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**LOAN AGREEMENT**

**Dated January 15, 2016**

**By and Between**

**THE CITY OF DEBARY, FLORIDA**

**(the "City")**

**and**

**WHITNEY BANK D/B/A HANCOCK BANK**

**(the "Bank")**

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

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## **LOAN AGREEMENT**

This **LOAN AGREEMENT** (the "Agreement"), made and entered into January 15, 2016, by and between **THE CITY OF DEBARY, FLORIDA** (the "City"), a municipal corporation duly organized under the laws of the State of Florida and its successors and assigns, and **WHITNEY BANK D/B/A HANCOCK BANK**, a Mississippi State Chartered Bank, and its successors (the "Bank").

### **WITNESSETH:**

**WHEREAS**, capitalized terms used in these recitals and not otherwise defined shall have the meanings specified in Article I of this Agreement; and

**WHEREAS**, the City, pursuant to the provisions of the Florida Constitution, Chapter 166, Florida Statutes, as amended and supplemented, the Charter of the City, and any other applicable provisions of law (all of the foregoing, collectively, the "Act"), and Resolution No. 16-01, adopted by the City on January 6, 2016, is authorized to borrow money, issue bonds, notes or other obligations to finance the costs of the permitting, design, construction and installation of a water main extension for potable water services and fire flow protection, and appropriate appurtenances thereto, along, under, over and through portions of Fort Florida Road, River Drive, Fifteenth Street, and Fort Florida Point Road within the City (the "Project"); and

**WHEREAS**, the City has issued a request for proposals for the financing of the Project and has determined that the proposal from the Bank contains the terms most favorable to the City; and

**WHEREAS**, the Bank has agreed to purchase the City's Water Line Assessment Revenue Bond, Series 2016 in the aggregate principal amount of \$555,000 upon the terms and conditions of this Agreement;

**NOW, THEREFORE**, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITION OF TERMS**

**Section 1.01. Definitions.** Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings as follows:

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

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

"Bank" shall mean Whitney Bank d/b/a Hancock Bank, and its successors.

"Bond" shall mean the City's Water Line Assessment Revenue Bond, Series 2016 issued pursuant to the Resolution and this Agreement.

"Bond Counsel" shall mean, initially, Greenberg Traurig, P.A., Orlando, Florida, or any other attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions as approved by the City.

"Bond Rate" shall mean 1.67% per annum.

"Bondholder" shall mean the Bank as the holder of the Bond and any subsequent registered holder of the Bond.

"Business Day" shall mean any day except any Saturday or Sunday or day on which the principal office of the Bank is closed.

"City" shall mean the City of DeBary, Florida, a municipal corporation.

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

"Default Rate" shall mean the lesser of (a) six percent (6%) or (b) the maximum rate permitted by Florida law.

"Determination of Taxability" shall mean, with respect to the Bond, the circumstance that shall be deemed to have occurred if interest paid or payable on the Bond becomes includable for federal income tax purposes in the gross income of the Bondholder, or the Bond not being a "qualified tax-exempt obligation" under Section 265(b)(3)(B) of the Code as a consequence of any act, omission or event whatsoever, and regardless of whether the same was within or beyond the control of the City. A Determination of Taxability will be deemed to have occurred upon (a) the receipt by the City or the Bondholder of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency which holds that any interest payable on the Bond is includable in the gross income of the Bondholder; (b) the issuance of any public or private ruling of the Internal Revenue Service that any interest payable on the Bond is includable in the gross income of the Bondholder; or (c) receipt by the City or the Bondholder of an opinion of Bond Counsel to the effect that any interest on the Bond has become includable in the gross income of the Bondholder for federal income tax purposes or the Bond is not a "qualified tax-exempt obligation." For all purposes of this definition, a Determination of Taxability will be deemed to occur on the date as of which the interest on the Bond is deemed includable in the gross income of the Bondholder.

In the case of (a) and (b) above, no Determination of Taxability shall be deemed to occur unless the City has been given timely written notice that such a determination has been made by the Internal Revenue Service and an opportunity to participate in and seek, at its own expense, a final administrative determination or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the existence of such event of taxability; provided that the City, at its own expense, delivers to the Bank an opinion of Bond Counsel acceptable to the Bank to the effect that such appeal or action for judicial or administrative review is not

without merit and there is a reasonable possibility that the judgment, order, ruling or decision from which such appeal or action for judicial or administrative review is taken will be reversed, vacated or otherwise set aside.

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

"Final Maturity Date" shall mean the date on which all principal and all unpaid interest accrued on the Bond shall be due and payable in full, which date shall be, if not sooner due to acceleration or prepayment, October 1, 2022.

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

"Non-Ad Valorem Revenues" shall mean amounts budgeted and appropriated by the City in its annual budget from all revenues of the City not derived from ad valorem taxation and which are lawfully available to be used to pay debt service on amounts due under the Bond as the same shall become due, all as more particularly set forth in the Resolution.

"Pledged Revenues" shall mean the Water Line Assessments and, to the extent that Water Line Assessments are insufficient to pay amounts due under the Bond, the Non-Ad Valorem Revenues.

"Project" shall mean the permitting, design, construction and installation of a water main extension for potable water services and fire flow protection, and appropriate appurtenances thereto, along, under, over and through portions of Fort Florida Road, River Drive, Fifteenth Street, and Fort Florida Point Road within the City as more particularly set forth in Resolution 15-13 of the City.

"Resolution" shall mean Resolution No. 16-01 adopted by the City on January 6, 2016 which, among other things, authorized the execution and delivery of this Agreement and the issuance of the Bond.

"Revenue Fund" shall mean the Water Line Assessment Revenue Bond, Series 2016 Revenue Fund established pursuant to Section 4.03 hereof.

"Water Line Assessments" shall mean those non-ad valorem special assessments imposed by the Water Resolution.

"Water Resolution" shall mean Resolution 15-13 of the City adopted on July 29, 2015 imposing the Water Line Assessments, as it may be amended and supplemented from time to time.

**Section 1.02. Interpretation.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this

Agreement not herein defined shall have the meaning ascribed to such terms in the Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

**Section 1.03. Titles and Headings.** The titles and headings of the Articles and Sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF THE PARTIES

**Section 2.01. Representations and Warranties of City.** The City represents and warrants to the Bank as follows:

(a) Existence. The City is a municipal corporation of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt the Resolution, to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Bond to the Bank. The making, execution and performance of this Agreement on the part of the City and the issuance and delivery of the Bond have been duly authorized by all necessary action on the part of the City and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the City or any of its material properties is bound.

(b) Validity, Etc. This Agreement, the Bond and the Resolution are or will be valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) No Financial Material Adverse Change. Except as noted in the financial statements and letters to the City's auditors provided by the City to the Bank, or as disclosed separately by the City to Bank in writing, there are no actions, proceedings or investigations pending against the City or affecting the City (or any basis therefor known to the City) which, either in any case or in the aggregate, are likely to result in any material adverse change in the financial condition, business, prospects, affairs or operations of the City, or in any material impairment of the right or ability of the City to carry on its operations as now conducted or proposed to be conducted, or in any material liability on the part of the City and none which questions the validity of this Agreement, the Bond or the Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) Powers of City. The City has the legal power and authority to pledge the Pledged Revenues to the repayment of the Bond as described herein.

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

(a) Existence. The Bank is a state banking association, with full power to enter into this Agreement, to perform its obligations hereunder and to purchase the Bond. The performance of this Agreement on the part of the Bank and the purchase of the Bond have been duly authorized by all necessary action on the part of the Bank and will not violate or conflict with applicable law or any material agreement, indenture or other instrument by which the Bank or any of its material properties is bound.

(b) Validity. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights (and specifically creditors' rights as the same relate to national banks) and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) Knowledge and Experience. The Bank (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of investing in the Bond, (ii) has received and reviewed such financial information concerning the City as it has needed in order to fairly evaluate the merits and risks of investing in the Bond; (iii) is an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933; and (iv) is purchasing the Bond as an investment for its own account and not with a view toward resale to the public.

### ARTICLE III

#### THE BOND

**Section 3.01. The Bond.** The Bond shall be substantially in the form set forth as Exhibit "A" to this Agreement. The general terms of the Bond shall be as follows:

(a) Amount of Bond. The Bond shall have a total principal amount not to exceed Five Hundred Fifty-Five Thousand Dollars (\$555,000).

(b) Interest. The Bond will mature October 1, 2022. Interest will be due and payable semi-annually commencing April 1, 2016 and each April 1 and October 1 thereafter. Principal payments will be due and payable annually commencing October 1, 2016 and each October 1, thereafter. The amount outstanding under the Bond shall bear interest at the Bond Rate from the date of issuance of the Bond until paid. Upon the occurrence of one or more of the events specified in Sections 3.02 of this Agreement, the Bond Rate shall be adjusted as therein provided. Interest on the Bond shall be computed on the basis a 360 day year comprised of twelve (12) thirty (30) day months.

**Section 3.02. Adjustments to the Bond Rate.** The Bond Rate shall be subject to adjustment by the Bank if a Determination of Taxability shall occur. This adjustment shall survive payment of the Bond until such time as the federal statute of limitations under which the

interest on the Bond could be declared taxable under the Code shall have expired. In the event of a Determination of Taxability, the interest on the Bond shall be adjusted to cause the yield on the Bond, after payment of any increase in tax, to equal what the yield on the Bond would have been in the absence of such Determination of Taxability. Upon an Event of Default and during the continuance thereof, the Bond shall bear interest at the Default Rate.

The above adjustments shall be cumulative, but in no event shall the interest on the Bond exceed the maximum permitted by law. The above adjustments to the interest rate on the Bond shall be effective for all periods during which tax treatment of the interest on the Bond by the Bank is affected. Proper partial adjustment shall be made if the tax law change is effective after the first day of the Bank's tax year or if the interest on the Bond does not accrue for the entire tax year of the Bank. Adjustments which create a circular calculation because the interest on the Bond is affected by the calculation shall be carried out sequentially, increasing the interest on the Bond accordingly in each successive calculation using as the new value the increase in the interest rate on the Bond, until the change on the interest rate on the Bond caused by the next successive calculation of the adjustment is de minimis.

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

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

(a) an opinion of the City's counsel, to the City and the Bank for the exclusive reliance by the addressees, to the effect that (i) the Water Resolution and the Resolution have been duly adopted and this Agreement has been duly authorized, executed and delivered by the City and constitutes a valid, binding and enforceable agreement of the City in accordance with its terms, except to the extent that the enforceability of the rights and remedies set forth herein may be limited by bankruptcy, insolvency, financial emergency or other laws affecting creditors' rights generally or by usual equity principles; (ii) the City's execution, delivery and performance of this Agreement and execution and issuance of the Bond are not subject to any authorization, consent, approval or review of any other governmental body, public officer or regulatory authority not heretofore obtained or effected; (iii) the execution, issuance and delivery of the Bond have been duly and validly authorized by the City, and the Bond constitutes a valid and binding special obligation of the City enforceable in accordance with their terms; (iv) the City (A) is a municipal corporation duly organized and validly existing under the laws of the State of Florida, and (B) has power and authority to execute and deliver this Agreement to consummate the transactions contemplated hereby; (v) the execution, delivery and performance of the Bond and this Agreement, and compliance with the terms thereof and hereof, under the circumstances contemplated hereby, do not and will not in any material respect conflict with, or constitute on the part of the City a breach or default under, any indenture, mortgage, deed of trust, agreement or other instrument to which the City or to which its properties are subject or conflict with, violate or result in a breach of any existing law, administrative rule or regulation, judgment, court order or consent decree to which the City or its properties are subject; (vi) to the best of such counsel's knowledge, there is no claim, action, suit, proceeding, inquiry, investigation,

litigation or other proceeding, at law or in equity, pending or threatened in any court or other tribunal, state or federal (A) restraining or enjoining, or seeking to restrain or enjoin, the issuance, sale, execution or delivery of the Bond, (B) in any way questioning or affecting the validity or enforceability of any provision of this Agreement, the Bond, the Water Resolution, or the Resolution, (C) in any way questioning or affecting the validity of any of the proceedings or authority for the authorization, sale, execution or delivery of the Bond, or of any provision made or authorized for the payment thereof, (D) questioning or affecting the authority of the City to impose or collect the Water Line Assessments or other Non-Ad Valorem Revenues, or (E) questioning or affecting the organization or existence of the City or the right of any of its officers to their respective offices; (vii) the City has the legal power to pledge the Pledged Revenues to the repayment of the Bond as described in the Resolution; and (viii) all conditions contained in the ordinances and resolutions of the City precedent to the issuance of the Bond have been complied with.

The City counsel will not render an opinion concerning the Determination of Taxability of the Loan Agreement and any issued Bond; the Federal and State of Florida tax-exempt status of the interest income and documentary taxes arising from the Loan Agreement, the Bond and this transaction; and any matters assigned to Bond Counsel pursuant to the Loan Agreement. The opinion of the City counsel will be based on the facts in existence and laws in effect on the date of the opinion letter and will disclaim any obligation to update the opinion regardless of whether changes in such facts or laws come to the counsel's attention after the delivery hereof. The opinion will be limited to the law of the State of Florida and will not express an opinion with respect to the laws of any other state or jurisdiction and will not render an opinion concerning securities laws of State of Florida and Federal government. The opinion of the City counsel will assume that the execution, delivery and performance of the loan documents are within the power of the Bank, and will not violate or result in a breach of any term or provision of any agreement, judgment, non-Florida Statute, decree or administrative order to which Bank is subject and will assume that the loan documents, in the exact form as reviewed by City counsel, will be duly authorized, completed, executed and delivered by the City and Bank.

(b) an opinion of Bond Counsel stating that such counsel is of the opinion that: (i) assuming compliance by the City with certain covenants relating to requirements contained in the Code (a) interest on the Bond is excluded from gross income for purposes of federal income taxation, and (b) interest on the Bond is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; and that the Bond is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

(c) a copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service by the City; and

(d) such other documents as the Bank and its counsel reasonably may request (including, without limitation, appropriate executed Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (d), inclusive, of this Section shall have been filed with the Bank, and when the Bond shall have been executed as required by this Agreement, and all conditions of the Resolution have been met, the City shall

deliver the Bond to or upon the order of the Bank, but only against and upon the City's receipt of the purchase price of the Bond, by certified check or by wire transfer in the City's discretion.

**Section 3.05. Registration of Transfer; Assignment of Rights of Bank.** The City shall keep at the office of the City Clerk in the City's records the registration of the Bond and the registration of transfers of the Bond as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Bond may be registered only upon the books kept for the registration of the Bond and registration of transfer thereof upon surrender thereof to the City together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Bond attached as Exhibit A to this Agreement; provided, however, that the Bond may be transferred only in whole and not in part. In the case of any such registration of transfer, the City shall execute and deliver in exchange for the applicable Bond a new Bond registered in the name of the transferee. In all cases in which the Bond shall be transferred hereunder, the City shall execute and deliver at the earliest practicable time a new Bond in accordance with the provisions of this Agreement. The City may make a charge for every such registration of transfer of the Bond sufficient to reimburse it for any tax or other governmental charges (other than charges imposed by the City) required to be paid with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Bond shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Bond on the registration books of the City shall be deemed to effect a transfer of the rights and obligations of the Bank under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Bank under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Bank. The City and the transferor shall execute and record such instruments and take such other actions as the City and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Bank under this Agreement and the Bond.

In the event the Bond is mutilated, lost, stolen, or destroyed, the City shall execute a new Bond of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the City, and in the case of any lost, stolen, or destroyed Bond, there first shall be furnished to the City evidence, satisfactory to the City, of such loss, theft or destruction together with an indemnity satisfactory to it.

Nothing in this Agreement or in the Bond shall be construed to prohibit the Bank from granting a participation or participations in the Bond to any other bank or banks affiliated with the Bank or any subsidiary thereof. No such bank participant shall, however, be a registered holder of any Bond or any portion thereof.

**Section 3.06. Ownership of the Bond.** The person in whose name the Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of such Bond shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond, and interest thereon, to the extent of the sum or sums so paid.

The registered owner of the Bond is hereby granted power to transfer absolute title thereof by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against such owner's assignor or any person in the chain of title and before the maturity of such Bond; provided, however, that the Bond may be transferred only in whole and not in part and provided further, that no transfer shall be permitted absent the City's (and the Bank's) receipt of a letter in form and substance similar to the one delivered by the Bank pursuant to Section 218.385, Florida Statutes from such proposed transferee. Every prior registered owner of the Bond shall be deemed to have waived and renounced all of such owner's equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

**Section 3.07. Use of Proceeds of Bond Permitted Under Applicable Law.** The City represents, warrants and covenants that the proceeds of the Bond will be used solely for the Project.

## ARTICLE IV

### COVENANTS OF THE CITY

**Section 4.01. Performance of Covenants.** The City covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in the Resolution, this Agreement and the Bond.

**Section 4.02. Payment of the Bond.**

(a) The City covenants that it will promptly pay the principal of and interest on the Bond at the place, on the dates and in the manner provided herein and in the Bond, in accordance with the terms thereof. Pursuant to Section 4.03 hereof, the City hereby covenants to impose and collect the Water Line Assessments in sufficient amounts to pay principal and interest on the Bond when due until the repayment in full of the Bond. As provided in the Resolution, the City shall collect the Water Line Assessments pursuant to the provisions of Chapter 197, Florida Statutes.

(b) The Bond will be a limited obligation of the City secured solely by the Pledged Revenues and are payable from the Pledged Revenues as provided in the Resolution. The Bond will not constitute a general debt, liability or obligation of the City or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory provision. Neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Bond and the Bondholder shall never have the right to compel any exercise of any ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment, nor require the City to levy and collect any particular amount of Available Non-Ad Valorem Revenues. The Bond shall not constitute a lien upon any property of the City except upon the Pledged Revenues.

**Section 4.03. Pledged Revenues.** The City currently imposes and collects the Water Line Assessments pursuant to the Water Resolution. The payment of principal of and interest on the Bond shall be secured by a first priority pledge and lien upon the Water Line Assessments collected by the City and by all amounts in the Revenue Fund. The City hereby creates the Revenue Fund and shall deposit all Water Line Assessments, upon receipt, as well as any amounts budgeted and appropriated by the City to the Revenue Fund. Other than the Bond, the Water Line Assessments are not currently pledged to any other debt of the City. Pursuant to the Resolution, the City has irrevocably pledged the Pledged Revenues to the payment of principal of and interest on the Bond. Notwithstanding anything in this Agreement to the contrary, the City shall not be obligated to increase the current rate of Water Line Assessments to pay amounts due on the Bond or by this Agreement. To the extent that Water Line Assessments are insufficient to pay amounts due on the Bond or by this Agreement, the City has covenanted to budget and appropriate non-ad valorem revenues as set forth in the Resolution. The City covenants to re-assess the Water Line Assessments in the event such special assessments are determined by a court of competent jurisdiction to be invalid or legally insufficient.

**Section 4.04. Tax Covenant.** The City covenants to the purchasers of the Bond provided for in this Agreement that the City will not make any use of the proceeds of the Bond at any time during the respective terms of such Bond which, if such use had been reasonably expected on the date the Bond were issued, would have caused such Bond to be an "arbitrage bond" within the meaning of the Code. The City will comply with the requirements of the Code and any valid and applicable rules and regulations promulgated thereunder necessary to ensure the exclusion of interest on the Bond from the gross income of the holders thereof for purposes of federal income taxation.

**Section 4.05. Budget and Other Financial Information.** The City shall, without cost to the Owner:

(a) Within one hundred and eighty (180) days following the end of each Fiscal Year of the City, provide the Bondholder, with a copy of the City's audited financial statements for the preceding Fiscal Year, current year operating budget, capital improvement plan, and an updated schedule of Water Line Assessments collected; and

(b) Provide the Bondholder upon request, with a copy of its resolution adopting its annual budget within thirty (30) days of the adoption of the same, a completed budget book upon the completion of the same, and such other financial information regarding the City as the Bondholder may reasonably request.

**Section 4.06. Prepayment.** Upon ten (10) Business Days' written notice, the Bond shall be subject to prepayment without penalty at the option of the City in whole on any date or in part on any principal payment date. Any prepayments shall be applied to the sums last maturing under the Bond. The prepayment price shall equal the principal amount thereof to be prepaid, plus accrued interest to the date fixed for prepayment, and shall be in multiples of \$1,000.

**Section 4.07. Limitation on Additional Debt Secured by Water Line Assessments.** The City may not incur debt with a lien on Water Line Assessments which is senior to the lien of the Bondholder. The City may incur debt, without limitation, with a lien on Water Line

Assessments which is junior and subordinate to the lien of the Bondholder, if such debt expressly states as much.

Notwithstanding the foregoing, the requirements of the above paragraph shall not apply to any refinancing in whole of the Bond.

**Section 4.08. Limitation on Additional Debt Secured by Covenant to Budget and Appropriate.** . So long as the Bond is outstanding, the City may only issue additional debt secured by a covenant to budget and appropriate in the event that the Available Non-Ad Valorem Revenues equal or exceed 125% of the maximum annual debt service on the Bond and the proposed additional debt as evidenced by a certificate of the City's Finance Director.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

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

(a) payment of the principal of the Bond is not made within ten (10) Business Days of when the same shall become due and payable; or

(b) payment of any installment of interest on the Bond is not made within ten (10) Business Days of when the same shall become due and payable; or

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

(d) the filing of a petition by or against the City relating to bankruptcy, reorganization, arrangement or readjustment of debt of the City or for any other relief relating to the City under the United States Bankruptcy Code, as amended, or any other insolvency act or law now or hereafter existing, or the involuntary appointment of a receiver or trustee for the City, where such event continues for at least 120 days undismissed or undischarged; or

(e) the City shall default in the payment of any other bonds or notes on parity with the Bond and payable from Water Line Assessments.

The City shall provide notice of any Event of Default to the Bondholder as soon as known by the City.

**Section 5.02. Exercise of Remedies.** Upon the occurrence and during the continuance of an Event of Default, the Bondholder may, by a notice in writing to the City, declare the principal of the Bond (if not then due and payable) to be immediately due and payable, and upon such declaration, the same shall be immediately due and payable, anything contained in the Bond or this Agreement to the contrary notwithstanding. Upon the occurrence and during the continuance of an Event of Default, the Bondholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Bondholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Bondholder shall have the right to bring a mandamus action to require the City to perform its obligations under Article IV of this Agreement.

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

**Section 5.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Bondholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder; provided, however, notwithstanding anything to the contrary herein, the sole and exclusive source of the funds for payment of the Bond and all costs, fees, expenses and other obligations of the City under this Agreement and the Bond shall be the Pledged Revenues.

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

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

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

**Section 6.01. Covenants of City, Etc.: Successors.** All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

**Section 6.02. Term of Agreement.** This Agreement shall be in full force and effect from the date hereof until the Bond and all other sums payable to the Bank hereunder have been paid in full and shall survive the termination of this Agreement in relation to those provisions that deal with retroactive cost increases for the Bank in relation to the tax exempt status of the Bond.

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

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

**Section 6.05. Notices.** Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the City or the Bank, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by U.S. first class mail and certified mail, return receipt requested:

- (a) As to the City:  
City of DeBary, Florida  
Attention: City Manager  
16 Colomba Road  
DeBary, Florida 32713

(b) As to the Bank:  
Whitney Bank d/b/a Hancock Bank  
Attention: Senior Vice President – Public Finance  
113 Designer Circle  
Dothan, Alabama 36303

Either party may, by notice sent to the other, designate a different or additional address to which notices under this Agreement are to be sent.

**Section 6.06. Benefits Exclusive.** Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City and the Bondholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the City and the Bondholder.

**Section 6.07. Severability.** In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Bond, but this Agreement, any amendment or supplement hereto and the Bond shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Bond or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent from time to time permitted by law.

**Section 6.08. Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of interest on or principal of the Bond or the date fixed for prepayment of the Bond shall not be a Business Day, then payment of such interest or principal shall be made on the next succeeding Business Day with the same force and effect as if paid on the date of maturity or the date fixed for prepayment, and no interest on any such principal amount shall accrue for the period after such date of maturity or such date fixed for prepayment.

**Section 6.09. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 6.10. Applicable Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida. Exclusive venue for any litigation arising out or concerning this Agreement and the Bond shall be in a court of competent jurisdiction in Volusia County, Florida, or in the U.S. District Court for the Middle District of Florida, Orlando Division.

**Section 6.11. No Personal Liability.** Notwithstanding anything to the contrary contained herein or in the Bond, or in any other instrument or document executed by or on behalf of the City in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the City Council, officer, attorney, employee or agent of the City, officer, employee or agent of a successor to the City, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements, liability, debt, judgment or obligations, nor shall any recourse be had for the payment of the principal of or interest on any Bond or for any claim based thereon or on any such stipulation, covenant, agreement, liability, debt, judgment or obligation, against any such person, in his or her individual capacity, either directly or through the City or any successor to the City, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

**Section 6.12. Incorporation by Reference.** All of the terms and obligations of the Resolution and the Exhibits hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

**Section 6.13. Waiver of Jury Trial.** THE CITY, AND THE BANK EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE BOND OR THE RESOLUTION (COLLECTIVELY, THE "LOAN DOCUMENTS") OR THE RELATIONSHIPS AMONG THE PARTIES CONTEMPLATED BY THE LOAN DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THE WAIVER SET FORTH HEREIN SHALL BE APPLICABLE TO EACH AND EVERY LOAN DOCUMENT EXECUTED OR TO BE EXECUTED BY THE PARTIES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, IT BEING SPECIFICALLY AGREED THAT IT SHALL NOT BE NECESSARY FOR THE PARTIES TO INCLUDE A WAIVER OF JURY TRIAL PROVISION IN THE BALANCE OF THE LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANK EXTENDING CREDIT TO THE CITY. FURTHER, THE CITY HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE BANK OR COUNSEL TO THE BANK HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF JURY TRIAL.

[SIGNATURE PAGE TO FOLLOW]

**SIGNATURE PAGE FOR LOAN AGREEMENT**

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

**CITY OF DEBARY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Clint Johnson, Mayor

ATTEST:

By: \_\_\_\_\_  
Clerk of the City of  
DeBary, Florida

**WHITNEY BANK D/B/A HANCOCK BANK**

By: \_\_\_\_\_  
Steven E. Cole  
Senior Vice President – Public Finance

**EXHIBIT A**

**FORM OF BOND**

ANY HOLDER SHALL, PRIOR TO BECOMING A HOLDER, EXECUTE A PURCHASER'S CERTIFICATE IN THE FORM ATTACHED TO THE RESOLUTION (HEREIN DEFINED) CERTIFYING, AMONG OTHER THINGS, THAT SUCH HOLDER IS AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN THE SECURITIES ACT OF 1933, AS AMENDED, AND REGULATION D THEREUNDER.

**CITY OF DEBARY, FLORIDA  
WATER LINE ASSESSMENT REVENUE BOND,  
SERIES 2016**

<b>Principal Sum</b>	<b>Maturity Date</b>	<b>Date of Issuance</b>
\$555,000	October 1, 2022	January 15, 2016

KNOW ALL MEN BY THESE PRESENTS that the CITY OF DEBARY, FLORIDA (the "City"), for value received, hereby promises to pay, solely from the Pledged Revenues described in the within mentioned Agreement, to the order of WHITNEY BANK D/B/A HANCOCK BANK, a Mississippi State Chartered Bank, or its assigns (the "Holder"), at such place as the Holder may from time to time designate in writing, the Principal Sum stated above pursuant to that certain Loan Agreement by and between the Holder and the City, dated January 15, 2016 (the "Agreement"), together with interest thereon as hereinafter provided until the Maturity Date (hereinabove defined) or the date the principal amount of this Bond is paid in the manner hereinafter set forth in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, which payments shall be made to the Holder hereof by check mailed to the Holder at the address designated in writing by the Holder for purposes of payment or by bank wire or bank transfer as such Holder may specify in writing to the City or otherwise as the City and the Holder may agree.

This Bond shall bear interest at a fixed rate equal to 1.67% per annum, which shall be calculated on the basis of a 360 day year comprised of twelve (12) thirty (30) day months.

Upon the City's written request, the Holder shall provide to the City such documentation to evidence any adjustment to the Bond Rate and the calculations made in connection therewith. Upon the occurrence of any Determination of Taxability, as defined in the Agreement, this Bond shall bear interest (from the date when such Determination of Taxability is deemed to have occurred), as set forth in the Agreement. The Bond Rate may also be adjusted as set forth in the Agreement.

The repayment schedule of principal and interest shall be set forth in Schedule I attached hereto and made a part hereof.

Upon ten (10) Business Days' written notice, the Bond shall be subject to prepayment at the option of the City in whole on any date or in part on any principal payment date. Any prepayments shall be applied to the sums last maturing under the Bond. The prepayment price shall equal the principal amount thereof to be prepaid, plus accrued interest to the date fixed for prepayment, and shall be in multiples of \$1,000.

Notice having been given as aforesaid, the principal amount stated in such notice or the whole thereof, as the case may be, shall become due and payable on the prepayment date stated in such notice, together with interest accrued and unpaid to the prepayment date on the principal amount then being paid. If, on the prepayment date, funds for the payment of the principal amount or portion thereof to be prepaid, together with interest to the prepayment date on such principal amount, shall have been given to the Holder, as above provided, then from and after the prepayment date interest on such principal amount, or portion thereof, of this Bond shall cease to accrue. If said funds shall not have been so paid on the prepayment date, the principal amount of this Bond shall continue to bear interest until payment thereof at the rate or rates provided for herein.

All payments made by the City hereon shall apply first to accrued interest, then to other charges due the Holder, and the balance thereof shall apply to the principal amount then due on this Bond.

This Bond is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the Constitution and statutes of the State of Florida, including, particularly, Chapter 166, Florida Statutes, as amended and supplemented, and other applicable provisions of law, the City's Resolution No. 16-01\_ \_\_\_ adopted January 6, 2016 (the "Resolution"), and is subject to all terms and conditions of said Resolution and the Agreement. Any term used in this Bond and not otherwise defined shall have the meaning ascribed to such term in the Resolution or the Agreement, as the case may be.

The principal of and interest on this Bond do not constitute a general obligation or indebtedness of the City, and the Holder shall never have the right to require or compel the levy of taxes on any property of or in the City for the payment of the principal of and interest on or for any other matter under or relating to this Bond. The principal of and interest on this Bond are not secured by a lien upon the Project, or upon any property of or in the City, but are secured solely by the Pledged Revenues in the manner provided herein and in the Agreement. Reference is made to the Agreement and the Resolution for the provisions relating to the security for payment of this Bond and the duties and obligations of the City hereunder.

The City has designated this Bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code.

Notwithstanding any provision in this Bond to the contrary, in no event shall the interest contracted for, charged or received in connection with this Bond (including any other costs or considerations that constitute interest under the laws of the State of Florida which are contracted for, charged or received) exceed the maximum rate of nonusurious interest allowed under the State of Florida as presently in effect and to the extent an increase is allowable by such laws, but in no event shall any amount ever be paid or payable by the City greater than the amount

contracted for herein. In the event the maturity of this Bond is accelerated or prepaid in accordance with the provisions hereof, then such amounts that constitute payments of interest, together with any costs or considerations which constitute interest under the laws of the State of Florida, may never exceed an amount which would result in payment of interest at a rate in excess of that permitted by Section 215.84(3), Florida Statutes, as presently in effect and to the extent an increase is allowable by such laws; and excess interest, if any, shall be cancelled automatically as of the date of such acceleration, or, if theretofore paid, shall be credited on the principal amount of this Bond unpaid, but such crediting shall not cure or waive any default under the Agreement or Resolution.

THIS BOND, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT AND THE RESOLUTION, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE CITY OR THE STATE OF FLORIDA (THE "STATE"), WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES, AS PROVIDED IN THE AGREEMENT AND THE RESOLUTION. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS BOND OR THE INTEREST THEREON.

Upon the occurrence of an Event of Default the principal of this Bond may become or be declared due and payable before the Maturity Date in the manner, with the effect and subject to the conditions set forth in the Agreement and Resolution. The Holder shall also have such other remedies as described in the Agreement.

The City hereby waives presentment, demand, protest and notice of dishonor. This Bond is governed and controlled by the Agreement and the Resolution and reference is hereby made thereto regarding interest rate adjustments, acceleration, and other matters.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the City has caused this Bond to be signed by the Mayor, on behalf of the City Council, either manually or with facsimile signature, and the seal of the City to be affixed hereto or imprinted or reproduced hereon, and attested by the Clerk of the City, either manually or with facsimile signature, and this Bond to be dated the Date of Issuance set forth above.

**CITY OF DEBARY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Clint Johnson, Mayor

ATTEST:

By: \_\_\_\_\_  
Clerk of the City of  
DeBary, Florida

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

---

(please print or typewrite name, address and tax identification number of assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

---

(Name of Attorney)

to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Name of Bondholder: \_\_\_\_\_

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

Schedule I

<u>Period Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
04/01/2016		\$ 1,956.68	\$ 1,956.68
10/01/2016	\$ 63,000.00	4,634.25	67,634.25
04/01/2017		4,108.20	4,108.20
10/01/2017	79,000.00	4,108.20	83,108.20
04/01/2018		3,448.55	3,448.55
10/01/2018	80,000.00	3,448.55	83,448.55
04/01/2019		2,780.55	2,780.55
10/01/2019	81,000.00	2,780.55	83,780.55
04/01/2020		2,104.20	2,104.20
10/01/2020	83,000.00	2,104.20	85,104.20
04/01/2021		1,411.15	1,411.15
10/01/2021	84,000.00	1,411.15	85,411.15
04/01/2022		709.75	709.75
10/01/2022	85,000.00	709.75	85,709.75
	<u>\$555,000.00</u>	<u>\$35,715.73</u>	<u>\$590,715.73</u>

ORL 299189150v3