fund of amounts required to be deposited therein to the United States of America in the amounts and at the times required by the Rebate Covenants. The Village covenants for the benefit of the Owners of the Notes that it will comply with the Rebate Covenants. The Rebate Fund, together with all moneys and securities from time to time held therein and all investment earnings derived therefrom, shall be excluded from the pledge and lien of this Resolution. The Village shall not be required to comply with the requirements of this Section 15 in the event that the Village obtains an opinion of nationally recognized note counsel that (i) such compliance is not required in order to maintain the federal income tax exemption of interest on the Notes and/or (ii) compliance with some other requirement is necessary to maintain the federal income tax exemption of interest on the Notes.

SECTION 15. SPECIAL COVENANTS OF THE VILLAGE.

(a) The Village shall, while the Notes are outstanding, upon receipt by the Village or within one hundred eighty (180) days of each fiscal year end, whichever is sooner, provide the Owners of the Notes with a printed copy of its Comprehensive Annual Financial Report, its current year operating budget and its capital improvement plan. The Village shall also provide to the Owners of the Notes any other financial information reasonably requested by such Owners.

(b) The Village covenants and agrees that it will at all times maintain a coverage ratio such that the average of Legally Available Non-Ad Valorem Revenues of the Village during the prior two fiscal years is equal to at least 150% of Maximum Annual Debt Service. For purposes of this paragraph (b),

(i) "Maximum Annual Debt Service" shall mean the maximum amount of principal and interest required in the then current or any future fiscal year to pay all Debt Obligations;

(ii) "Debt Obligations" shall mean debt service on debt obligations of the Village, including the Notes, which are secured by or payable from one or more sources of non-ad valorem revenues.

Calculations of Legally Available Non-Ad Valorem Revenues will be based on information derived from the most recently audited fiscal year end financial statements. For purposes of calculating Maximum Annual Debt Service, (x) the interest rate to be assumed for indebtedness bearing interest at a variable rate shall be equal to the higher of 7% per annum or the average rate of interest paid by the Village with respect to such indebtedness during the month preceding the date of calculation and (y) the Notes shall be assumed to amortize over twenty (20) years.

(c) The total Debt of the Village, including amounts authorized but still not drawn down under existing loan agreements and other contractual arrangements with banks and other financial institutions, underwriters, brokers and/or intermediaries, shall not exceed the greater of:

(i) one percent (1%) of the total assessed value of all property within the Village, as certified by the Miami-Dade County Property Appraiser for the current fiscal year; or

(ii) that amount which would cause annual Debt Service to equal fifteen percent (15%) of General Fund expenditures for the previous fiscal year; provided, however, that if in the future the Village Charter is amended to permit total Debt to exceed the amounts set forth above, then the total Debt of the Village permitted hereunder shall be deemed to be such greater amount consistent with the Charter.

As used in this paragraph (c),

(iii) "Debt" shall mean any obligation of the Village to repay borrowed money however evidenced since the date of its incorporation regardless of tenor or term for which it was originally contracted or subsequently converted through refinancing or novation, except (A) any obligation required to be repaid in less than a year and which was incurred solely for emergency relief of natural

disasters, or (B) that portion of any obligations for operations which are financed and operated in an independent, self-liquidating manner and recovered entirely through currently collected user fees and charges.

(iv) "Debt Service" shall include, without limitation thereto, scheduled interest payments, repayments of principal and all financial fees arising from Debt or from the underlying contractual obligations, whether as originally incurred or subsequently deferred or otherwise renegotiated.

(v) "General Fund" shall mean any and all revenues of the Village, from whatever source derived, except those revenues derived from special assessments, user fees and charges and designated as a separate fund to finance goods and services to the public.

SECTION 16. COVENANTS BINDING ON VILLAGE AND SUCCESSOR. All covenants, stipulations, obligations and agreements of the Village contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the Village to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon the officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Village or upon the Council by the provisions of this Resolution shall be exercised or performed by the Council or by such officers, board, body or commission as may be required by law to exercise such powers or to perform such duties.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the Council or officer, agent or employee of the Village in his or her individual capacity, and neither the members of the Council nor any officer, agent or employee of the Village executing the Notes shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 17. EVENTS OF DEFAULT. Each of the following events is hereby declared an "event of default":

(a) payment of the principal (including mandatory prepayment) of any of the Notes shall not be made when the same shall become due and payable; or

(b) payment of any installment of interest on any of the Notes shall not be made when the same shall become due and payable; or

(c) the Village shall default in the due and punctual performance of any covenant, condition, agreement or provision contained in the Notes or in this Resolution (except for a default described in subsection (a) or (b) of this Section) on the part of the Village to be performed, and such default shall continue for sixty (60) days after written notice specifying such default and requiring same to be remedied shall have been given to the Village by any Owner of any note; provided that it shall not constitute an event of default if the default is not one that can be cured within such sixty (60) days, as agreed by the Noteholders and the Village, and the Village commences within such sixty (60) days and is proceeding diligently with action to correct such default;

(d) any proceeding shall be instituted with the consent of the Village for the purpose of effecting a composition between the Village and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted and such proceedings shall not have been dismissed within thirty (30) days after the institution of the same; or

(e) a payment default under any other debt obligation of the Village which results in an acceleration of such debt.

SECTION 18. REMEDIES; RIGHTS OF NOTEHOLDERS.

(a) Upon the occurrence and continuance of any event of default specified in Section 17(e) hereof, the Owners of the Notes may declare all payments of principal and accrued interest to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) Upon the occurrence and continuance of any event of default specified in Section 17(a), (b), (c) or (d) hereof, the Owners of the Notes may pursue any available remedy by suit, at law or in equity, to enforce the payment of the principal of and interest on the Notes then outstanding.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any event of default hereunder shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

The Village agrees, to the extent permitted by law, to indemnify the Bank and its directors, officers, employees and agents from any against any losses, claims, damages, liabilities and expenses (including, without limitation, counsel fees and expenses) which may be incurred in connection with enforcement of the provisions of this Resolution and the Notes.

SECTION 19. DEFEASANCE. (a) The covenants, liens and pledges entered into, created or imposed pursuant to this Resolution may be fully discharged and satisfied with respect to the Notes in any one or more of the following ways:

(i) by paying the principal of, prepayment premium, if any, and interest on the Notes when the same shall become due and payable; or

(ii) by depositing with an escrow agent certain moneys irrevocably pledged to the payment of the Notes, which together with other moneys lawfully available therefor, if any, shall be sufficient at the time of such deposit with the escrow agent to pay when due the principal, prepayment premium, if any, and interest due and to become due on said Notes on or prior to the prepayment date or maturity date thereof; or

(iii) by depositing with an escrow agent moneys irrevocably pledged to the payment of the Notes, which together with other moneys lawfully available therefor, when invested by the escrow agent in direct obligations of the United States of America which shall not be subject to redemption prior to their maturity other than at the option of the holder thereof, will provide moneys which shall be sufficient (as evidenced by a verification report of an independent certified public accountant or firm of accountants) to pay when due the principal, prepayment premium, if any, and interest due and to become due on said Notes on or prior to the prepayment date or maturity date thereof.

Upon such payment or deposit with an escrow agent in the amount and manner provided in this Section 19, the Notes shall be deemed to be paid and shall no longer be deemed to be Outstanding for the purposes of this Resolution and the covenants of the Village hereunder and all liability of the Village with respect to said Notes shall cease, terminate and be completely discharged and extinguished and the holders thereof shall be entitled to payment solely out of the moneys or securities so deposited with the escrow agent; provided, however, that (i) if any Notes are to be redeemed prior to the maturity thereof, notice of the redemption thereof shall have been duly given in accordance with the provisions of Section 2 hereof and (ii) in the event that any Notes are not by their terms subject to redemption within the next succeeding sixty (60) days following a deposit of moneys with the escrow agent in accordance with this Section, the Village shall have given the escrow agent in form satisfactory to it irrevocable instructions to mail to the Owners of such Notes at their addresses as they appear on the registration books of the Village, a notice stating that a deposit in accordance with this Section has been made with the escrow agent and that the Notes are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on said Notes.

(b) Notwithstanding the foregoing, all references to the discharge and satisfaction of Notes shall include the discharge and satisfaction of any portion of the Notes.

(c) If any portion of the moneys deposited with an escrow agent for the payment of the principal of, redemption premium, if any, and interest on any portion of the Notes is not required for such purpose, the escrow agent shall transfer to the Village the amount of such

excess and the Village may use the amount of such excess free and clear of any trust, lien, security interest, pledge or assignment securing said Notes or otherwise existing under this Resolution.

(d) Notwithstanding any of the foregoing, the requirements of Section 12 and 14 hereof relating to use and investment of proceeds and rebate amounts due to the United States pursuant to the Rebate Covenants shall survive the payment of principal and interest with respect to the Notes or any portion thereof.

SECTION 20. SALE OF NOTES. Based upon the uncertainty of the interest rate environment if sale of the Notes is delayed, the Village hereby determines and finds the necessity for a negotiated sale of the Notes. The Village has been provided all applicable disclosure information required by Section 218.385, Florida Statutes. The negotiated sale of the Notes is hereby approved to the Bank at a purchase price of par.

SECTION 21. AUTHORITY OF OFFICERS. The Mayor, the Vice Mayor, any member of the Council, the Village Manager, the Village Clerk, the Finance Director and any other proper official of the Village, are and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transaction contemplated by this Resolution and the other documents identified herein.

SECTION 22. SEVERABILITY. In case any one or more of the provisions of this Resolution or of any Notes issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Notes, but this Resolution and the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The Notes are issued and this Resolution is adopted with the intent that the laws of the State shall govern their construction.

SECTION 23. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS. In any case where the date of maturity of interest on or principal of the Notes shall be a Saturday, Sunday or a day on which the banks in the State are required, or authorized or not prohibited, by law (including executive orders) to close and are closed, then payment of such interest or principal need not be made by the Village on such date but may be made on the next succeeding business day on which the banks in the State are open for business.

SECTION 24. OPEN MEETING FINDINGS. It is hereby found and determined that all official acts of the Council concerning and relating to the adoption of this Resolution and all prior resolutions affecting the Council's ability to issue the Notes were taken in an open meeting of the Council and that all deliberations of the Council or any of its committees that resulted in such official acts were in meetings open to the public, in compliance with all legal requirements, including Section 286.011, Florida Statutes.

SECTION 25. REPEALING CLAUSE. All resolutions or orders and parts thereof in conflict herewith, to the extent of such conflicts, are hereby superseded and repealed.

SECTION 26. WAIVER OF JURY TRIAL. To the extent permitted by applicable law, the Village, knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Resolution, the Notes or any agreement contemplated to be executed in connection with this Resolution, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of the Village or the Bank with respect hereto. The Village acknowledges that this provision is a material inducement to the Bank to purchase the Notes.

SECTION 27. ARBITRATION. Upon demand of either the Village or any Owner of the Notes, whether made before or after the institution of any judicial proceeding, any claim or controversy arising out of or relating to this Resolution or the Notes (a "Dispute") shall be resolved by binding arbitration conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the "Arbitration Rules") of the American Arbitration Association ("AAA") and the Federal Arbitration Act. Disputes may include, without limitation, tort claims, counterclaims, a dispute as to whether a matter is subject to arbitration, claims brought as class actions, or claims arising from documents executed in the future related to the Notes. A judgment upon the award may be entered in any court having jurisdiction. Notwithstanding the foregoing, this arbitration provision does not apply to disputes under or related to swap agreements. All arbitration hearings shall be conducted in Miami, Florida. A hearing shall begin within 90 days of demand for arbitration and all hearings shall conclude within 120 days of demand for arbitration. These time limitations may not be extended unless a party shows cause for extension and then for no more than a total of 60 days. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000.00. Arbitrators shall be licensed attorneys selected from the Commercial Financial Dispute Arbitration Panel of the AAA. Neither the Village nor any Owner of the Notes waives applicable Federal or state substantive law except as provided in this Resolution. Notwithstanding the preceding binding arbitration provisions, the Village and the Owners of the Notes agree to preserve, without diminution, certain remedies that any party may exercise before or after an arbitration proceeding is brought. The Village and the Owners of the Notes shall have the right to proceed in any court of proper jurisdiction to exercise or prosecute the following remedies, as applicable: (i) obtaining provisional or ancillary remedies including injunctive relief, appointment of receiver and filing an involuntary bankruptcy proceeding; and (ii) when applicable, a judgment by confession of judgment. Any claim or controversy with regard to either the Village's or the Owners' of the Notes entitlement to such remedies is a Dispute.

SECTION 28. EFFECTIVE DATE. This Resolution shall take effect immediately on August 7, 2008.

PASSED AND ADOPTED this 8th day of July, 2008.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ
CMC, VILLAGE CLERK

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

VILLAGE ATTORNEY

EXHIBIT "A"

No. R-

\$ _____

UNITED STATES OF AMERICA

STATE OF FLORIDA

VILLAGE OF KEY BISCAYNE

WATER AND SEWER REVENUE NOTE
SERIES 2008

Registered Owner:

Principal Amount: Five Million Dollars (\$5,000,000)

KNOW ALL MEN BY THESE PRESENTS, that the Village of Key Biscayne, Florida (the "Village"), for value received, hereby promises to pay in installments to the Registered Owner shown above, or registered assigns, on the dates set forth below, the Principal Amount specified above. Subject to prior prepayment described in this Note, this Note shall mature on August 12, 2009. Principal of this Note is payable in full on its maturity date.

This Note is issued under authority of and is full compliance with the Constitution and laws of the State of Florida, including particularly Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Village, Ordinance No. 2008-__ duly adopted by the Village Council (the "Council") of the Village on July 8, 2008 (the "Ordinance"), and Resolution No. R-2008-__ duly adopted by the Council of the Village on July 8, 2008 (the "Resolution," and collectively with the Ordinance, the "Note Ordinance"), and is subject to the terms of the Note Ordinance. This Note is issued for the purpose of financing a portion of the costs of water and sewer system improvements within the Village, financing architectural, engineering, environmental, legal and other planning costs related thereto, and paying costs of issuance of the Notes (collectively, the "Project").

This Note shall be payable only from the sources identified in the Note Ordinance and from proceeds of revenue bonds or notes issued to refund the Notes, or from any other loan entered into by the Village to finance the Project (when, as and if such bonds or notes are issued or such loan is closed). The Village intends to enter into a loan with the Florida Department of Environmental Protection to finance the Project, or to issue revenue bonds or notes at or prior to the date of maturity of this Note in order to extend or refund this Note, and the issuance of such bonds or notes has been authorized by the Village; however, such authorization does not obligate the Village to issue such bonds or notes or to issue bonds or notes in any specific amount.

Subject to adjustment as provided below, this Note shall bear interest on the outstanding

principal balance from its date of issuance payable on February 12, 2009 and upon maturity, at an interest rate equal to 2.69% per annum.

Interest on this Note shall be computed on the basis of a 360-day year for the actual number of days elapsed.

Adjustment of Interest Rate For Full Taxability. In the event a Determination of Taxability shall have occurred, the rate of interest on the Notes shall be increased to 4.02% per annum (the "Taxable Rate"), effective retroactively to the date on which the interest payable on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof. In addition, the Owners of the Notes or any former Owners of the Notes, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owners or former Owners of the Notes as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Village on the next succeeding Interest Payment Date following the Determination of Taxability. A "Determination of Taxability" shall mean means the circumstance of the interest on the Notes becoming includable for federal income tax purposes in the gross income of the Owners thereof, or the Notes not being "qualified tax-exempt obligations" as defined in Section 265(b)(3)(B) of the Internal Revenue Code, regardless of whether caused by or within the control of the Village. A Determination of Taxability will be deemed to have occurred upon (i) the issuance by the Internal Revenue Service of a technical advice memorandum or statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof, which memorandum, notice or notification is not contested by either the Village or any Owners of the Notes, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Village to the effect that interest on Notes is includable for federal income tax purposes in the gross income of the Owners thereof, or (iv) receipt by the Village or any Owners of the Notes of an opinion of bond counsel to the Village to the effect that interest on the Notes is includable for federal income tax purposes in the gross income of the Owners thereof or that the Notes are not "qualified tax-exempt obligations".

Adjustment of Interest Rate for Changes Affecting After-Tax Yield. So long as any portion of the principal amount of the Notes or interest thereon remains unpaid (a) if any law, rule, regulation or executive order is enacted or promulgated by any public body or governmental agency which changes the basis of taxation of interest on the Notes or causes a reduction in yield on the Notes (other than by reason of a change described above) to the Owners or any former Owners of the Notes, including without limitation, a change in the maximum effective corporate tax rate in effect on the date of issuance of the Notes (35%), the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any public body or governmental agency, any payment is required to be made by, or any federal, state or local income tax deduction is denied to, the Owners or any former Owners of the Notes (other than by reasons of change described above or by reason of any action or failure to act on the part of any Owner or any former Owner of the Notes) by reason of the ownership of the Notes, (i) the interest rate on the Notes will be

adjusted to cause the yield on the Notes, after payment of any increase in tax, to equal what the yield on the Notes would have been in the absence of such change in law, rule, regulation or executive order, or such action by any public body or governmental agency, and (ii) the Village shall reimburse any such Owner within five (5) days after receipt by the Village of written demand for such payment, and the Village agrees to indemnify each such Owner against any loss, cost, charge or expense with respect to any such change.

Adjustment of Interest Rate Upon an Event of Default. If an “event of default” occurs under Section 18 of the Note Ordinance, the interest rate on the Notes shall immediately be adjusted to a rate equal to the per annum interest rate announced by Wachovia Bank, National Association, from time to time, as its “Prime Rate,” plus two percent (2%).

Optional Prepayment. This Note is subject to optional prepayment in whole or in part at any time at a price of par, plus accrued interest to the date of prepayment, plus a premium equal to the “Prepayment Penalty” described in Exhibit “A” attached hereto, upon written notice to the Owners thereof given by the Village at least five (5) days prior to the date fixed for prepayment.

In the event that there is more than one Owner of the Notes, (i) the Village shall determine the amount of each Note to be redeemed, and (ii) the Village shall give notice to each Owner of the Notes at least five (5) days prior to the date of redemption of the amount of each Note to be redeemed.

The principal of and interest on this Note are payable in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Owner or his legal representative at the address of the Owner as it appears on the registration books of the Village.

The Village has covenanted and agreed in the Note Ordinance to appropriate in its annual budget, by amendment, if necessary, from Legally Available Non-Ad Valorem Revenues lawfully available in each fiscal year, amounts sufficient to pay the principal and interest due on the Notes in accordance with their terms during such fiscal year. “Legally Available Non-Ad Valorem Revenues” means all revenues of the Village derived from any source other than ad valorem taxation on real or personal property which are legally available to make the payments required under the Note Ordinance; but only after provision has been made by the Village for the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law. Such covenant and agreement on the part of the Village to budget and appropriate such amounts of Legally Available Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Legally Available Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Village, the Village does not covenant to maintain any services or programs, now provided or maintained by the Village, which generate non-ad valorem revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such

Legally Available Non-Ad Valorem Revenues, and, subject to the provisions of the Note Ordinance, does not preclude the Village from pledging in the future its Legally Available Non-Ad Valorem Revenues, nor does it require the Village to levy and collect any particular non-ad valorem revenues. Such covenant to budget and appropriate Legally Available Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of one or more sources of such Legally Available Non-Ad Valorem Revenues heretofore or hereinafter entered into (including the payment of debt service on notes and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated in the Note Ordinance shall have the effect of making available in the manner described herein Legally Available Non-Ad Valorem Revenues and placing on the Village a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under the Note Ordinance, subject, however, in all respects to the terms of the Note Ordinance and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Village or which are legally mandated by applicable law.

THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OF THE VILLAGE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION, BUT SHALL BE PAYABLE FROM AND SECURED SOLELY BY LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE VILLAGE, AND AS OTHERWISE PROVIDED IN THE NOTE ORDINANCE. THE ISSUANCE OF THIS NOTE SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE VILLAGE TO LEVY OR TO PLEDGE ANY FORM OF AD VALOREM TAXATION WHATEVER THEREFOR NOR SHALL THIS NOTE CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE VILLAGE, AND THE HOLDER OF THIS NOTE SHALL HAVE NO RECOURSE TO THE POWER OF AD VALOREM TAXATION.

The original registered Owner, and each successive registered Owner of this Note shall be conclusively deemed to have agreed and consented to the following terms and conditions:

1. The Village shall keep books for the registration of Notes and for the registration of transfers of Notes as provided in the Resolution. Notes may be transferred or exchanged upon the registration books kept by the Village, upon delivery to the Village, together with written instructions as to the details of the transfer or exchange, of such Notes in form satisfactory to the Village and with guaranty of signatures satisfactory to the Village, along with the social security number or federal employer identification number of any transferee and, if the transferee is a trust, the name and social security or federal tax identification numbers of the settlor and beneficiaries of the trust, the date of the trust and the name of the trustee. The Notes may be exchanged for Notes of the same principal amount and maturity and denominations in integral multiples of \$250,000 (except that an odd lot is permitted to complete the outstanding principal balance). No transfer or exchange of any Note shall be effective until entered on the registration books maintained by the Village.

2. The Village may deem and treat the person in whose name any Note shall be registered upon the books of the Village as the absolute Owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note as they become due, and for all other purposes. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

3. In all cases in which the privilege of exchanging Notes or transferring Notes is exercised, the Village shall execute and deliver notes in accordance with the provisions of the Resolution. There shall be no charge for any such exchange or transfer of Notes, but the Village may require payment of a sum sufficient to pay any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The Village shall not be required to transfer or exchange Notes for a period of fifteen (15) days next preceding an interest payment date on such Notes.

4. All Notes, the principal of which has been paid, either at or prior to maturity, shall be delivered to the Village when such payment is made, and shall thereupon be canceled. In case part, but not all of an outstanding Note shall be prepaid, such Note shall not be surrendered in exchange for a new Note.

It is hereby certified and recited that all acts, conditions and things required to happen, to exist and to be performed precedent to and for the issuance of this Note have happened, do exist and have been performed in due time, form and manner as required by the Constitution and the laws of the State of Florida applicable thereto.

IN WITNESS WHEREOF, the Village of Key Biscayne, Florida has caused this Note to be executed by the manual or facsimile signature of its Mayor and of its Village Clerk, and the Seal of the Village of Key Biscayne, Florida or a facsimile thereof to be affixed hereto or imprinted or reproduced hereon, all as of the ____ day of _____, 2008.

VILLAGE OF KEY BISCAYNE, FLORIDA

Mayor

Village Clerk

(SEAL)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned _____ (the "Transferor"), hereby sells, assigns and transfers unto _____ (Please insert name and Social Security or Federal Employer identification number of assignee) the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ (the "Transferee") as attorney to register the transfer of the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Date _____

Signature Guaranteed:

_____ Social Security Number of Assignee

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company

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

The following abbreviations, when used in the inscription on the face of the within Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

(Cust.)

Custodian for _____,

(Minor)

TEN ENT - as tenants by the entirety

under Uniform Gifts to Minors

Act of _____ (State)

JT TEN -as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the list above.

[ATTACH EXHIBIT "A"—PREPAYMENT PENALTY]

EXHIBIT "B"

Any applicable prepayment penalty on the Notes shall be calculated in accordance with the following:

"Break Event" means any voluntary or mandatory prepayment or acceleration, in whole or in part, of the principal of the Notes occurring prior to the date such principal would, but for that prepayment or acceleration, have become due (a "Scheduled Due Date"). For each date on which a Break Event occurs (a "Break Date"), a Breakage Fee shall be due to the owners of the Notes only if the rate under "A" below exceeds the rate under "B" below, such Breakage Fee to be determined as follows:

Breakage Fee = the Present Value of $[(A-B) \times C]$, plus LIBOR Breakage, where:

A = A rate per annum equal to the sum of [i] the note equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the date the Fixed Rate on the Notes was set (the "Lock -in Date") plus [ii] the corresponding swap spread of the Bank on the Lock-in Date for fixed rate payor to pay the Bank the fixed rate side of an interest rate swap of that maturity, plus [iii] 0.25%;

B = A rate per annum equal to the sum [i] the note equivalent yield (bid side) of the U.S Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the Break Date, plus [ii] the corresponding swap spread that the Bank determines another swap dealer would quote to the Bank on the Break Date for paying to the Bank the fixed rate side of an interest rate swap of that maturity;

C = The sum of the products of [i] each Affected Principal Amount for each Affected Principal Period, times [ii] the number of days in the Affected Principal Period divided by 360;

"Affected Principal Amount" for an Affected Principal Period is the principal amount of the Notes scheduled to be outstanding during that Affected Principal Period determined as of the relevant Break Date before giving effect to the Break Event on that Break Date, and for any prepayment, multiplying each such principal amount times the Prepayment Fraction.

"Affected Principal Period" is each period from and including a Scheduled Due Date to but excluding the next succeeding Scheduled Due Date, provided that the first such period shall begin on and includes the Break Date.

"Libor Breakage" is any additional loss, cost or expense that the Bank may incur with respect to any hedge for the Fixed Rate on the Notes based on the difference between the London interbank offered rate (for U.S. dollar deposits of the relevant

maturity) available in the London interbank market at the beginning of the interest period in which the Break Date occurs and that which is available in that market on the Break Date.

"Maturity Date" is the date on which the final payment of principal of the Notes would, but for any Break Event, have become due.

"Prepayment Fraction" is a fraction equal to the principal amount being prepaid over the principal amount of the Notes outstanding immediately prior to that prepayment on the Break Date.

"Present Value" is determined as of the Break Date using "B" above as the discount rate.

In addition, a Break Event shall be deemed to occur hereunder if, on any date ("Borrowing Date") after the date hereof but prior to any acceleration of the Notes, any advance of principal under the Notes is scheduled to be made and that advance fails to be made on that Borrowing Date (whether due to the Village's default, the Village's failure to borrow, the termination of any loan commitment, any unsatisfied condition precedent, or otherwise), in which case that Borrowing Date shall be a Break Date, the Affected Principal Amount for that Break Event shall be based on the amount of the failed advance, and the Village shall on demand pay to the Bank any Breakage Fee due hereunder for that Break Event.

Breakage Fees are payable as liquidated damages, are a reasonable pre-estimate of the losses, costs and expenses Bank would incur in the event of any prepayment or acceleration of the Notes, are not a penalty, will not require claim for, or proof of, actual damages, and Bank's determination thereof shall be conclusive and binding in the absence of manifest error. For any Break Event hereunder, the foregoing Breakage Fee provisions supersede any breakage compensation agreement that Village and Bank may have executed with respect to the Notes.