

**FLORIDA PORTS FINANCING  
COMMISSION MEETING  
AND TEFRA HEARING**

**THURSDAY, JANUARY 13, 2011**

**11:00 A.M. - 1:00 P.M.**

**FLORIDA PORTS COUNCIL  
502 EAST JEFFERSON STREET  
TALLAHASSEE, FL 32301**

**850-222-8028**

**TAB 1**  
**CALL TO ORDER**

## **AGENDA**

### **FLORIDA PORTS FINANCING COMMISSION MEETING**

**Thursday, January 13, 2011  
11:00 A.M. - 1:00 P.M.**

**502 East Jefferson Street  
Tallahassee, FL 32301**

**Phone: 850-222-8028    FAX: 850-222-7552**

- 1.     Call to Order.**
- 2.     Roll Call.**
- 3.     Approval of October 13, 2010 FPFC Meeting Summary.**
- 4.     Potential Refunding of FPFC 1996 and 1999 Bonds.**
  - A.     Presentation of Financial Advisor.**
  - B.     Presentation of Senior Manager.**
  - C.     Presentation of Bond Counsel.**
  - D.     Discussion of Selection of Trustee.**
  - E.     Discussion of Selection of Commission Counsel.**
  - F.     Other Issues.**
- 5.     TEFRA Hearing.**
- 6.     Consider adoption of TEFRA Resolutions approving financing pursuant to Section 147(f) of Internal Revenue Code of 1986, as amended.**
- 7.     Consider adoption of Resolution for FPFC Refunding Revenue Bonds (State Transportation Trust Fund), 2011A (Non-AMT) and for FPFC Refunding Revenue Bonds (State Transportation Trust Fund), 2011B (AMT).**
- 8.     Consider adoption of Resolution for FPFC Refunding Revenue Bonds, State Transportation Trust Fund - Intermodal Program), 2011A (Non-AMT) and for FPFC Refunding Revenue Bonds, State Transportation Trust Fund - Intermodal Program), 2011B (AMT).**
- 9.     Administrative Report.**
- 10.    Other Issues.**
- 11.    Adjournment.**

**TAB 2**  
**ROLL CALL**



# FLORIDA PORTS FINANCING COMMISSION

## ROLL CALL

### MEMBER:

### REPRESENTATIVE:

### DESIGNEE:

#### **JACKSONVILLE**

(Jacksonville Port Authority)

MICHAEL POOLE

#### **CANAVERAL**

(Canaveral Port Authority)

STAN PAYNE, Chairman

#### **EVERGLADES**

(Broward County)

PHIL ALLEN

#### **FT. PIERCE**

(St. Lucie County)

FAYE OUTLAW

#### **MANATEE**

(Manatee County Port Authority)

DAVID MCDONALD

#### **MIAMI**

(Miami-Dade County)

KHALID SALAHUDDIN, Vice Chairman

#### **PALM BEACH**

(Port of Palm Beach District)

MANNY ALMIRA

#### **PANAMA CITY**

(Panama City Port Authority)

WAYNE STUBBS

#### **PENSACOLA**

(Pensacola Port Authority)

CLYDE MATHIS

#### **TAMPA**

(Hillsborough County Port District)

RAM KANCHARLA, Secretary/Treasurer

1-13-11

**TAB 3**  
**APPROVAL OF OCTOBER 13, 2010**  
**FPFC MEETING SUMMARY**

## MEETING SUMMARY

### FLORIDA PORTS FINANCING COMMISSION

October 13, 2010  
10:30 a.m. - 11:30 a.m.

Disney Yacht & Beach Club  
Lake Buena Vista, FL

The Florida Ports Financing Commission (FPFC) meeting was called to order by Acting Chair, Khalid Salahuddin.

#### Members Present:

Khalid Salahuddin, Miami, Acting Chairman  
Ram Kancharla, Tampa, Secretary/Treasurer  
Stan Payne, Canaveral  
Michael Poole, Jacksonville  
Phil Allen, Everglades  
Manny Almira, Palm Beach  
Wayne Stubbs, Panama City  
Clyde Mathis, Pensacola  
Bob Armstrong, Manatee

A quorum was announced.

#### Others in attendance included:

Val Schwec	Tom Giblin
Tommy Pitts	Edward Marquez
Bill Johnson	Michael Hole
Jim Fitton	Glenn Wiltshire
David Anderton	Mark Weinberg
Walt Miller	Dick Montalbano
Doug Wheeler	Meredith Dahlrose
Nancy Leikauf	Ken Hern
Toy Keller	Don West
Mike Rubin	

**Tab 3: Approval of September 29, 2010 FPFC Meeting Summary** was taken up for consideration. With no discussion or corrections, a motion was made by Mr. Kancharla and seconded by Mr. Mathis and the meeting summary was approved with no opposition.

#### **Tab 4: Election of Officers**

Clyde Mathis facilitated the nominating process for a new FPFC Chairman, nominating David

McDonald. Khalid Salahuddin as Vice Chair and Ram Kancharla as Secretary/Treasurer agreed to serve for another year. Mike Poole made a motion to nominate Stan Payne; it was seconded by Ram Kancharla.

A discussion on matters of protocol followed where it was determined to take a roll call vote with each member stating their vote for Chairman.

Roll call vote on FPFC Chairman:

MR. POOLE:	Payne.
MR. PAYNE:	Payne.
MR. ALLEN:	Payne.
MR. WEST:	Payne.
MR. ARMSTRONG:	McDonald.
CHAIRMAN SALAHUDDIN:	McDonald.
MR. ALMIRA:	Payne.
MR. STUBBS:	Payne.
MR. MATHIS:	McDonald.
MR. KANCHARLA:	Payne.

Chairman Salahuddin congratulated Mr. Payne and suggested he chair the remainder of the meeting.

**Tab 5: Discussion of Refunding of FPFC Series 1996/1999 Bonds**

**A. Financial Advisor**

Ms. Leikauf introduced the financial adviser, Ed Marquez, from First Southwest and referenced information from previous meetings. She noted that during the last teleconference meeting the Financing Commission voted to move forward with upfront savings and to look at a variety of issues. Mr. Marquez directed members to Tab 5A within the agenda, and began his report about how they had contrasted level savings with an upfront savings scenario that maximized the debt service savings in the upfront structure. He explained that it was an upfront savings maximization that provides \$11.9 million in 2011 and \$9.5 million in 2012. That had the effect of increasing the weighted average maturity (WAM) of new bonds versus the old and because of that, TEFRA hearings would need to be held.

Mr. Marquez showed other scenarios in the report creating no WAM increase -- an attempt to generate as much upfront savings without changing the weighted average of maturity. However, he explained that the dollar amounts in that scenario for each subsequent year are diminished as opposed to \$11.9 million in fiscal '11, it would be \$7.4 million, and on and on. The difference in the timing of dollars is that over the first four years, ports would receive approximately \$14.3 million less in savings than with each of the other two variations.

Mr. Marquez noted that staff and consultants appear to be geared up to move forward on the maximization scenario, which would require the TEFRA hearings, but should the market start to become unfavorable and the Commission wanted to shorten that time process to issue bonds, the no- WAM increase scenario is an alternative that is available.

Ram Kancharla observed that between Scenario B and the no bond increase, the increased

saving difference is half a million dollars. He noted that by selecting the no-WAM increase as far as NPV is concerned, there is hardly any difference. Mr. Kancharla noted that all ports have great needs in general and from previous discussions, it appears the Commission would prefer the Scenario B option.

Mr. Marquez concluded his presentation.

## **B. Senior Manager**

Michael Hole of Citigroup reported that the refinancing would be subject to TEFRA hearings and the associated legal process and encouraged ports to please expedite the process as much as possible. He pointed out that if the refinancing needs to be a quicker process, Scenario B could be used without the TEFRA hearings, and the net present value savings does not change. What does change is the timing of the receipt the savings. He noted that it was this Commission's desire to receive as much savings as possible, which is what requires the TEFRA hearings. Unless otherwise notified, Mr. Hole indicated they would proceed as planned. From a structuring perspective, that decision does not have to be made immediately, so the ability is there to make a change. He encouraged the ports to contact Tom Giblin, Bond Counsel, regarding their TEFRA process.

Mr. Hole concluded his report.

Phil Allen and Mr. Giblin discussed the process and schedule of TEFRA hearings relative to each port and its respective governing entity.

Mr. Kancharla asked if TEFRA hearings would be necessary for the new FSTED projects that the refinancing will fund. Mr. Giblin answered, saying no, the projects would be built with savings and tax-exempt bond proceeds will not be involved.

## **C. Bond Counsel**

Mr. Giblin reported Bond Counsel's piece of the refinancing process, noting three or four moving parts, all moving at the same time. He noted item number one, legal documents, stating that they are going to involve indentures. Amended indentures for both the '96 and '99 bonds programs will need to be done and would probably be out to the financing team sometime next week. He said there are a number of other legal documents also being worked on at the same time.

Item two was described as the preliminary official statement, also being worked on by Citigroup's counsel, which is Squire Sanders & Dempsey. He noted that they would get that document out about the same time as his documents go out, which would be sometime next week. Mr. Giblin stated that one of the things recommended to Michael Hole and to Squire Sanders in terms of having disclosure counsel is that, because the selection process is long and cumbersome, Citigroup hire disclosure counsel. The disclosure counsel hired must be willing to give the Commission a reliance letter, which is their opinion to Citigroup, in terms of all the security law issues, but it would also be addressed to the Commission. It satisfies Citigroup and gives the Commission some comfort that the official statement under its name is okay.

Mr. Giblin went on to describe the next moving part, the TEFRA hearings, which may be

cumbersome. They were done back in '96 and '99, and because each port has its own requirements, some take longer than others. He indicated that the process may take about a month and a half or perhaps even longer. He encouraged the ports to check their records and make sure that the project descriptions in terms of what the '96 and '99 bond proceeds were used for, are accurate.

Mr. Giblin's final element was AMT versus non-AMT. He noted that a point person from each port had been assigned to this issue. A questionnaire was circulated to the group and some responses have been received; they are due on the 21<sup>st</sup>. It is important to get these responses back because they will be used to generate a fair amount of additional savings in terms of interest rates.

Mr. Giblin hopes to have all the items wrapped up sometime at the end of November or early December and begin to market the Commission's bonds.

Mr. Salahuddin had a question regarding using the underwriter's counsel as disclosure counsel which was answered by Mr. Giblin who stated that they would actually be representing CitiGroup, not the Commission and that no conflict existed.

#### **Tab 6: Consideration of Proposal from Nabors, Giblin & Nickerson P.A.**

Ms. Leikauf directed the members to a proposal to formally engage bond counsel, which the Commission requested during the last meeting.

Before any action on the proposal from Nabors, Giblin & Nickerson took place, a discussion was initiated by Mr. Kancharla regarding the process used in determining the number of firms selected to manage the bond issue. Mr. Marquez pointed out that the alternatives had been laid out for the Commission to consider during the last meeting and the Commission agreed to keep the existing team.

Dick Montalbano, Managing Director with RBC Capital Markets, addressed the Commission. He noted that he had worked with some members of the Commission from the original concept, to creating the financing pool through the legislative process, and had much historical experience to offer. He noted that RBC missed the selection by one half of one percent and suggested the value RBC could bring to the table would be worth an opportunity to continue their relationship with the FPFC.

After a discussion regarding the addition of RBC to the list of managers, the Commission took no additional action to expand the list of managers. The Commission moved the discussion back to the Nabors, Giblin & Nickerson proposal. Chairman Payne asked about costs associated with expenses and Mr. Giblin noted combined costs should not exceed a total of \$15,000 for both issues, not inclusive of additional copies of transcripts. Mr. Wainio inquired about the \$1.10 bond rate and after a lengthy discussion, it was decided that it was a fair industry rate based on the scope of work and involving two bonds.

A motion was made by Mr. Salahuddin that the contract be approved reflecting the \$15,000 cost was for both issues. It was seconded by Mr. Kancharla. The motion passed with no opposition.

## **Tab 7: Discussion of Priority Seaport Project List**

The Commission discussed a proposal by Joan Sanchez (\$8,640) to survey the ports for a determination of the need for additional seaport infrastructure investment projects. If such a need was identified, the Commission discussed funding options and the need for economic impact information to justify utilizing the savings for infrastructure investments that create jobs and increase state and local revenues. A proposal by Martin & Associates (not to exceed \$10,000) to provide the economic impact analysis for each of those projects also was discussed.

A motion was made by Mr. Stubbs to approve both proposals for service. Motion was seconded by Mr. Salahuddin. The motion passed with no opposition.

## **Tab 8: Administrative Issues**

Ms. Leikauf directed the members to the meeting materials which included the approved '09/'10 budget, expense information from '09/'10, remaining payables, and a proposed budget for '10/'11', reflecting a balance-forward from '09/'10. There was a discussion and review of outstanding items from the '09/'10 budget, and a description of the proposed '10/'11 budget, including the infusion of SBA funds and the estimated costs for consultants associated with the refinancing of bonds.

A motion was made by Mr. Kancharla to approve the budget. Motion was seconded by Mr. Mathis. The motion passed with no opposition.

Another motion was made by Mr. Kancharla to approve payment of services to the financial advisor of approximately \$8,637. Motion was seconded by Mr. Stubbs. The motion passed with no opposition.

## **Tab 9: Other Issues**

No discussion

## **Tab 10: Adjournment**

Mr. Kancharla moved to adjourn; it was seconded by Mr. Salahuddin and the meeting was adjourned at 11:33 a.m.

**TAB 4**  
**POTENTIAL REFUNDING OF FPFC 1996**  
**AND 1999 BONDS**



**TAB 4A**  
**PRESENTATION OF**  
**FINANCIAL ADVISOR**

# FitchRatings

One State Street Plaza  
New York, NY 10004

T 212 908 0500 / 800 75 FITCH  
[www.fitchratings.com](http://www.fitchratings.com)

January 6, 2011

Ms. Nancy Leikauf  
interim President  
Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, FL 32301

Dear Ms. Leikauf:

Fitch Ratings has assigned one or more ratings and/or otherwise taken rating action(s), as detailed on the attached Notice of Rating Action.

In issuing and maintaining its ratings, Fitch relies on factual information it receives from issuers and underwriters and from other sources Fitch believes to be credible. Fitch conducts a reasonable investigation of the factual information relied upon by it in accordance with its ratings methodology, and obtains reasonable verification of that information from independent sources, to the extent such sources are available for a given security or in a given jurisdiction.

The manner of Fitch's factual investigation and the scope of the third-party verification it obtains will vary depending on the nature of the rated security and its issuer, the requirements and practices in the jurisdiction in which the rated security is offered and sold and/or the issuer is located, the availability and nature of relevant public information, access to the management of the issuer and its advisers, the availability of pre-existing third-party verifications such as audit reports, agreed-upon procedures letters, appraisals, actuarial reports, engineering reports, legal opinions and other reports provided by third parties, the availability of independent and competent third-party verification sources with respect to the particular security or in the particular jurisdiction of the issuer, and a variety of other factors.

Users of Fitch's ratings should understand that neither an enhanced factual investigation nor any third-party verification can ensure that all of the information Fitch relies on in connection with a rating will be accurate and complete. Ultimately, the issuer and its advisers are responsible for the accuracy of the information they provide to Fitch and to the market in offering documents and other reports. In issuing its ratings Fitch must rely on the work of experts, including independent auditors with respect to financial statements and attorneys with respect to legal and tax matters. Further, ratings are inherently forward-looking and embody assumptions and predictions about future events that by their nature cannot be verified as facts. As a result, despite any verification of current facts, ratings can be affected by future events or conditions that were not anticipated at the time a rating was issued or affirmed.

Fitch seeks to continuously improve its ratings criteria and methodologies, and periodically updates the descriptions on its website of its criteria and methodologies for securities of a given type. The criteria and methodology used to determine a rating action are those in effect at the time the rating action is taken, which is the date of the related rating action commentary. Each rating action commentary provides information about the criteria and methodology used to arrive at the stated rating, which may differ from the general criteria and methodology for the applicable security type posted on the website at a given time. For this reason, you should always consult the applicable rating action commentary for the most accurate information on the basis of any given rating.

Ratings are not a recommendation or suggestion, directly or indirectly, to you or any other person, to buy, sell, make or hold any investment, loan or security or to undertake any investment strategy with respect to any investment, loan or security or any issuer. Ratings do not comment on the adequacy of market price, the suitability of any investment, loan or security for a particular investor (including without limitation, any accounting and/or regulatory treatment), or the tax-exempt nature or taxability of payments made in respect of any investment, loan or security. Fitch is not your advisor, nor is Fitch providing to you or any other party any financial advice, or any legal, auditing, accounting, appraisal, valuation or actuarial services. A rating should not be viewed as a replacement for such advice or services.

The assignment of a rating by Fitch does not constitute consent by Fitch to the use of its name as an expert in connection with any registration statement or other filings under US, UK or any other relevant securities laws.

It is important that you promptly provide us with all information that may be material to the ratings so that our ratings continue to be appropriate. Ratings may be raised, lowered, withdrawn, or placed on Rating Watch due to changes in, additions to, accuracy of or the inadequacy of information or for any other reason Fitch deems sufficient.

Nothing in this letter is intended to or should be construed as creating a fiduciary relationship between Fitch and you or between us and any user of the ratings. Nothing in this letter shall limit our right to publish, disseminate or license others to publish or otherwise to disseminate the ratings or the rationale for the ratings.

In this letter, "Fitch" means Fitch, Inc. and Fitch Ratings Ltd and any subsidiary of either of them together with any successor in interest to any such person.

We are pleased to have had the opportunity to be of service to you. If we can be of further assistance, please feel free to contact us at any time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ann Flynn", written in a cursive style.

Ann Flynn  
Senior Director  
U.S. Public Finance

AF/jh

Enc: Notice of Rating Action  
(Doc ID: 155812)

## Notice of Rating Action

<u>Bond Description</u>	<u>Rating Type</u>	<u>Action</u>	<u>Rating</u>	<u>Outlook/ Watch</u>	<u>Eff Date</u>	<u>Notes</u>
Florida Ports Financing Commission (FL) (State Transportation Trust Fund) rfdg rev bonds (AMT) ser 2011B	Long Term	New Rating	AA	RO:Sta	22-Dec-2010	
Florida Ports Financing Commission (FL) (State Transportation Trust Fund) rfdg rev bonds ser 2011A	Long Term	New Rating	AA	RO:Sta	22-Dec-2010	
Florida Ports Financing Commission (FL) (State Transportation Trust Fund-Intermodal Prog) rfdg rev bonds (AMT) ser 2011B	Long Term	New Rating	AA	RO:Sta	22-Dec-2010	
Florida Ports Financing Commission (FL) (State Transportation Trust Fund-Intermodal Prog) rfdg rev bonds ser 2011A	Long Term	New Rating	AA	RO:Sta	22-Dec-2010	
Florida Ports Financing Commission (FL) (State Transportation Trust Fund) rev bonds ser 1996 (insured: MBIA Insurance Corp.)	Long Term	Affirmed	AA	RO:Sta	22-Dec-2010	
Florida Ports Financing Commission (FL) (State Transportation Trust Fund-Intermodal Prog) rev bonds ser 1999 (insured: Financial Guaranty Insurance Company)	Long Term	Affirmed	AA	RO:Sta	22-Dec-2010	
Key: RO: Rating Outlook, RW: Rating Watch; Pos: Positive, Neg: Negative, Sta: Stable, Evo: Evolving						

December 28, 2010

Mr. Mike Rubin  
Florida Ports Finance Commission  
502 East Jefferson Street  
Tallahassee, FL 32301

Dear Mr. Rubin,

We wish to inform you that on December 22, 2010, Moody's Investors Service assigned a rating of Aa3 to the Florida Ports Financing Commission's Refunding Revenue Bonds (State Transportation Trust Fund) Series 2011A (Non-AMT) and 2011B (AMT) (Series 1996 Refunding) and the Refunding Revenue Bonds (State Transportation Trust Fund) Series 2011A (Non-AMT) and 2011B (AMT) (Series 1999 Refunding).

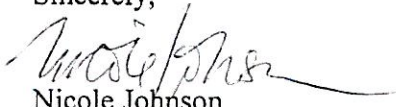
In order for us to maintain the currency of our ratings, we request that you provide ongoing disclosure, including annual financial and statistical information.

Moody's will monitor this rating and reserves the right, at its sole discretion, to revise or withdraw this rating at any time in the future.

The rating, as well as any revisions or withdrawals thereof, will be publicly disseminated by Moody's through normal print and electronic media and in response to verbal requests to Moody's ratings desk.

Should you have any questions regarding the above, please do not hesitate to contact me at 212-553-4573.

Sincerely,



Nicole Johnson  
Senior Vice President

**New Issue: MOODY'S ASSIGNS Aa3 RATING TO FLORIDA PORTS FINANCING COMMISSION'S REFUNDING REVENUE BONDS (STATE TRANSPORTATION TRUST FUND), SERIES 2011A AND 2011B (SERIES 1996 REFUNDING) AND SERIES 2011A AND 2011B (SERIES 1999 REFUNDING)**

Global Credit Research - 23 Dec 2010

**OUTLOOK IS STABLE**

Ports  
FL

**Moody's Rating**

ISSUE	RATING
Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT) (1999 Refunding)	Aa3
<b>Sale Amount</b>	\$70,535,000
<b>Expected Sale Date</b>	01/07/11
<b>Rating Description</b>	Motor Vehicle License Tax Revenue
Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (1999 Refunding)	Aa3
<b>Sale Amount</b>	\$43,575,000
<b>Expected Sale Date</b>	01/17/11
<b>Rating Description</b>	Motor Vehicle License Tax Revenue
Revenue Refunding Bonds (State Transportation Trust Fund) Series 2011 A (Non-AMT) (1996 Refunding)	Aa3
<b>Sale Amount</b>	\$11,755,000
<b>Expected Sale Date</b>	01/17/11
<b>Rating Description</b>	Motor Vehicle License Tax Revenue
Revenue Refunding Bonds (State Transportation Trust Fund), Series 2011B (AMT) (1996 Refunding)	Aa3
<b>Sale Amount</b>	\$146,115,000
<b>Expected Sale Date</b>	01/17/11
<b>Rating Description</b>	Motor Vehicle License Tax Revenue

**Opinion**

NEW YORK, Dec 23, 2010 -- Moody's Investors Service has assigned Aa3 ratings to the Florida Ports Financing Commission's issuance of Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A and 2011B (Series 1996 Refunding) and Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A and 2011B (Series 1999 Refunding). Moody's has also affirmed the Aa3 rating on the commission's outstanding 1999 bonds (\$117.9 million). Proceeds of the new bonds, which will be sold the week of January 17, will be used to refund the commissions outstanding 1996 and 1999 bonds for net present value savings. The 1996 and 1999 refunding bonds are secured by a fixed allocation (\$15 million and \$10 million, respectively) of state motor vehicle license taxes after distribution for education capital outlay purposes and Florida's interstate highway system. The original proceeds were used for capital improvements to 11 participating ports in the state.

**RATINGS RATIONALE**

The Aa3 rating reflects the pledge of dedicated motor vehicle license (MVL) taxes; overall stability and reliability of the revenue stream; and sufficient debt service coverage by pledged revenues with ample cushion provided by total MVL taxes after prior distributions, before final transfer to the general revenue fund for state operating purposes.

**Credit strengths:**

- \*Fixed allocation of MVL taxes plus available revenues provides ample cushion for debt service
- \*Overall favorable revenue trends
- \*Payment mechanism well in advance of debt service payment dates protects against potential collection fluctuations
- \*State covenant not to take actions that would adversely impact bondholders

**Credit Challenges:**

- \*Fixed allocation results in sum sufficient coverage
- \*Bonds are fully leveraged

**STRONG PAYMENT MECHANISMS AND LEGAL PROTECTIONS**

Both series of bonds are secured by an irrevocable lien upon, and pledge of, the trust estate, which is comprised of all right, title and interest of the commission under loan agreements with each participating port. Under each loan agreement, each borrower has assigned to the trustee, on behalf of the commission, all its rights, title and interest in moneys paid from the State Transportation Trust Fund (STTF). Pursuant to a master agreement between the State's Department of Transportation and the Port Commission, such moneys shall be deposited directly by the Department to a Florida Ports escrow account on behalf of the trustee for payment of debt service.

The bonds are secured by fixed amounts (\$15 million and \$10 million for the 1996 and 1999 refunding bonds, respectively) allocated annually, by statute, from MVL taxes deposited in the STTF. The pledge is subordinate to the constitutional requirement that first available revenues are dedicated to education capital outlay purposes, according to an enrollment-based formula. In addition, \$25 million has been statutorily pledged to the Department of Transportation for interstate highway purposes. Payments to education capital outlay have been relatively stable in the last five years, and consumed about 19% of total revenues deposited in the STTF in fiscal 2009. The portion decreased following the increase in the MVL tax in fiscal 2010.

The Department of Transportation, which collects the taxes, deposits the full allocation into an escrow for payment of debt service on July 1 of each fiscal year, ensuring availability of funds sufficient to pay annual debt service on the first day of each fiscal year, well in advance of debt service payments on December 1 and June 1. Pursuant to the loan agreements with each port, basic payments are due October 1 and April 1. Funds will be transferred to the trustee within 60 days prior to each debt service payment date. This strong payment mechanism also protects against aberrations in cash flows or

total collections. The annual payment of debt service is unconditional, and not subject to annual appropriation. Debt service is paid from revenues from the STTF, and is not a general fund obligation.

The legislation establishing this borrowing program also includes a covenant by the state to not take any actions which would materially and adversely affect the rights of bondholders. However, there is no prohibition against dedicating additional portions of the revenue stream. There is no debt service reserve fund.

#### PLEDGED REVENUES PROVIDE SUFFICIENT COVERAGE; SOME FLUCTUATION IN REVENUES

The MVL tax is an annual fee for the operation of motor vehicles, covering automobiles, motorcycles, motor trucks, and all other vehicles in the state. Since 2001, revenues have exhibited some sensitivity to economic conditions. There were declines of 1.5% in fiscal 2002 and 3.8% in fiscal 2007, and revenues were essentially flat in fiscal 2009 (-0.8% decline). However, amounts dedicated to the commission's bonds were unaffected due to the fixed allocations.

Both allocations are fully leveraged, resulting in 1.0 times coverage from pledged revenues. Additional bonds are permitted following certification by an authorized representative of the Ports Commission to the trustee that the maximum amount of moneys available in the STTF will be sufficient to pay debt service on current and proposed bonds. However, the current sum sufficient coverage effectively precludes the issuance of additional bonds secured by the same revenue stream without a further allocation.

MVL taxes available in the trust fund after payment of debt service on the 1996 and 1999 bonds totaled \$490 million in fiscal 2009, providing ample protection against potential fluctuations in the revenue stream. After distribution to the school capital outlay fund and transportation trust fund, the remaining revenues are transferred to the state's general revenue fund. The state legislature raised the motor vehicle license fee in fiscal 2010, resulting in a substantial increase in operating revenues for the state, after the required distributions which remain unchanged. Revenues available after debt service increased to \$585 million in fiscal 2010 following the tax increase.

#### Outlook

The rating outlook is stable based on Moody's expectation that the bonds will remain fully leveraged and revenues available for debt service will continue to provide ample cushion despite potential fluctuations in the total revenue stream.

What could make the rating move - UP

\*Increased allocation of dedicated MVL taxes, without additional debt authorization, resulting in higher debt service coverage from the pledged allocation

\*Higher priority of debt service in MVL distribution, ahead of prior allocations

What could make the rating move -DOWN

\*Additional leveraging of revenue stream that dilutes cushion for debt service

\*Significant fall off in MVL tax collections

The current rating assignment was assigned by evaluating factors we believe are relevant to the credit profile of the issuer, such as i) the business risk and competitive position of the issuer versus others within its industry or sector, ii) the capital structure and financial risk of the issuer, iii) the projected performance of the issuer over the near to intermediate term, iv) the issuer's history of achieving consistent operating performance and meeting budget or financial plan goals, v) the debt service coverage provided by such revenue stream, vi) the legal structure that documents the revenue stream and the source of payment, and vii) the issuer's management and governance structure related to the payment.

#### REGULATORY DISCLOSURES

Information sources used to prepare the credit rating are the following: parties involved in the ratings, public information, confidential and proprietary Moody's Analytics' information.

Moody's Investors Service considers the quality of information available on the credit satisfactory for the purposes of assigning a credit rating.

Moody's adopts all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from sources Moody's considers to be reliable including, when appropriate, independent third-party sources. However, Moody's is not an auditor and cannot in

every instance independently verify or validate information received in the rating process.

Please see ratings tab on the issuer/entity page on Moodys.com for the last rating action and the rating history.

The date on which some Credit Ratings were first released goes back to a time before Moody's Investors Service's Credit Ratings were fully digitized and accurate data may not be available. Consequently, Moody's Investors Service provides a date that it believes is the most reliable and accurate based on the information that is available to it. Please see the ratings disclosure page on our website [www.moodys.com](http://www.moodys.com) for further information.

Please see the Credit Policy page on Moodys.com for the methodologies used in determining ratings, further information on the meaning of each rating category and the definition of default and recovery.

#### **Analysts**

Nicole Johnson  
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Public Finance Group  
Moody's Investors Service

Emily Raimes  
Backup Analyst  
Public Finance Group  
Moody's Investors Service

#### **Contacts**

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Research Clients: (212) 553-1653

Moody's Investors Service  
250 Greenwich Street  
New York, NY 10007  
USA



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December 22, 2010

### Summary:

## Florida Port Financing Commission; Miscellaneous Tax

#### Primary Credit Analyst:

John Sugden-Castillo, New York (1) 212-438-1678; john\_sugden@standardandpoors.com

#### Secondary Contact:

Robin Prunty, New York (1) 212-438-2081; robin\_prunty@standardandpoors.com

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Rationale

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## Summary:

# Florida Port Financing Commission; Miscellaneous Tax

### Credit Profile

US\$157.87 mil rfdg rev bnds (State Transp Trust Fund) ser 2011A&B due 06/01/2027

Long Term Rating

AA+/Stable

New

## Rationale

Standard & Poor's Ratings Services assigned its 'AA+' rating with a stable outlook to Florida Port Financing Commission's (State Transportation Trust Fund; STTF) series 2011A and B refunding revenue bonds.

The 'AA+' rating reflects our view of the following:

- The pledge of motor vehicle license tax revenues levied statewide to cover a \$15 million transfer annually from the Florida Department of Transportation (DOT) STTF to support debt service pursuant to Florida statutes 320.20(3). The distribution is subordinate to the constitutional funding commitment for the Florida Board of Education (capital outlay and debt service fund), which has ranged from \$104 million to \$120 million over the past 10 years, and a \$25 million deposit to the STTF.
- Steady growth of motor vehicle license revenues over time with a decline projected for 2011 before a return to growth. Fiscal 2010 revenues totaled \$730 million, representing a 39.9% increase since 2001. Current projections by the Florida Revenue Estimating Conference show steady annual growth in this tax source over the next 10 years with the exception of 2011.
- Strong coverage from the revenue source covering the transfer that supports debt service on these bonds, even when factoring in prior-lien commitments. For the most recent audit year, pledged revenues covered all lien obligations by 4.6x.
- No remaining capacity for additional debt.

Bond proceeds are being issued to refund the series 1996 STTF revenue bonds for net present value savings. We understand that savings will be taken in the first few years and used to fund additional projects. The bonds are secured by a subordinate lien on state motor vehicle license fees.

There is no debt service reserve funded for this issue, which is offset by the requirement that the DOT transfer the entire \$15 million on the first day of the fiscal year to a trustee-held escrow fund. Each borrower under this program has assigned its right to receive funds from the STTF directly to a trustee that provides the funding source for the \$15 million transfer to the escrow fund. There is a 1x debt service coverage requirement for this issue.

Pursuant to state statute, there will be no impairment of debt service payments. Under the master agreement between the DOT and the Florida Port Financing Commission, the \$15 million must be programmed annually as a budget item by the DOT until all bond obligations are paid off. The master agreement also states that payments must be made by the DOT regardless of any disputes that may develop with the commission, trustee, or the individual ports. There is no offset, abatement, or counterclaim of the payment obligation allowed pursuant to the



master agreement.

The Florida Constitution requires motor vehicle license tax revenues first be allocated for educational capital outlay projects. Funds for capital outlay purposes are allocated based on a school enrollment formula, with the distribution in fiscal 2010 equal to \$120 million compared to total revenues of \$730 million. After satisfying education capital outlay requirements, \$25 million motor vehicle license tax revenues are dedicated by statute 320.20(2) to be deposited into the STTF, followed by the \$15 million allocation for this bond issue pursuant to statute 320.20.(3), and then various other uses including (but not limited to) the STTF–Intermodal Program revenue bonds 2011A and B, STTF, Highway Safety Operating Fund, State Law Enforcement Radio System Trust Fund, and transfers to local governments.

Annual motor vehicle licensing has been required in Florida since 1917, with reclassifications of vehicles and rate changes occurring several times. The state most recently increased rates in 2010. Revenues increased by approximately \$100 million in fiscal 2010, but management projects them to decline to \$700.6 million in fiscal 2011, increase to \$732.9 million in 2012, and reach \$829.9 million by 2015.

This bond program was established pursuant to state statute to finance the Florida Seaport Transportation and Economic Development Program and for funding seaport intermodal access projects of statewide significance. Bond proceeds fund loans made by the Florida Port Commission to certain participating ports to finance, refinance, or reimburse state-approved capital projects. Of Florida's 14 deepwater ports, nine participate in this bond program. The largest allocations have gone to Port of Miami (\$57.5 million), Jacksonville Port Authority (\$50.5 million), and Port Everglades (\$39.8 million). It is our understanding that additional parity debt may be issued in the future for additional projects, subject to a 1x additional bonds test, but there is no capacity under the current debt service structure.

## Outlook

The stable outlook reflects our view of the stability of the pledged revenue stream that ultimately secures the debt payments for this issue. The taxes supporting this bond issue are levied statewide and have experienced steady growth over time, affording a high debt service coverage level of all obligations secured by pledged revenues.

## Related Criteria And Research

USPF Criteria: Special Tax Bonds, June 13, 2007

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**TO BE DISCUSSED AT MEETING**

**TAB 4B**  
**PRESENTATION OF**  
**SENIOR MANAGER**

**TO BE DISCUSSED AT MEETING**



**TAB 4C**  
**PRESENTATION OF**  
**BOND COUNSEL**

**TO BE DISCUSSED AT MEETING**

**TAB 4D**  
**DISCUSSION OF SELECTION OF**  
**TRUSTEE**

**TO BE DISCUSSED AT MEETING**

**TAB 4E**  
**DISCUSSION OF SELECTION OF**  
**COMMISSION COUNSEL**

**TO BE DISCUSSED AT MEETING**

**TAB 4F**  
**OTHER ISSUES**

**\$300,000,000\***

**FLORIDA PORTS FINANCING COMMISSION  
REFUNDING OF SERIES 1996 AND SERIES 1999 BONDS  
REMAINING FINANCING SCHEDULE\***

January 2011						
Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February 2011						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

March 2011						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Date	Event
Week of January 10	State-wide TEFRA Hearing (January 13)
	FPFC Meeting to Approve Bond Documents, Parameter Sale and Trustee Selection (January 13)
Week of January 17*	Due Diligence Call with Underwriters
	POS to Printer
	Investor Roadshow Presentation
Week of January 24*	Bond Pricing
	Send out Conditional Notice of Redemption for Series 1999 Bonds
Week of February 7*	Pre-Closing and Closing
	Send out Irrevocable Notice of Redemption for 1996 Bonds
Week of February 28*	Series 1999 Bonds Redeemed
Week of March 14*	Series 1996 Bonds Redeemed

*\*Preliminary, subject to change/market conditions*



**TAB 5**  
**TEFRA HEARING**

**FLORIDA DEPARTMENT OF STATE**  
**Dawn K. Roberts, Interim Secretary of State**

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Administrative Code Unit

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Attn: TOY KELLER

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**Invoice Number: 121132**

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1	Volume:36/50 Pages:6050-6051	154	1.24	\$190.96

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Samas Account Code/Vendor: F593267382-001

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## FLORIDA PORTS COUNCIL

The **Florida Ports Financing Commission** announces a hearing to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council Offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: TEFRA Public Hearing – Refunding Series 1996 Bonds.

AGENDA: Receive comments and hear discussion concerning a plan of financing relating to the issuance by the Commission of its Refunding Revenue Bonds (State Transportation Trust Fund) in one or more series (the “Refunding Bonds”). Proceeds of the Refunding Bonds will be used to refinance all or a portion of the Commission’s outstanding Revenue Bonds (State Transportation Trust Fund), Series 1996, the proceeds of which were loaned to certain marine ports in the State of Florida and used by such ports to finance all or a portion of the costs of various marine facilities and intermodal capital projects (the “Projects”) located in or near the following ports: Canaveral Port Authority, Port Everglades, Port of Fernandina, Jacksonville Port Authority, Manatee County Port Authority, Port of Miami, Port of Palm Beach, Panama City Port Authority, and Tampa Port Authority (collectively the “Ports”). A more specific description of the Projects is available upon request from: The Commission at (850)222-8028.

The Owners of the Projects are the respective Ports where the Projects are located or the political subdivisions of the State of Florida which own and operate such Ports. The Commission is located at Florida Ports Financing Commission, c/o Florida Ports Council, 502 East Jefferson Street, Tallahassee, Florida 32301.

All affected taxpayers, property owners and citizens and all other interested persons are invited to attend said hearing and, either personally or through representatives, present comments and discussion, oral or written, concerning the proposed plan of financing and the Refunding Bonds.

Should any person decide to appeal any decision, he will need a record of the proceedings, and he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidenced upon which the appeal is to be based.

The public hearing is required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”). Subsequent to the public hearing, the Commission and Governor will consider whether to approve the Refunding Bonds as required by Section 147(f) of the Code. Any person interested in the proposed plan of financing, the Projects or the issuance of the Refunding Bonds may appear and be heard.

A copy of the agenda may be obtained by contacting: Nancy Leikauf at (850)222-8028.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Nancy Leikauf at (850)222-8028. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

For more information, you may contact: Nancy Leikauf at (850)222-8028.

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GENERAL SUBJECT MATTER TO BE CONSIDERED: TEFRA Public Hearing – Refunding Series 1999 Bonds.

AGENDA: Receive comments and hear discussion concerning a plan of financing relating to the issuance by the Commission of its Refunding Revenue Bonds (State Transportation Trust Fund – Intermodal Program) in one or more series (the “Refunding Bonds”). Proceeds of the Refunding Bonds will be used to refinance all or a portion of the Commission’s outstanding Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 1999, the proceeds of which were loaned to certain marine ports in the State of Florida and used by such ports to finance all or a portion of the costs of various marine facilities and intermodal capital projects (the “Projects”) located in or near the following ports: Canaveral Port Authority, Port Everglades, Port of Fernandina, Jacksonville Port Authority, Manatee County Port Authority, Port of Miami, Port of Palm Beach, Panama City Port Authority, Port of Pensacola and Tampa Port Authority (collectively the “Ports”). A more specific description of the Projects is available upon request from the Commission at (850)222 8028.

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For more information, you may contact: Nancy Leikauf at (850)222-8028.

The **Florida Ports Financing Commission** announces a public meeting to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: State TEFRA hearing for Series 1996 and Series 1999 Bond Program Refunding.

A copy of the agenda may be obtained by contacting: Nancy Leikauf at (850)222-8028.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Nancy Leikauf at (850)222-8028. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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For more information, you may contact: Nancy Leikauf at (850)222-8028.

## FLORIDA LOCAL GOVERNMENT FINANCE COMMISSION

The **Florida Local Government Finance Commission** announces a public meeting to which all persons are invited.

DATE AND TIME: Tuesday, December 21, 2010, 10:30 a.m.

PLACE: 2502 Rocky Point Drive, Suite 1060, Tampa, Florida 33607

GENERAL SUBJECT MATTER TO BE CONSIDERED: The meeting of the Commission will be for the purposes of reviewing the statewide pooled commercial paper loan program for Florida governmental entities. The Commission is an unincorporated, nonprofit association whose members are comprised of Brevard County; Charlotte County; Collier County; Lee County; Osceola County and Sarasota County, Florida.

A copy of the agenda may be obtained by contacting: Elizabeth Newberry, Florida Association of Counties, Tallahassee, Florida, (850)922-4300.

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

## INDEPENDENT COLLEGES AND UNIVERSITIES OF FLORIDA

The **Higher Educational Facilities Financing Authority** announces a public meeting to which all persons are invited.

DATE AND TIME: Thursday, January 6, 2011, 12:00 Noon – 1:00 p.m.

PLACE: The Offices of the Independent Colleges and Universities of Florida, Inc., 542 East Park Avenue, Tallahassee, Florida 32301; Conference Call: 1(866)578-5716, Conference Code: 6813188#

GENERAL SUBJECT MATTER TO BE CONSIDERED: (a) Consider a resolution authorizing the issuance of not exceeding \$99,000,000 in principal amount of revenue bonds of the Authority in order to make a loan to Nova Southeastern University for the purpose of:

1. Refunding all or a portion of the outstanding Broward County Educational Facilities Authority Educational Facilities Revenue Bonds, Series 2000A (Nova Southeastern University Project), Broward County Educational Facilities Authority Educational Facilities

**TAB 6**  
**CONSIDER ADOPTION OF TEFRA**  
**RESOLUTIONS APPROVING FINANCING**  
**PURSUANT TO SECTION 147(f) OF**  
**INTERNAL REVENUE CODE OF 1986, AS**  
**AMENDED**

## **RESOLUTION NO. 2011-\_\_**

A RESOLUTION OF THE FLORIDA PORTS FINANCING COMMISSION EXPRESSING ITS INTENT TO ISSUE NOT EXCEEDING \$175,000,000 FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS (STATE TRANSPORTATION TRUST FUND) IN ONE OR MORE SERIES IN ORDER TO REFINANCE CERTAIN OUTSTANDING INDEBTEDNESS PREVIOUSLY ISSUED TO FINANCE THE ACQUISITION AND CONSTRUCTION OF VARIOUS MARINE FACILITIES AND INTERMODAL CAPITAL PROJECTS IN THE STATE OF FLORIDA; REQUESTING THE GOVERNOR OF THE STATE OF FLORIDA TO APPROVE ISSUANCE OF SUCH BONDS SOLELY FOR THE PURPOSES OF SECTION 147(f) OF THE INTERNAL REVENUE CODE; AUTHORIZING THE CHAIRMAN OF THE FLORIDA PORTS FINANCING COMMISSION TO TAKE SUCH ACTIONS AS SHALL BE NECESSARY TO RECEIVE SUCH APPROVAL; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Commission is a legal entity created for the purpose of providing a means for financing, refinancing and reimbursing the cost of acquisition and construction of qualifying capital projects for certain ports described in Section 311.09(1), Florida Statutes (the "Ports"); and

**WHEREAS**, the Commission intends to issue its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund) in one or more series (the "Refunding Bonds") in an amount not to exceed \$175,000,000, and intends to use the proceeds thereof to refinance all or a portion of the Commission's outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds"); and

**WHEREAS**, the proceeds of the Series 1996 Bonds were loaned by the Commission to the Ports in order to finance the acquisition and construction of certain marine facilities and intermodal capital projects (collectively, the "Projects"); and

**WHEREAS**, it is expected that the average maturity of the Refunding Bonds will be later than the average maturity of the Series 1996 Bonds to be refunded thereby; and

**WHEREAS**, pursuant to the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, the Commission has held a public hearing subsequent to at least 14 days' notice thereof (Exhibit A hereto) in The Florida Administrative Weekly,

a periodical circulated in the State of Florida in which official notice of public meetings is published, during which all interested parties were given the opportunity to be heard concerning the Refunding Bonds.

**NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA PORTS FINANCING COMMISSION:**

**SECTION 1.** This resolution is adopted pursuant to the laws of the State of Florida.

**SECTION 2.** The Commission hereby expresses its intent to issue the Refunding Bonds in order to refund all or a portion of the Series 1996 Bonds.

**SECTION 3.** A public hearing having been held as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Commission hereby approves the issuance of the Refunding Bonds and its financing plan for purposes of said Section 147(f).

**SECTION 4.** The Chairman is authorized to take such actions as may be necessary to receive approval of the Refunding Bonds for purposes of refunding all or a portion of the Series 1996 Bonds from the Governor of the State of Florida as provided in Section 147(f) of the Code.

**SECTION 5.** The several members, officials, attorneys or other employees or agents of the Commission are hereby authorized and directed to do all the acts and things required of them by the provisions of this resolution to the end that full and complete performance of all the terms of this resolution shall be effected.

**SECTION 6.** This resolution shall take effect immediately.

**DULY ADOPTED** this 13th day of January, 2011.

**FLORIDA PORTS FINANCING  
COMMISSION**

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

Attest:

By: \_\_\_\_\_  
Secretary-Treasurer

**EXHIBIT A**

**AFFIDAVIT OF PUBLICATION**



**FLORIDA DEPARTMENT OF STATE**  
**Dawn K. Roberts, Interim Secretary of State**

Division of Library  
Administrative Code Unit

The Gray Building - 500 S. Bronough Street, Suite101 - Tallahassee, Fl. 32399-0250 - (850)245-6270

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TALLAHASSEE, FL 32301-0000

Attn: TOY KELLER

**Account: 10074**

**Invoice Date: 12/23/2010**

**Invoice Number: 121132**

P.O. #	Publication in Florida Administrative Weekly	# units	\$each	Extension
1	Volume:36/50 Pages:6050-6051	154	1.24	\$190.96

Invoice # must appear on all checks and correspondence. Please pay balance due: **\$190.96**  
F.E.I.D. number: 59-3466865 \*\*\* Net Due - 15 days - No Discount \*\*\*

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Department of State - Division of Administrative Services - Bureau of Planning, Budget and Financial Services  
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**Account: 10074      Invoice Date: 12/23/2010      Number: 121132      Amount Due: \$190.96**

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Org Code / EO :45400120200 7X    Object: 019032    Category: 001903

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Samas Account Code/Vendor: F593267382-001

or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

## FLORIDA PORTS COUNCIL

The **Florida Ports Financing Commission** announces a hearing to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council Offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: TEFRA Public Hearing – Refunding Series 1996 Bonds.

AGENDA: Receive comments and hear discussion concerning a plan of financing relating to the issuance by the Commission of its Refunding Revenue Bonds (State Transportation Trust Fund) in one or more series (the “Refunding Bonds”). Proceeds of the Refunding Bonds will be used to refinance all or a portion of the Commission’s outstanding Revenue Bonds (State Transportation Trust Fund), Series 1996, the proceeds of which were loaned to certain marine ports in the State of Florida and used by such ports to finance all or a portion of the costs of various marine facilities and intermodal capital projects (the “Projects”) located in or near the following ports: Canaveral Port Authority, Port Everglades, Port of Fernandina, Jacksonville Port Authority, Manatee County Port Authority, Port of Miami, Port of Palm Beach, Panama City Port Authority, and Tampa Port Authority (collectively the “Ports”). A more specific description of the Projects is available upon request from: The Commission at (850)222-8028.

The Owners of the Projects are the respective Ports where the Projects are located or the political subdivisions of the State of Florida which own and operate such Ports. The Commission is located at Florida Ports Financing Commission, c/o Florida Ports Council, 502 East Jefferson Street, Tallahassee, Florida 32301.

All affected taxpayers, property owners and citizens and all other interested persons are invited to attend said hearing and, either personally or through representatives, present comments and discussion, oral or written, concerning the proposed plan of financing and the Refunding Bonds.

Should any person decide to appeal any decision, he will need a record of the proceedings, and he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidenced upon which the appeal is to be based.

The public hearing is required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”). Subsequent to the public hearing, the Commission and Governor will consider whether to approve the Refunding Bonds as required by Section 147(f) of the Code. Any person interested in the proposed plan of financing, the Projects or the issuance of the Refunding Bonds may appear and be heard.

A copy of the agenda may be obtained by contacting: Nancy Leikauf at (850)222-8028.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Nancy Leikauf at (850)222-8028. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

For more information, you may contact: Nancy Leikauf at (850)222-8028.

The **Florida Ports Financing Commission** announces a hearing to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council Offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: TEFRA Public Hearing – Refunding Series 1999 Bonds.

AGENDA: Receive comments and hear discussion concerning a plan of financing relating to the issuance by the Commission of its Refunding Revenue Bonds (State Transportation Trust Fund – Intermodal Program) in one or more series (the “Refunding Bonds”). Proceeds of the Refunding Bonds will be used to refinance all or a portion of the Commission’s outstanding Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 1999, the proceeds of which were loaned to certain marine ports in the State of Florida and used by such ports to finance all or a portion of the costs of various marine facilities and intermodal capital projects (the “Projects”) located in or near the following ports: Canaveral Port Authority, Port Everglades, Port of Fernandina, Jacksonville Port Authority, Manatee County Port Authority, Port of Miami, Port of Palm Beach, Panama City Port Authority, Port of Pensacola and Tampa Port Authority (collectively the “Ports”). A more specific description of the Projects is available upon request from the Commission at (850)222 8028.

The Owners of the Projects are the respective Ports where the Projects are located or the political subdivisions of the State of Florida which own and operate such Ports. The Commission is located at Florida Ports Financing Commission, c/o Florida Ports Council, 502 East Jefferson Street, Tallahassee, Florida 32301.

All affected taxpayers, property owners and citizens and all other interested persons are invited to attend said hearing and, either personally or through representatives, present comments

and discussion, oral or written, concerning the proposed plan of financing and the Refunding Bonds. Should any person decide to appeal any decision, he will need a record of the proceedings, and he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidenced upon which the appeal is to be based. The public hearing is required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"). Subsequent to the public hearing, the Commission and Governor will consider whether to approve the Refunding Bonds as required by Section 147(f) of the Code. Any person interested in the proposed plan of financing, the Projects or the issuance of the Refunding Bonds may appear and be heard.

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For more information, you may contact: Nancy Leikauf at (850)222-8028.

The **Florida Ports Financing Commission** announces a public meeting to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: State TEFRA hearing for Series 1996 and Series 1999 Bond Program Refunding.

A copy of the agenda may be obtained by contacting: Nancy Leikauf at (850)222-8028.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Nancy Leikauf at (850)222-8028. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

For more information, you may contact: Nancy Leikauf at (850)222-8028.

## FLORIDA LOCAL GOVERNMENT FINANCE COMMISSION

The **Florida Local Government Finance Commission** announces a public meeting to which all persons are invited.

DATE AND TIME: Tuesday, December 21, 2010, 10:30 a.m.

PLACE: 2502 Rocky Point Drive, Suite 1060, Tampa, Florida 33607

GENERAL SUBJECT MATTER TO BE CONSIDERED: The meeting of the Commission will be for the purposes of reviewing the statewide pooled commercial paper loan program for Florida governmental entities. The Commission is an unincorporated, nonprofit association whose members are comprised of Brevard County; Charlotte County; Collier County; Lee County; Osceola County and Sarasota County, Florida.

A copy of the agenda may be obtained by contacting: Elizabeth Newberry, Florida Association of Counties, Tallahassee, Florida, (850)922-4300.

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

## INDEPENDENT COLLEGES AND UNIVERSITIES OF FLORIDA

The **Higher Educational Facilities Financing Authority** announces a public meeting to which all persons are invited.

DATE AND TIME: Thursday, January 6, 2011, 12:00 Noon – 1:00 p.m.

PLACE: The Offices of the Independent Colleges and Universities of Florida, Inc., 542 East Park Avenue, Tallahassee, Florida 32301; Conference Call: 1(866)578-5716, Conference Code: 6813188#

GENERAL SUBJECT MATTER TO BE CONSIDERED: (a) Consider a resolution authorizing the issuance of not exceeding \$99,000,000 in principal amount of revenue bonds of the Authority in order to make a loan to Nova Southeastern University for the purpose of:

1. Refunding all or a portion of the outstanding Broward County Educational Facilities Authority Educational Facilities Revenue Bonds, Series 2000A (Nova Southeastern University Project), Broward County Educational Facilities Authority Educational Facilities

## **RESOLUTION NO. 2011-\_\_**

A RESOLUTION OF THE FLORIDA PORTS FINANCING COMMISSION EXPRESSING ITS INTENT TO ISSUE NOT EXCEEDING \$130,000,000 FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS (STATE TRANSPORTATION TRUST FUND-INTERMODAL PROGRAM) IN ONE OR MORE SERIES IN ORDER TO REFINANCE CERTAIN OUTSTANDING INDEBTEDNESS PREVIOUSLY ISSUED TO FINANCE THE ACQUISITION AND CONSTRUCTION OF VARIOUS MARINE FACILITIES AND INTERMODAL CAPITAL PROJECTS IN THE STATE OF FLORIDA; REQUESTING THE GOVERNOR OF THE STATE OF FLORIDA TO APPROVE ISSUANCE OF SUCH BONDS SOLELY FOR THE PURPOSES OF SECTION 147(f) OF THE INTERNAL REVENUE CODE; AUTHORIZING THE CHAIRMAN OF THE FLORIDA PORTS FINANCING COMMISSION TO TAKE SUCH ACTIONS AS SHALL BE NECESSARY TO RECEIVE SUCH APPROVAL; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Commission is a legal entity created for the purpose of providing a means for financing, refinancing and reimbursing the cost of acquisition and construction of qualifying capital projects for certain ports described in Section 311.09(1), Florida Statutes (the "Ports"); and

**WHEREAS**, the Commission intends to issue its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program) in one or more series (the "Refunding Bonds") in an amount not to exceed \$130,000,000, and intends to use the proceeds thereof to refinance all or a portion of the Commission's outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999 (the "Series 1999 Bonds"); and

**WHEREAS**, the proceeds of the Series 1999 Bonds were loaned by the Commission to the Ports in order to finance the acquisition and construction of certain marine facilities and intermodal capital projects (collectively, the "Projects"); and

**WHEREAS**, it is expected that the average maturity of the Refunding Bonds will be later than the average maturity of the Series 1999 Bonds to be refunded thereby; and

**WHEREAS**, pursuant to the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, the Commission has held a public hearing subsequent

to at least 14 days' notice thereof (Exhibit A hereto) in The Florida Administrative Weekly, a periodical circulated in the State of Florida in which official notice of public meetings is published, during which all interested parties were given the opportunity to be heard concerning the Refunding Bonds.

**NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA PORTS FINANCING COMMISSION:**

**SECTION 1.** This resolution is adopted pursuant to the laws of the State of Florida.

**SECTION 2.** The Commission hereby expresses its intent to issue the Refunding Bonds in order to refund all or a portion of the Series 1999 Bonds.

**SECTION 3.** A public hearing having been held as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Commission hereby approves the issuance of the Refunding Bonds and its financing plan for purposes of said Section 147(f).

**SECTION 4.** The Chairman is authorized to take such actions as may be necessary to receive approval of the Refunding Bonds for purposes of refunding all or a portion of the Series 1999 Bonds from the Governor of the State of Florida as provided in Section 147(f) of the Code.

**SECTION 5.** The several members, officials, attorneys or other employees or agents of the Commission are hereby authorized and directed to do all the acts and things required of them by the provisions of this resolution to the end that full and complete performance of all the terms of this resolution shall be effected.

**SECTION 6.** This resolution shall take effect immediately.

**DULY ADOPTED** this 13th day of January, 2011.

**FLORIDA PORTS FINANCING  
COMMISSION**

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

Attest:

By: \_\_\_\_\_  
Secretary-Treasurer

**EXHIBIT A**

**AFFIDAVIT OF PUBLICATION**

**FLORIDA DEPARTMENT OF STATE**  
**Dawn K. Roberts, Interim Secretary of State**

Division of Library  
Administrative Code Unit

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TALLAHASSEE, FL 32301-0000

Attn: TOY KELLER

**Account: 10074**

**Invoice Date: 12/23/2010**

**Invoice Number: 121132**

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R.A. Gray Bldg - 500 S. Bronough St, 4th Fl. - Tallahassee, Fl. 32399-0250

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## FLORIDA PORTS COUNCIL

The **Florida Ports Financing Commission** announces a hearing to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council Offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: TEFRA Public Hearing – Refunding Series 1996 Bonds.

AGENDA: Receive comments and hear discussion concerning a plan of financing relating to the issuance by the Commission of its Refunding Revenue Bonds (State Transportation Trust Fund) in one or more series (the “Refunding Bonds”). Proceeds of the Refunding Bonds will be used to refinance all or a portion of the Commission’s outstanding Revenue Bonds (State Transportation Trust Fund), Series 1996, the proceeds of which were loaned to certain marine ports in the State of Florida and used by such ports to finance all or a portion of the costs of various marine facilities and intermodal capital projects (the “Projects”) located in or near the following ports: Canaveral Port Authority, Port Everglades, Port of Fernandina, Jacksonville Port Authority, Manatee County Port Authority, Port of Miami, Port of Palm Beach, Panama City Port Authority, and Tampa Port Authority (collectively the “Ports”). A more specific description of the Projects is available upon request from: The Commission at (850)222-8028.

The Owners of the Projects are the respective Ports where the Projects are located or the political subdivisions of the State of Florida which own and operate such Ports. The Commission is located at Florida Ports Financing Commission, c/o Florida Ports Council, 502 East Jefferson Street, Tallahassee, Florida 32301.

All affected taxpayers, property owners and citizens and all other interested persons are invited to attend said hearing and, either personally or through representatives, present comments and discussion, oral or written, concerning the proposed plan of financing and the Refunding Bonds.

Should any person decide to appeal any decision, he will need a record of the proceedings, and he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidenced upon which the appeal is to be based.

The public hearing is required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”). Subsequent to the public hearing, the Commission and Governor will consider whether to approve the Refunding Bonds as required by Section 147(f) of the Code. Any person interested in the proposed plan of financing, the Projects or the issuance of the Refunding Bonds may appear and be heard.

A copy of the agenda may be obtained by contacting: Nancy Leikauf at (850)222-8028.

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The **Florida Ports Financing Commission** announces a hearing to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council Offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: TEFRA Public Hearing – Refunding Series 1999 Bonds.

AGENDA: Receive comments and hear discussion concerning a plan of financing relating to the issuance by the Commission of its Refunding Revenue Bonds (State Transportation Trust Fund – Intermodal Program) in one or more series (the “Refunding Bonds”). Proceeds of the Refunding Bonds will be used to refinance all or a portion of the Commission’s outstanding Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 1999, the proceeds of which were loaned to certain marine ports in the State of Florida and used by such ports to finance all or a portion of the costs of various marine facilities and intermodal capital projects (the “Projects”) located in or near the following ports: Canaveral Port Authority, Port Everglades, Port of Fernandina, Jacksonville Port Authority, Manatee County Port Authority, Port of Miami, Port of Palm Beach, Panama City Port Authority, Port of Pensacola and Tampa Port Authority (collectively the “Ports”). A more specific description of the Projects is available upon request from the Commission at (850)222 8028.

The Owners of the Projects are the respective Ports where the Projects are located or the political subdivisions of the State of Florida which own and operate such Ports. The Commission is located at Florida Ports Financing Commission, c/o Florida Ports Council, 502 East Jefferson Street, Tallahassee, Florida 32301.

All affected taxpayers, property owners and citizens and all other interested persons are invited to attend said hearing and, either personally or through representatives, present comments



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A copy of the agenda may be obtained by contacting: Nancy Leikauf at (850)222-8028.

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The **Florida Ports Financing Commission** announces a public meeting to which all persons are invited.

DATE AND TIME: Thursday, January 13, 2011, 11:00 a.m.

PLACE: Florida Ports Council offices, 502 E. Jefferson Street, Tallahassee, FL 32301

GENERAL SUBJECT MATTER TO BE CONSIDERED: State TEFRA hearing for Series 1996 and Series 1999 Bond Program Refunding.

A copy of the agenda may be obtained by contacting: Nancy Leikauf at (850)222-8028.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Nancy Leikauf at (850)222-8028. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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For more information, you may contact: Nancy Leikauf at (850)222-8028.

## FLORIDA LOCAL GOVERNMENT FINANCE COMMISSION

The **Florida Local Government Finance Commission** announces a public meeting to which all persons are invited.

DATE AND TIME: Tuesday, December 21, 2010, 10:30 a.m.

PLACE: 2502 Rocky Point Drive, Suite 1060, Tampa, Florida 33607

GENERAL SUBJECT MATTER TO BE CONSIDERED: The meeting of the Commission will be for the purposes of reviewing the statewide pooled commercial paper loan program for Florida governmental entities. The Commission is an unincorporated, nonprofit association whose members are comprised of Brevard County; Charlotte County; Collier County; Lee County; Osceola County and Sarasota County, Florida.

A copy of the agenda may be obtained by contacting: Elizabeth Newberry, Florida Association of Counties, Tallahassee, Florida, (850)922-4300.

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

## INDEPENDENT COLLEGES AND UNIVERSITIES OF FLORIDA

The **Higher Educational Facilities Financing Authority** announces a public meeting to which all persons are invited.

DATE AND TIME: Thursday, January 6, 2011, 12:00 Noon – 1:00 p.m.

PLACE: The Offices of the Independent Colleges and Universities of Florida, Inc., 542 East Park Avenue, Tallahassee, Florida 32301; Conference Call: 1(866)578-5716, Conference Code: 6813188#

GENERAL SUBJECT MATTER TO BE CONSIDERED: (a) Consider a resolution authorizing the issuance of not exceeding \$99,000,000 in principal amount of revenue bonds of the Authority in order to make a loan to Nova Southeastern University for the purpose of:

1. Refunding all or a portion of the outstanding Broward County Educational Facilities Authority Educational Facilities Revenue Bonds, Series 2000A (Nova Southeastern University Project), Broward County Educational Facilities Authority Educational Facilities

**TAB 7**

**CONSIDER ADOPTION OF RESOLUTION  
FOR FPFC REFUNDING REVENUE  
BONDS (STATE TRANSPORTATION  
TRUST FUND), 2011A (NON-AMT) AND  
FOR FPFC REFUNDING REVENUE  
BONDS (STATE TRANSPORTATION  
TRUST FUND), 2011B (AMT)**

## **RESOLUTION NO.**

A RESOLUTION OF THE FLORIDA PORTS FINANCING COMMISSION AUTHORIZING THE ISSUANCE BY THE FLORIDA PORTS FINANCING COMMISSION OF ITS FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS (STATE TRANSPORTATION TRUST FUND), SERIES 2011A (NON-AMT) AND ITS FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS (STATE TRANSPORTATION TRUST FUND), SERIES 2011B (AMT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$175,000,000 IN ORDER TO REFINANCE THE COMMISSION'S REVENUE BONDS (STATE TRANSPORTATION TRUST FUND), SERIES 1996; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDED AND RESTATED INDENTURE OF TRUST; AUTHORIZING THE EXECUTION AND DELIVERY OF THE FIRST SUPPLEMENTAL INDENTURE OF TRUST; APPROVING NEW EXHIBITS A AND D TO THE LOAN AGREEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT OF PURCHASE WITH RESPECT TO THE NEGOTIATED SALE OF SAID BONDS; DELEGATING CERTAIN AUTHORITY TO THE CHAIRMAN OR VICE-CHAIRMAN TO AWARD SAID BONDS PURSUANT TO THE CONTRACT OF PURCHASE IN THE EVENT CERTAIN PARAMETERS SET FORTH HEREIN ARE MET; APPOINTING A TRUSTEE; APPROVING THE USE OF A PRELIMINARY OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINAL OFFICIAL STATEMENT WITH RESPECT TO THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE CERTIFICATE; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT; MAKING CERTAIN FINDINGS AND PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; AUTHORIZING THE OFFICERS OF THE COMMISSION TO PERFORM CERTAIN OTHER ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE FOR THIS RESOLUTION.

**WHEREAS**, the Commission is duly created and existing pursuant to the Constitution and laws of the State of Florida, including, particularly, Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes (the "Interlocal Act"), and a first amended and restated interlocal agreement, dated as of September 15, 1997 (the "Interlocal Agreement"), among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County; and

**WHEREAS**, the Commission, pursuant to the authority of the Interlocal Act, the Interlocal Agreement and other applicable provisions of law, is authorized, among other things, to issue revenue bonds on behalf of and for the benefit of the ports located in the State of Florida (the "Ports") in order to finance, refinance or reimburse the cost of qualified projects of such Ports, such bonds to be secured by instruments evidencing and securing loans to the Ports and to be payable solely out of payments made by the Ports pursuant to Loan Agreements entered into between the Ports and the Commission or from other moneys designated as available therefor; and

**WHEREAS**, the Commission has determined that the public interest will be best served by the Commission's issuance of revenue bonds in order to provide funds to loan to the participating Ports to finance, refinance or reimburse the cost of qualifying projects pursuant to loan agreements between the respective Ports and the Commission; and

**WHEREAS**, the Commission has heretofore issued its \$222,320,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds"), pursuant to an Indenture of Trust, dated as of December 1, 1996 (the "Original Indenture"), between the Commission and SunTrust Bank, as Trustee, to provide funds to finance, refinance or reimburse the cost of qualified projects of the participating Ports; and

**WHEREAS**, in order to secure the payment of the principal of, premium, if any, and interest on the Series 1996 Bonds and any additional parity bonds issued under the Original Indenture, Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City), Port St. Joe Port Authority and St. Lucie County (collectively, the "Borrowers") have each entered into a loan agreement with the Commission (collectively, the "Loan Agreements") and have agreed in the Loan Agreements to assign, transfer and pledge moneys received by such Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, in order

to provide for the payment of principal of, premium, if any, and interest on the Series 1996 Bonds and any additional parity bonds issued under the Original Indenture; and

**WHEREAS**, payments made by the Borrowers under the Loan Agreements relating to repayment of the Series 1996 Bonds shall be made solely from moneys transferred from the State Transportation Trust Fund to the Trustee pursuant to Section 320.20(3), Florida Statutes, and the Master Agreement (the "Master Agreement"), between the Commission and the State of Florida Department of Transportation; and

**WHEREAS**, the Commission determines that is in its best interests to refinance the Series 1996 Bonds in order to achieve debt service savings; and

**WHEREAS**, the Commission has deemed it in its best interest to amend the Original Indenture in various respects and restate such Original Indenture in the form of the First Amended and Restated Indenture of Trust, dated as of the date of issuance of the Series 2011 Bonds (as amended and supplemented, the "Indenture"); and

**WHEREAS**, the Commission shall issue its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT) (the "Series 2011A Bonds") and its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (the "Series 2011B Bonds" and together with the Series 2011A Bonds, the "Series 2011 Bonds") in an aggregate principal amount of not exceeding \$175,000,000 pursuant to the terms of the Indenture and the First Supplemental Indenture of Trust, dated as of the date of issuance of the Series 2011 Bonds (the "First Supplemental Indenture"), for the principal purposes of refinancing the Series 1996 Bonds and paying the costs of issuance of the Series 2011 Bonds; and

**WHEREAS**, proceeds of the Series 2011 Bonds, together with other available moneys of the Commission, shall be deposited into an escrow deposit trust fund (the "Escrow Fund") in accordance with the terms of an Escrow Deposit Agreement, between the Commission and the Trustee, as escrow agent; and

**WHEREAS**, moneys in the Escrow Fund shall be invested in Government Obligations such that the principal and interest on such Government Obligations shall be sufficient to pay the principal of and interest on the Series 1996 Bonds as same becomes due or are redeemed; and

**WHEREAS**, the Series 2011 Bonds shall constitute Bonds pursuant to the terms of the Indenture and the Loan Agreements; and

**WHEREAS**, the Commission anticipates receiving a favorable offer to purchase the Series 2011 Bonds from Citigroup Global Markets, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated and Siebert Brandford Shank &

Co., LLC (collectively, the "Underwriters"), pursuant to the terms and conditions set forth in the Contract of Purchase between the Commission and the Underwriters (the "Contract of Purchase"); and

**WHEREAS**, because of the length of time to notice meetings of the Commission, the Commission hereby determines to delegate the award of the Series 2011 Bonds to the Chairman within the parameters described herein; and

**WHEREAS**, the Commission desires to authorize the issuance of the Series 2011 Bonds and to provide further approval of certain documents and actions in connection with such issuance;

**NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA PORTS FINANCING COMMISSION:**

**SECTION 1. AUTHORITY FOR RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Interlocal Act and other applicable provisions of law.

**SECTION 2. DEFINITIONS.** Terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

**SECTION 3. AUTHORIZATION AND DESCRIPTION OF SERIES 2011 BONDS.** (A) In accordance with the terms of the Indenture, the Commission hereby authorizes the issuance of a Series of Bonds to be known as "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT)" for the principal purpose of refinancing the Refunded Bonds. The Series 2011A Bonds shall be issued under and secured by the Indenture and the First Supplemental Indenture. Pursuant to the Loan Agreements, the Loans made to the Borrowers and Exhibit D to the Loan Agreements shall reflect the refinancing of the Refunded Bonds. The Series 2011A Bonds shall be dated as of their date of delivery, or such other date or dates as determined by the Chairman, shall be issued in the form of fully registered Bonds, without coupons, in the denomination of \$5,000 or integral multiples thereof, shall be numbered consecutively, shall be substantially in the form of Exhibit C of the Indenture, shall bear interest from their date of delivery (or such other date or dates as determined by the Chairman), payable semi-annually, on the Interest Payment Dates, commencing on June 1, 2011 (or such other date or Dates as determined by the Chairman). The Series 2011A Bonds shall have such other terms as determined by the Chairman, subject to the provisions of Section 4 hereof.

(B) In accordance with the terms of the Indenture, the Commission hereby authorizes the issuance of a Series of Bonds to be known as "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT)" for the principal purpose of refinancing the Refunded Bonds. The Series 2011B

Bonds shall be issued under and secured by the Indenture and the First Supplemental Indenture. Pursuant to the Loan Agreements, the Loans made to the Borrowers and Exhibit D to the Loan Agreements shall reflect the refinancing of the Refunded Bonds. The Series 2011B Bonds shall be dated as of their date of delivery, or such other date as determined by the Chairman, shall be issued in the form of fully registered Bonds, without coupons, in the denomination of \$5,000 or integral multiples thereof, shall be numbered consecutively, shall be substantially in the form of Exhibit C of the Indenture, shall bear interest from their date of delivery (or such other date or dates as determined by the Chairman), payable semi-annually, on the Interest Payment Dates, commencing on June 1, 2011 (or such other date or Dates as determined by the Chairman). The Series 2011B Bonds shall have such other terms as determined by the Chairman, subject to the provisions of Section 4 hereof.

(C) The aggregate principal amount of the Series 2011A Bonds and the Series 2011B Bonds shall be determined by the Chairman upon advice from the Commission's Financial Advisor and Bond Counsel; provided the aggregate principal amount of the Series 2011 Bonds shall not exceed \$175,000,000.

**SECTION 4. TERMS OF THE SERIES 2011 BONDS.** The Chairman shall award the Series 2011 Bonds to the Underwriters in accordance with the terms of the Contract of Purchase attached hereto as Exhibit A; provided, however, the Contract of Purchase shall not be executed by the Chairman unless all of the following conditions have been satisfied:

(A) Receipt by the Chairman of a written offer to purchase the Series 2011 Bonds by the Underwriters substantially in the form of the Contract of Purchase, said offer to provide for, among other things, (i) not exceeding \$175,000,000 aggregate principal amount of Series 2011 Bonds, (ii) an underwriting discount (including management fee and all expenses) not in excess of 0.80% of the par amount of the Series 2011 Bonds, (iii) a true interest cost of the Series 2011 Bonds of not more than 5.0% per annum, (iv) the maturities of the Series 2011 Bonds, with the final maturity being not later than June 1, 2027, (v) the debt service of the Series 2011 Bonds in each year shall be no greater than the debt service of the Refunded Bonds for such year, and (vi) the net present value savings resulting from the issuance of the Series 2011 Bonds shall be no less than 3.0% of the par amount of the Refunded Bonds.

(B) With respect to any redemption terms for the Series 2011 Bonds, the first call date may be no later than June 1, 2021 and no call premium may exceed 2.0% of the par amount of that portion of the Series 2011 Bonds to be redeemed. Term Bonds may be established with such Amortization Installments as the Chairman deems appropriate.

(C) Receipt by the Chairman of a disclosure statement, including a truth-in-bonding statement, of the Underwriters dated the date of the Contract of Purchase and complying with Section 218.385, Florida Statutes.

(D) Receipt by the Chairman of a good faith check from the Underwriters in an amount not less than 1.0% of the par amount of the Series 2011 Bonds provided on the cover page of the Preliminary Official Statement.

Upon satisfaction of all the requirements set forth in this Section 4, the Chairman is authorized to execute and deliver the Contract of Purchase containing terms complying with the provisions of this Section 4. The Chairman shall rely upon the advice of the Commission's Financial Advisor in determining the satisfaction of the conditions provided in this Section 4.

**SECTION 5. REDEMPTION PROVISIONS.** The Series 2011 Bonds may be redeemed prior to their respective maturities from any moneys legally available therefor, upon notice as provided in the Indenture, upon the terms and provisions set forth in the Contract of Purchase which shall be approved by the Chairman in accordance with the terms of Section 4 hereof.

**SECTION 6. NEGOTIATED SALE.** Due to the potential instability in the market for tax-exempt revenue obligations and the importance of timing in connection therewith, the complex nature of financings for the benefit of multiple borrowers, and taking into consideration the experience of the Underwriters in the marketing of revenue obligations of a similar type, it is hereby determined that it is in the best interest of the public and the Commission to sell the Series 2011 Bonds at a negotiated sale. The negotiated sale of the Series 2011 Bonds is hereby authorized and approved. The Chairman is hereby authorized to sell the Series 2011 Bonds to the Underwriters at a negotiated sale based upon the provisions set forth in Section 4 hereof.

**SECTION 7. CONTRACT OF PURCHASE.** The Series 2011 Bonds shall be sold at a negotiated sale upon the terms and conditions set forth in the Contract of Purchase. Subject to the provisions of Section 4 hereof, the Chairman is hereby authorized to execute the Contract of Purchase between the Commission and the Underwriters. The Contract of Purchase shall be in substantially the form attached hereto as Exhibit A, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the Contract of Purchase by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions.

**SECTION 8. AUTHORIZATION OF INDENTURE.** The Chairman and Secretary-Treasurer are hereby authorized and directed to execute and deliver the Indenture. The Indenture shall be in substantially in the form attached hereto as Exhibit B, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the Indenture by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions. All of the provisions of the Indenture, when executed and delivered by the Commission, as authorized herein, and when duly authorized, executed



and delivered by the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 9. AUTHORIZATION OF FIRST SUPPLEMENTAL INDENTURE.** The Chairman and Secretary-Treasurer are hereby authorized and directed to execute and deliver the First Supplemental Indenture. The First Supplemental Indenture shall be in substantially in the form attached hereto as Exhibit C, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the First Supplemental Indenture by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions. All of the provisions of the First Supplemental Indenture, when executed and delivered by the Commission, as authorized herein, and when duly authorized, executed and delivered by the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 10. AUTHORIZATION OF ESCROW DEPOSIT AGREEMENT.** The Chairman and Secretary-Treasurer are hereby authorized and directed to execute and deliver the Escrow Deposit Agreement, dated as of the date of issuance of the Series 2011 Bonds, between the Commission and the Trustee. The Escrow Deposit Agreement shall be in substantially in the form attached hereto as Exhibit D, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the Escrow Deposit Agreement by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions. All of the provisions of the Escrow Deposit Agreement, when executed and delivered by the Commission, as authorized herein, and when duly authorized, executed and delivered by the Trustee, as escrow agent, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein. The Trustee is hereby authorized to act as escrow agent pursuant to the terms of the Escrow Deposit Agreement.

**SECTION 11. APPROVAL OF DEBT SERVICE SCHEDULE.** The Commission hereby authorizes the Chairman, and in his absence or unavailability, the Program Administrator, to modify Exhibits A and D to the Loan Agreements and Exhibit C to the Master Agreement to reflect the debt service on the Series 2011 Bonds and the refunding of the Refunded Bonds. The loan obligations of the Borrowers under the Loan Agreements shall reflect the debt service requirements of the Series 2011 Bonds. The Chairman is further authorized to execute any amendments to the Memorandum of Agreement attached as Exhibit A to the Master Agreement that he deems appropriate to implement the transactions authorized herein and to ensure that excess moneys in the escrow account established by the Memorandum of Agreement will be available to fund capital improvements for participating Ports.

**SECTION 12. PRELIMINARY OFFICIAL STATEMENT.** The terms and provisions of the Preliminary Official Statement, the form of which is attached hereto

as Exhibit E (the "Preliminary Official Statement"), be and the same are hereby approved with respect to the information contained therein. The Chairman is hereby authorized to deliver the Preliminary Official Statement to the Underwriters for their use in offering the Series 2011 Bonds for sale with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. The Chairman is authorized to "deem final" the Preliminary Official Statement as of its date within the meaning of SEC Rule 15c2-12 (the "Rule") and the applicable rules developed by the Municipal Securities Rulemaking Board. The Chairman is authorized to execute a certificate deeming such Preliminary Official Statement "final."

**SECTION 13. OFFICIAL STATEMENT.** The form, terms and provisions of the Official Statement, which shall be dated the date of the Contract of Purchase and which shall be substantially in the form of the Preliminary Official Statement, be and the same hereby are approved with respect to the information therein contained. The Chairman is hereby authorized and directed to execute and deliver said Official Statement in the name and on behalf of the Commission, and thereupon to cause such Official Statement to be delivered to the Underwriters with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman and as shall be necessary to reflect the final terms and provisions of the Series 2011 Bonds. Said Official Statement, including any such changes, amendments, modifications, omissions and additions as approved by the Chairman, and the information contained therein are hereby authorized to be used in connection with the sale of the Series 2011 Bonds to the public. Execution of the Official Statement by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions.

**SECTION 14. CONTINUING DISCLOSURE.** The Commission hereby covenants and agrees that, in order to provide for compliance by the Commission with the secondary market disclosure requirements of the Rule, it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate to be executed by the Commission and dated the date of delivery of the Series 2011 Bonds, as it may be amended from time to time in accordance with the terms thereof (the "Disclosure Certificate"). The Disclosure Certificate shall be substantially in the form attached hereto as Exhibit F with such changes, amendments, modifications, omissions and additions as shall be approved by the Chairman who is hereby authorized to execute and deliver such Certificate. Notwithstanding any other provision of the Resolution or Indenture, failure of the Commission to comply with such Disclosure Certificate shall not be considered an event of default under the Indenture.

**SECTION 15. APPOINTMENT OF TRUSTEE.** U.S. Bank is hereby removed as Trustee pursuant to the terms of the Original Indenture, including in particular Section 10.07 thereof, subject to the appointment of a replacement Trustee as provided in this Section 15. \_\_\_\_\_, whose designated trust

office is \_\_\_\_\_, Florida, is hereby designated Trustee pursuant to the terms of the Indenture. The Chairman and the Secretary-Treasurer are hereby authorized to enter into any agreement which may be necessary to effect the transactions contemplated by this Section 15.

**SECTION 16. PREREQUISITES PERFORMED.** All acts, conditions and things relating to the passage of this Resolution required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required.

**SECTION 17. MISCELLANEOUS.** The Chairman, Vice-Chairman and the Secretary-Treasurer or any other appropriate officers of the Commission are hereby authorized and directed to execute any and all certifications or other instruments or documents required by this Resolution, the Indenture, the First Supplemental Indenture, the Loan Agreements, the Contract of Purchase, the Official Statement, the Escrow Deposit Agreement or any other document required as a prerequisite or precondition to the issuance of the Bonds and any such representation made therein shall be deemed to be made on behalf of the Commission. All action taken to date by the officers of the Commission, the Administrator, the Financial Advisor of the Commission, Bond Counsel or Commission Counsel in furtherance of the issuance of the Bonds, including execution of any insurance commitment relating to the Bonds, is hereby approved, confirmed and ratified. The Chairman is hereby authorized to approve a change in the dates of any document or instrument authorized hereby.

**SECTION 18. GENERAL AUTHORITY.** The members of the governing body of the Commission and its officers, counsel, agents and officials are hereby authorized to do all acts and things required of them consistent with the requirements of this Resolution and any documents relating to the Program for the full punctual and complete performance of all the terms, covenants and agreements contained in the Series 2011 Bonds, this Resolution and such documents. The Vice-Chairman is authorized to do all things required or permitted by this Resolution of the Chairman or Secretary-Treasurer in their absence or unavailability.

**SECTION 19. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions contained herein shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof and shall in no way affect the validity of any of the other provisions of this Resolution.

**SECTION 20. REPEALING CLAUSE.** All resolutions or parts thereof of the Commission in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**SECTION 21. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED this 13th day of January, 2011.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

**EXHIBIT A**

**FORM OF CONTRACT OF PURCHASE**

\$ \_\_\_\_\_  
**FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS**  
**(STATE TRANSPORTATION TRUST FUND)**  
**SERIES 2011A (NON-AMT)**

and

\$ \_\_\_\_\_  
**FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS**  
**(STATE TRANSPORTATION TRUST FUND)**  
**SERIES 2011B (AMT)**

January \_\_, 2011

**CONTRACT OF PURCHASE**

Chairman and Other Representatives  
Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301

Ladies and Gentlemen:

Citigroup Global Markets Inc. (the “Representative”), on behalf of itself, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated and Siebert Brandford Shank & Co., L.L.C. (collectively, the “Underwriters”), hereby offers to enter into this Contract of Purchase with the Florida Ports Financing Commission (the “Commission”) for the purchase by the Underwriters and sale by the Commission of all, but not less than all, of the \$\_\_\_\_\_ aggregate principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT) (the “Series 2011A Bonds”) and \$\_\_\_\_\_ aggregate principal amount of Florida Ports Financing Commission Refunding Revenue Bonds, (State Transportation Trust Fund), Series 2011B (AMT) (the “Series 2011B Bonds” and, together with the Series 2011A Bonds, the “Bonds”). The Bonds shall be dated their date of delivery. This offer is made subject to acceptance by the Commission prior to 5:00 p.m., New York City time, on the date hereof, and upon such acceptance this Contract of Purchase shall be in full force and effect in accordance with its terms and shall be binding upon the Commission and the Underwriters. All capitalized terms not otherwise defined herein shall have the meaning set forth in the hereinafter described Indenture.

**1. Purchase and Sale.** Upon the terms and conditions and upon the basis of the representations warranties and agreements set forth herein, the Underwriters hereby agree to purchase all, but not less than all, of the Bonds from the Commission for offering to the public, and the Commission hereby agrees to sell such Bonds to the Underwriters for such purposes, for the aggregate purchase price of \$\_\_\_\_\_ (\$\_\_\_\_\_ principal amount of Bonds, less Underwriters’ discount of \$\_\_\_\_\_, and [less]/[plus] \$\_\_\_\_\_ original issue

[discount]/[premium]). The Bonds shall be as described in, and shall be issued under the authority of and in full compliance with, the Constitution and laws of the State of Florida, including particularly Section 320.20(3), Florida Statutes, and Chapter 163, Part I, Florida Statutes (collectively, the "Interlocal Act"), and other applicable provisions of law, including, without limitation, Part I of Chapter 159, Florida Statutes, Chapter 311, Florida Statutes, and Chapter 315, Florida Statutes (together with the Interlocal Act, the "Act"). The Bonds shall mature at the times and in the amounts and bear interest at the rates set forth in Exhibit A hereto and shall be redeemable prior to their stated maturities at the times, in the amounts, and at the prices set forth in Exhibit B hereto. The Bonds will be issued pursuant to an Indenture of Trust between the Commission and SunTrust Bank, Central Florida, National Association, as trustee, dated as of December 1, 1996, as amended and restated by the First Amended and Restated Indenture of Trust dated as of the Date of Closing, as supplemented by the First Supplemental Indenture of Trust, dated as of the Date of Closing, (collectively, the "Indenture") each between the Commission and \_\_\_\_\_, as Trustee (the "Trustee"). All capitalized words and phrases used herein, unless defined herein, shall have the meaning set forth in the Official Statement (hereafter defined).

The Commission was created pursuant to the Interlocal Act through an Interlocal Agreement, dated as of July 17, 1996, as amended and restated by a First Amended and Restated Interlocal Agreement dated as of September 15, 1997 (together, the "Interlocal Agreement"), by and among Broward County (Port Everglades), Canaveral Port Authority, Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Miami-Dade County (Port of Miami), Panama City Port Authority, Port of Palm Beach District and St. Lucie County. The Commission has established a financing program (the "Program") pursuant to which the Commission previously issued its \$222,320,000 aggregate principal amount of Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 of which \$\_\_\_\_\_ aggregate principal amount remains outstanding (the "Refunded Bonds") and loaned the proceeds thereof to certain ports, port authorities and port districts in Florida described in Section 311.09(1), Florida Statutes (each, a "Port" and collectively, the "Ports") in order to finance, refinance or reimburse the cost of acquiring and constructing capital projects within said Ports.

The purpose of the Refunded Bonds was to provide funds to finance, refinance and reimburse the costs of approved capital projects (as defined in the Indenture, each a "Project" and collectively, the "Projects") for certain participating Ports and to pay certain costs of issuing the Bonds. The Commission accomplished such financing, refinancing and reimbursement for such Projects through loans (each, a "Loan" and collectively, the "Loans") to such Ports or the political subdivisions of the State of Florida which own and operate such Ports (each, a "Borrower" and collectively, the "Borrowers") pursuant to separate Loan Agreements entered into between each Borrower and the Commission (each, a "Loan Agreement" and collectively, the "Loan Agreements"). Pursuant to the Program Administration Agreement, dated as of December 1, 1996, (the "Program Administration Agreement"), between the Commission and the Florida Ports Council (the "Administrator"), the Administrator provides certain services to the Commission with respect to the Program and acts as the Commission's agent as set forth in the Program Administration Agreement.

The Bonds are being issued to refund, on a current basis, pursuant to a resolution of the Commission adopted on January 13, 2011 (the "Resolution"), all of the outstanding Refunded

Bonds and to pay certain costs of issuance on the Bonds, pursuant to a resolution of the Commission adopted on January 13, 2011 (the “Resolution”).

The Bonds are special and limited obligations of the Commission payable solely from payments of principal and interest (“Basic Payments”) by the Borrowers under the Loan Agreements and investment earnings to the extent provided in the Indenture. Basic Payments are required to be paid by the Borrowers solely from moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes. In addition to Basic Payments, each Borrower agrees to pay on demand of the Commission or the Trustee “Additional Payments”, constituting (a) its proportionate share of certain ongoing Program fees, costs and expenses, (b) all reasonable fees and expenses of the Commission, the Administrator and the Trustee relating to the Loan Agreement, (c) certain rebate obligations relating to the Bonds pursuant to Section 148(f) of the Internal Revenue Code, as amended and (d) any unallowable costs (plus interest) required to be repaid by the Borrower under the Loan Agreement. Basic Payments and Additional Payments are hereinafter referred to as “Loan Repayments”. Pursuant to a Master Agreement dated as of November 7, 1996, between the State Department of Transportation (the “Department”) and the Commission (collectively, the “Master Agreement”), the Department agrees to transfer into an escrow account held by the State of Florida’s Department of Insurance, Division of Treasury on behalf of the Trustee, on an annual basis from moneys derived from the State Transportation Trust Fund the interest and the principal coming due on the Bonds.

In accordance with Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934, the Commission and the Department will agree to provide or cause to be provided to the Municipal Securities Rulemaking Board (“MSRB”), (i) certain annual financial information and operating data of the Commission and the Department, respectively, and (ii) certain notices of material events. The Commission and the Department shall each execute and deliver at Closing a separate Continuing Disclosure Certificate evidencing their obligations.

**2. Good Faith Deposit.** The Representative shall, before 1:00 p.m., New York City time, on the date hereof, deliver to the Chairman of the Commission, or other person designated by the Commission, a company check or checks payable to the order of the Commission in the amount of \$\_\_\_\_\_ as security for the performance by the Underwriters of our obligations to accept and pay for the Bonds at the Closing (defined below) in accordance with the provisions of this Contract of Purchase. Such check shall be returned uncashed to the Representative at the Closing, except under the circumstances set forth in the last sentence of this paragraph. If the Commission does not accept this offer, or upon your failure (other than for a reason permitted under this Contract of Purchase) to deliver the Bonds at the Closing, or if you shall be unable to satisfy the conditions to the Underwriters’ obligations contained in this Contract of Purchase (unless waived by the Underwriters), or if such obligations shall be terminated for any reason permitted by this Contract of Purchase or otherwise at the Closing, you shall return the check to the Representative. If the Underwriters fail (other than for a reason permitted under this Contract of Purchase) to accept and pay for the Bonds at the Closing, such check may be cashed and the proceeds thereof shall be retained by the Commission as and for full liquidated damages for such failure, and not as a penalty, and for any and all defaults hereunder on the part of the Underwriters, and thereupon, all claims and rights hereunder against the Underwriters shall be



fully released and discharged, it being understood by the Commission and the Underwriters that actual damages in such circumstances may be difficult or impossible to compute.

The Representative has been duly authorized to execute this Contract of Purchase and has been duly authorized to act hereunder on behalf of the Underwriters.

**3. Offering.** It shall be a condition of the Commission's obligation to sell and deliver the Bonds to the Underwriters, and the obligation of the Underwriters to purchase and accept delivery of the Bonds, that the entire aggregate principal amount of the Bonds shall be sold and delivered by the Commission and accepted and paid for by the Underwriters at the Closing (as hereinafter defined).

The Underwriters agree to make a bona fide public offering of all of the Bonds at the initial offering prices reflecting the prices set forth in Exhibit A attached hereto. The Underwriters, however, reserve the right to make concessions to dealers and to change such initial offering prices as the Underwriters shall deem necessary in connection with the marketing of the Bonds and to offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts, including investment trusts managed by the Underwriters) and others at prices lower than the initial offering prices set forth in Exhibit A hereto. The Underwriters also reserve the right to: (a) over-allot or effect transactions that stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market, and (b) discontinue such stabilization, if commenced, at any time.

**4. Preliminary Official Statement and Official Statement.** The Commission hereby confirms that it has heretofore made available to the Underwriters a Preliminary Official Statement of the Commission relating to the Bonds, dated January \_\_, 2011, (which, together with the cover page and appendices contained therein, is herein called the "Preliminary Official Statement"), and authorizes the distribution thereof to prospective purchasers and investors. The Commission has provided the Underwriters the opportunity to review such Preliminary Official Statement prior to the distribution thereof. The Preliminary Official Statement is deemed final for purposes of the Rule. At the time of or before acceptance of this Contract of Purchase, or at such later time as shall be agreeable to the Underwriters, the Commission shall deliver to the Underwriters three (3) copies of the Official Statement, dated the date hereof (which together with the cover page and appendices contained therein, is herein called the "Official Statement"), executed on behalf of the Commission by its Chairman.

Within seven (7) business days of the acceptance hereof by the Commission (and insufficient time to comply with the applicable rules of the MSRB and to accompany any confirmation that requests payment from any customer), the Commission shall cause to be delivered such reasonable number of conformed copies of the Official Statement executed by the Commission, as the Underwriters shall reasonably request, which shall be sufficient in number with paragraph (b)(3) of the Rule and with Rule G-32, Rule G-12 and all other applicable rules of the MSRB. The Commission, by its acceptance hereof, ratifies and approves the Preliminary Official Statement and approves and authorizes the Underwriters to use the Official Statement in connection with the public offering and sale of the Bonds.

The Underwriters agree to file the Official Statement with the MSRB (accompanied by a completed Form G-36) not later than two (2) business days after the Closing. The filing of the Official Statement with the MSRB shall be in accordance with the rules of the MSRB.

In accordance with Section 218.385, Florida Statutes, the Underwriters hereby disclose the information required by such Section, including a truth-in-bonding statement, all as provided in Exhibit B attached hereto.

**5. Use of Documents.** You hereby authorize the use by the Underwriters of (a) the Indenture, (b) the Master Agreement, (c) the Preliminary Official Statement, (d) the Official Statement (including any supplements or amendments thereto), and (e) any other documents related to the transactions contemplated in the Official Statement in connection with the public offering, sale and distribution of the Bonds.

**6. Representations, Warranties and Agreements.** The Commission hereby represents, warrants and agrees as follows:

a. The Commission is and will be at the Date of Closing duly organized and validly existing as a public body corporate and politic of the State of Florida, with the powers and authority set forth in the Interlocal Agreement and in the Act.

b. The Commission has full legal right, power and authority to: (i) execute and deliver this Contract of Purchase, (ii) execute and deliver the Master Agreement, (iii) execute and deliver the Loan Agreements, (iv) execute and deliver the Indenture, (v) execute and deliver the Program Administration Agreement, (vi) execute and deliver a Continuing Disclosure Certificate, (vii) execute and deliver the Escrow Deposit Agreement dated as of the Date of Closing (the "Escrow Deposit Agreement") between the Commission and the Trustee, (viii) sell, issue and deliver the Bonds to the Underwriters as provided herein, and (ix) carry out and consummate the transactions contemplated by this Contract of Purchase, the Master Agreement, the Program Administration Agreement, the Indenture, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Official Statement. The Commission has complied, and at the Closing will be in compliance in all respects with, the terms of the Act and with the obligations on its part contained in the Indenture, the Bonds, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and this Contract of Purchase.

c. The Commission has, by all necessary official action, duly authorized, approved and ratified the Official Statement in a form substantially the same as the Preliminary Official Statement, has duly authorized and approved the execution and delivery of, if applicable, and the performance by the Commission of its obligations under, the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate and this Contract of Purchase, and the consummation by it of all other transactions contemplated by the foregoing in connection with time issuance of the Bonds, the refunding of the Refunded Bonds and the sale to the Underwriters of the Bonds. The Indenture, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and this Contract of Purchase constitute legal, valid and binding agreements of the Commission, enforceable against the Commission in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws

affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Bonds, when issued, authenticated and delivered, will constitute legal, valid and binding obligations of the Commission, enforceable against the Commission in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

d. The Commission is not in material breach of or material default under any applicable constitutional provision, law or administrative regulation of the State of Florida (the "State") or the United States of America or any applicable judgment or decree, or any loan agreement, indenture, bond, note, agreement or other material instrument to which the Commission is a party or to which the Commission or any of its property or assets is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute a material default or event of default under any of the foregoing; provided, however, that no breach of or default under any of the foregoing shall be deemed to be "material" unless such breach or breaches, individually or in the aggregate, have a material adverse effect on the Commission's ability to make timely payment of principal and interest on the Bonds or on the Commission's ability to fulfill its other obligations under this Contract of Purchase, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Indenture, the Escrow Deposit Agreement and the Continuing Disclosure Certificate. The execution and delivery of the Bonds, this Contract of Purchase, the Loan Agreements, the Indenture, the Master Agreement, the Program Administration Agreement and the Continuing Disclosure Certificate, and compliance with the obligations on the Commission's part contained in all of the foregoing, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, indenture, bond, note, ordinance, material agreement or any other material instrument to which the Commission is a party onto which the Commission or any of its property or assets is otherwise subject. Such execution, delivery, adoption or compliance will not result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Commission or under the terms of any such law, regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, ordinance, agreement or other instrument, except as specifically provided by the Bonds, the Indenture, the Master Agreement, Program Administration Agreement, the Loan Agreements, the Escrow Deposit Agreement and the Continuing Disclosure Certificate.

e. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matters described herein or which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Commission of the Commission's obligations under this Contract of Purchase, the Indenture, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Escrow Deposit Agreement and the Continuing Disclosure Certificate have been duly obtained, except for such approvals, consents and orders as maybe required under the Blue Sky or securities laws of any state or of the United States of America in connection with the offering and sale of the Bonds.

f. As of the date of the Official Statement and at the Date of Closing, the statements and information contained in the Official Statement (other than the information under the captions “THE BONDS - Book-Entry-Only System,” “MUNICIPAL BOND INSURANCE,” and information in Appendices F and G, as to which no representation is made) will be true, correct and complete in all material respects, and the Official Statement (other than as aforesaid) will not omit any statement or information which should be included therein for the purposes for which the Official Statement is to be used or which is necessary to make the statements or information contained therein, in light of the circumstances under which they were made, not misleading.

g. Between the date of this Contract of Purchase and the Date of Closing, except for the Commission’s Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program) Series 2011A (Non-AMT) and Series 2011B (AMT), the Commission will not execute any bonds, notes or obligations for borrowed money, other than the Bonds, without giving prior written notice thereof to the Underwriters.

h. The Bonds, when issued, executed, authenticated and delivered, will be validly issued and outstanding obligations of the Commission, entitled to the benefits of the Indenture, including a pledge of, lien on, and source of payment from the Trust Estate (as defined in the Indenture). The Indenture will provide, for the benefit of the holders from time to time of the Bonds, a pledge of and lien on the Trust Estate.

i. As of the date hereof, and except as disclosed in the Official Statement, to the best knowledge of the Chairman there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body pending or, threatened against or affecting the Commission, affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds, or the execution and delivery by the Commission of this Contract of Purchase, the Continuing Disclosure Certificate, the Escrow Deposit Agreement or the Indenture or contesting or affecting as to the Commission the validity or enforceability of the Act in any respect relating to authorization for the issuance of the Bonds, execution and delivery of the Indenture, this Contract of Purchase, the Escrow Deposit Agreement, the Continuing Disclosure Certificate or contesting the exclusion from gross income of interest on the Bonds for purposes of federal income taxation, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the authority of the Commission for the issuance of the Bonds.

j. The Commission will furnish such information, execute such instruments, and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order to (i) qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States of America as the Underwriters may designate, and (ii) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Commission shall not be required to execute a general or special consent to service of process, pay any fee or qualify to do business in connection with any such qualification or determination in any jurisdiction.

k. If, after the date of this Contract of Purchase and until the earlier of (i) 90 days from the end of the “underwriting period” (as defined in the Rule) or (ii) the time when the Official Statement is available to any person from a nationally recognized repository, but in no case less than 25 days following the end of the underwriting period (the “Disclosure Period”), any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Commission shall notify the Underwriters thereof, and, if in the reasonable opinion of the Underwriters such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Commission will at its own expense forthwith prepare and furnish to the Underwriters a sufficient number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and Squire, Sanders & Dempsey (US) LLP, Miami, Florida, Counsel to the Underwriters) which will supplement or amend the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading.

l. Prior to the execution of this Contract of Purchase, the Commission delivered to the Underwriters copies of the Preliminary Official Statement which the Commission deemed to be “final” as it relates to the Bonds for purposes of the Rule as of the date thereof, except for Permitted Omissions (as defined in the Rule).

m. If the Official Statement is supplemented or amended pursuant to Section 6(n) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to Section 6(n) hereof) at all times during the Disclosure Period, the Official Statement as so supplemented or amended (other than the information under the captions “THE BONDS - Book-Entry-Only System,” “MUNICIPAL BOND INSURANCE,” and information in Appendices F and G, as to which no representation is made) will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

n. During the Disclosure Period, the Commission will (i) not adopt any amendment of or supplement to the Official Statement to which, after having been furnished with a copy, the Representative on behalf of the Underwriters shall reasonably object in writing, unless the Commission has obtained the opinion of Nabors, Giblin & Nickerson, P.A., Bond Counsel, stating that such amendment or supplement is necessary in order to make the Official Statement not misleading in light of the circumstances existing at the time that it is delivered to a purchaser, and (ii) if any event relating to or affecting the Commission or the Bonds shall occur which would or might cause the information contained in the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Commission shall notify the Underwriters thereof, and if as a result of which it is necessary, in the opinion of Squire, Sanders & Dempsey (US) LLP, Counsel to the Underwriters, to amend or supplement the Official Statement in order to make the Official Statement not misleading in light of the circumstances existing at the time it is delivered to a purchaser, the Commission shall forthwith prepare and furnish to the Underwriters (at the expense of the Commission) a reasonable number of copies of

an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Representative and the Commission) which will amend or supplement the Official Statement so that such Official Statement, as amended or supplemented, will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading. For the purposes of this paragraph, the Representative will furnish such information with respect to itself as the Commission may from time to time reasonably request.

o. Other than as described in the Official Statement, since December 31, 1975, and at all times subsequent thereto up to and including the Date of Closing, the Commission has not been and will not be in default with respect to payment of the principal of, or interest on, any bonds or other debt obligations that it has issued or will issue or that it has guaranteed or will guarantee (including bonds or other debt obligations for which it has served as a conduit issuer, such as the Bonds).

p. The Commission has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

q. The Commission will not take any action nor omit to take any action which would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Refunded Bonds or the Bonds under the Code.

r. The Commission is presently in compliance with its prior continuing disclosure undertakings entered into pursuant to the Rule over the past five years.

s. The financial statements of the Commission contained in the Official Statement fairly present, in all material respects, the financial position and results of operation of the Commission as of the dates and for the periods therein set forth, and such financial statements have been prepared in accordance with generally accepted accounting principles, and since the date of such financial statements there has been no material adverse change, other than as disclosed in the Official Statement, in the financial position of the Commission from those disclosed in such financial statements.

**7. Closing.** At 12:00 p.m. (noon), New York City time, on [February] \_\_, 2011 or at such other time or on such other date upon which we mutually agree, the Commission will deliver or cause to be delivered to The Depository Trust Company, New York, New York ("DTC"), the Bonds in book-entry-only form, and bearing proper CUSIP numbers, duly executed and authenticated in accordance with the Indenture, and the Commission will deliver the other documents hereafter mentioned at such time, and the Underwriters will, subject to the conditions contained herein, accept delivery of the Bonds and will pay the purchase price of the Bonds set forth in Section 1 hereof in Federal Funds to or on behalf of the Commission. Payment for the Bonds and delivery of the documents hereafter mentioned shall be made at the offices of Nabors, Giblin & Nickerson, P.A. Tampa, Florida, or at such other place as may be agreed upon by us. Such delivery and payment is herein called the "Closing", and the date of such delivery and payment is herein called the "Date of Closing." The Bonds shall be prepared, and the Bonds shall be delivered, as one fully registered bond for each maturity of the Bonds and registered in the

name of Cede & Co., as nominee of DTC, which will act as securities depository for the Bonds. The Bonds will be made available to the Representative for checking not less than twenty-four (24) hours prior to the Closing.

**8. Closing Conditions.** The Underwriters have entered into this Contract of Purchase in reliance upon the representations of the Commission contained herein, in reliance upon the representations contained in the documents and instruments to be delivered at the Closing, and in reliance upon the performance by the Commission of its obligations hereunder, both as of the date hereof and as of the Date of Closing. Accordingly, the Underwriters' obligation under this Contract of Purchase to purchase the Bonds is conditioned upon satisfaction of the following conditions set forth in Sections 8(a) through (e) below:

a. At or prior to the time of Closing, the Commission shall have performed all of its obligations to be performed hereunder, under this Contract of Purchase, the Loan Agreements, the Indenture, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and under the other documents and instruments to be delivered at the Closing and the representations of the Commission contained herein shall be true, complete and correct on the date hereof and on and as of the Date of Closing, as if made on the Date of Closing.

b. At the time of the Closing, the Indenture, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Escrow Deposit Agreement and the Continuing Disclosure Certificate shall be in full force and effect in accordance with their terms and shall not have been amended, modified or supplemented, except as agreed to by the Underwriters and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Underwriters.

c. At the time of the Closing, all official action of the Commission relating to this Contract of Purchase, the Bonds, the Loan Agreements, the Indenture, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Commission's approval of the Official Statement shall be in full force and effect in accordance with their respective terms and shall not have been amended, modified or supplemented in any material respect, except in each case as may have been agreed to by the Underwriters.

d. At or prior to the Closing, the Underwriters shall have received the following:

(i) The Resolution certified by the secretary of the Commission under seal as having been duly adopted by the Commission and as being in effect, with only such supplements, modifications or amendments as may have been agreed to by the Underwriters.

(ii) The Official Statement and each supplement or amendment, if any, thereto, executed on behalf of the Commission by the Chairman of the Commission.

(iii) An opinion, dated the Date of Closing and addressed to the Commission, the Trustee, the Borrowers [and the Bond Insurer], of Nabors, Giblin & Nickerson, P.A., Bond Counsel to the Commission, as it relates to the Bonds, in substantially the form of

the opinion included in the Official Statement as Appendix F (which form shall be acceptable to the Underwriters), together with a letter of such Counsel, dated the Date of Closing and addressed to the Underwriters, to the effect that the foregoing opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them. The opinion addressed to the Trustee [and the Bond Insurer] may be in the form of a reliance letter.

(iv) An opinion, dated the Date of Closing and addressed to the Underwriters, of Nabors, Giblin & Nickerson, P.A., Bond Counsel to the Commission, to the effect that (A) any summaries of opinions attributed to said Bond Counsel in the Official Statement constitute fair and accurate summaries of such opinions; (B) the statements contained in the Official Statement under the captions “INTRODUCTORY STATEMENT,” “PLAN OF FINANCE,” “THE BONDS” (except that no opinion need be expressed with respect to the information under the caption “Book-Entry-Only System” except to the extent that such information purports to summarize provisions of the Indenture), “SECURITY FOR THE SERIES 2011 BONDS” (except that no opinion need be expressed with respect to the information under the captions “Motor Vehicle License Taxes” and “Ceiling on State Revenue Collections”), “THE LOAN AGREEMENT,” “THE INDENTURE,” “CONTINUING DISCLOSURE,” and “TAX MATTERS,” and APPENDICES A, B, C, D, and F, insofar as such statements under said captions purport to summarize certain provisions of the Bonds, the Loan Agreements, the Indenture, the Master Agreement, and the laws of the United States of America and the State of Florida, such statements fairly present the information purported to be summarized; provided, however, that such summaries do not purport to summarize all the provisions of, and are qualified in the entirety by, the complete documents or laws which are summarized; (C) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended; and (D) the Refunded Bonds are deemed paid in accordance with, and are no longer deemed to be outstanding under the provisions of the Indenture.

(v) An opinion, dated the Date of Closing and addressed to the Commission Bond Counsel, the Trustee and the Underwriters, of \_\_\_\_\_, \_\_\_\_\_, Florida, General Counsel to the Commission, to the effect that:

(1) the Commission is a legal entity duly organized and validly existing under the laws of the State of Florida, with the powers and authority set forth in the Interlocal Agreement and the Act;

(2) the Commission has the legal right, power and authority (i) to execute and deliver the Indenture, [the Master Agreement, the Program Administration Agreement,] the Continuing Disclosure Certificate, the Contract of Purchase, the Escrow Deposit Agreement [and the Loan Agreements,] and (ii) to sell, issue and deliver the Bonds;

(3) the Indenture, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Contract of Purchase, the Escrow Deposit Agreement and the Loan Agreements have each been duly approved and executed by the Commission;



(4) the Loan Agreements, the Contract of Purchase, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Indenture are each in full force and effect and constitute the legal, valid and binding obligations of the Commission, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in equity or at law) and no other authorization is required;

(5) the Commission has duly authorized the execution and delivery of the Official Statement and ratified the use of the Preliminary Official Statement by the Underwriters;

(6) the information in the Official Statement under the captions "THE COMMISSION," "FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM," "LITIGATION" and "DISCLOSURE UNDER FLORIDA BLUE SKY LAWS" present fair and accurate summaries of the legal matters summarized therein;

(7) as of the Date of Closing, nothing has come to its attention causing it to believe that (A) the information contained in the Official Statement under the captions "THE COMMISSION," "FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM," "LITIGATION" and "DISCLOSURE UNDER FLORIDA BLUE SKY LAWS" as of its date contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which *they* were made, not misleading; and (B) the information contained in the Official Statement under the captions "THE COMMISSION," "FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM," "LITIGATION" and "DISCLOSURE UNDER FLORIDA BLUE SKY LAWS" (as supplemented or amended pursuant to Section 6(n) hereof, if applicable) as of the Date of Closing contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(8) the execution and delivery of the Bonds, this Contract of Purchase, the Indenture, the Escrow Deposit Agreement, the Continuing Disclosure Certificate and compliance with the provisions on the Commission's part contained in the foregoing and the Loan Agreements, the Master Agreement and the Program Administration Agreement, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Commission is a party or to which the Commission or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption, enactment, or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the

property or assets of the Commission or under the terms of any such law, regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, ordinance, agreement or other instrument, except as expressly provided by the Indenture;

(9) to the best of its knowledge, there is, except as disclosed in the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or threatened against or affecting the Commission, nor is there to the best of its knowledge after due inquiry, any basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the Commission's ability to make timely payments of principal and interest on the Bonds or upon the transactions contemplated by the Official Statement or upon the validity of the Bonds, the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement or the Contract of Purchase; and

(10) all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities then required for the Commission's adoption, execution and performance of its obligations under the Bonds, the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Contract of Purchase have been obtained or effected and it has no reason to believe that the Commission will be unable to obtain or effect any such additional authorization, consent, approval or review that may be required for performance under any of the foregoing by the Commission.

(vi) A certificate, dated the Date of Closing, signed by the Chairman of the Commission or other appropriate official satisfactory to the Underwriters, to the effect that, to the best of his or her knowledge:

(1) the representations of the Commission herein are true and correct in all material respects as of the Date of Closing;

(2) the Commission has performed all obligations to be performed hereunder as of the Date of Closing;

(3) as of the Date of Closing, the Commission is not in default under any of the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement or this Contract of Purchase;

(4) except as disclosed in the Official Statement, no litigation is pending or threatened (i) to restrain or enjoin the issuance or delivery of the Bonds; (ii) in any way contesting or affecting any authority for the issuance of the Bonds or the validity of the Bonds, the Master Agreement, the Program Administration Agreement, the Indenture, the Loan Agreements, the Continuing

Disclosure Certificate, the Escrow Deposit Agreement or this Contract of Purchase; (iii) in any way contesting the existence or powers of the Commission; (iv) to restrain or enjoin the collection of the Loan Repayments; (v) which may result in any material adverse change in the business, properties, assets or financial condition of the Commission; or (vi) asserting that the Preliminary Official Statement or the Official Statement contain any untrue statement of a material fact or omits any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (but, in lieu of such certificate, the Underwriters, in their discretion, may accept an opinion of counsel to the effect that the issues raised in any such pending or threatened litigation is without substance or that, the contentions of any plaintiffs therein are without merit); and

(5) the Official Statement (other than the information under the captions “THE BONDS - Book-Entry-Only System,” [“MUNICIPAL BOND INSURANCE,”] and the information in Appendices F and G) did not as of its date, and does not as of the Date of Closing, contain any untrue statement of a material fact or omit to state a material fact which should be included therein which is necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(vii) An opinion of Squire, Sanders & Dempsey (US) LLP, Miami, Florida, as Counsel to the Underwriters, addressed to the Underwriters, and dated the date of Closing, substantially to the effect that (A) with respect to the information in the Official Statement and based upon said firm’s participation in the preparation of the Official Statement as Counsel to the Underwriters and without having undertaken to determine independently the accuracy or completeness of the contents of the Official Statement, said firm has no reason to believe that the Official Statement (except for the information under the headings “THE BONDS - Book-Entry Only System” [and “MUNICIPAL BOND INSURANCE”] and in the Appendices A through D and F through H and the financial and statistical data contained therein, as to which no view need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, (B) the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification as an indenture under the Trust Indenture Act of 1939, as amended and (C) the Continuing Disclosure Agreement complies as to form in all material respects with the applicable requirements of the Rule, and a reliance letter addressed to the Commission with respect to the opinion given in clause (A) above.

[

(viii) An opinion of counsel to the Bond Insurer (which counsel may be an employee of the Bond Insurer) in the form acceptable to the Underwriters;]

(ix) An opinion of counsel to the Trustee in substantially the form attached hereto as Exhibit D;

(x) Copies of the opinion of counsel to each of the Borrowers rendered in connection with the issuance of the Refunded Bonds in substantially the form set forth in Exhibit C of the form of the Loan Agreements;

(xi) An original executed Indenture between the Commission and the Trustee;

(xii) Certified executed copies of Loan Agreements between the Commission and (A) Broward County (Port Everglades), (B) Canaveral Port Authority, (C) Miami-Dade County (Port of Miami), (D) Hillsborough County Port District (Tampa Port Authority), (E) Jacksonville Port Authority, (F) Manatee County Port Authority, (G) Ocean Highway and Port Authority, (H) Port of Palm Beach District, (I) Panama City Port Authority, and (J) Port of Pensacola;

(xiii) A certified executed copy of the Master Agreement between the Department and the Commission;

(xiv) A certified executed copy of the Program Administration Agreement between the Commission and the Administrator;

(xv) [A municipal bond insurance policy effective as of the Date of Closing issued by the Bond Insurer insuring the payment of principal of and interest on the Bonds, when due;]

(xvi) A copy of the resolutions, certified by an appropriate governmental official from each of the Ports, that were adopted by each of the Ports approving their respective Loan Agreements, authorizing the borrowing of money from the Commission pursuant to the Loan Agreements, and authorizing the transactions contemplated by such Loan Agreements;

(xvii) A certificate of an appropriate official or officials of each of the Ports, as Borrowers, which shall be satisfactory to the Underwriters to the effect that (A) the statements and information in the Preliminary Official Statement and the Official Statement relating to the Borrower under the caption "THE COMMISSION - Loans from Proceeds of the Bonds" is accurate; (B) there is no litigation or legal or governmental action, proceeding, inquiry or investigation pending or, to the best of its knowledge, threatened, or to which the Borrower is a party, which has not been disclosed in writing to the Commission and the Bond Insurer which, if determined adversely to the Borrower, would individually or in the aggregate materially adversely affect the existence of the Borrower or the ability of the Borrower to comply with its obligations under the Loan Agreement; (C) all representations and warranties of the Borrower contained in the Loan Agreement are true and correct as of the Date of the Closing; (D) the Borrower has duly authorized, executed and delivered the Loan Agreement, the resolution authorizing the execution and delivery of the Loan Agreement and authorizing the borrowing of money from the Commission is in full force and effect, and the Loan Agreement constitutes a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency and other similar laws affecting enforceability of creditors' rights generally and to the application of equitable principles if equitable principles are sought; and (F) as

of the Date of Closing the Borrower is in compliance with all covenants contained in the Loan Agreement and is not in default under any provision of the Loan Agreement;

(xviii) A certified copy of the Interlocal Agreement, as amended;

(xix) Executed Continuing Disclosure Certificates from the Commission and the Department;

(xx) An opinion of counsel to the Department addressed to the Commission and the Underwriters to the effect that:

(1) the Department has the legal right, power and authority to execute and deliver the Continuing Disclosure Certificate;

(2) the Master Agreement and the Continuing Disclosure Certificate are in full force and effect and constitute the legal, valid and binding obligations of the Department, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in equity or at law) and no other authorization is required;

(3) the execution and delivery of the Continuing Disclosure Certificate, and compliance with the provisions on the Department's part contained in the foregoing and in the Master Agreement, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Department is a party or to which the Department or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption, enactment, or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Department or under the terms of any such law, regulation or instrument;

(4) to the best of its knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, government agency, public board or body, pending or threatened against or affecting the Department, nor is there to the best of its knowledge after due inquiry, any basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling or finding would have a material adverse effect upon the validity of the Master Agreement or the Continuing Disclosure Certificate; and

(5) all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities then required for the Department's adoption, execution and performance of its obligations under the Master Agreement and the Continuing Disclosure Certificate have been obtained or

effected and it has no reason to believe that the Department will be unable to obtain or effect any such additional authorization, consent, approval or review that may be required for performance under either of the foregoing by the Department.

(xxi) An opinion of counsel to the Administrator addressed to the Commission and the Underwriters or a Certificate of the Administrator to the effect that:

(1) the Administrator had the legal right, power and authority to execute and deliver the Program Administration Agreement;

(2) the Program Administration Agreement is in full force and effect and constitutes the legal, valid and binding obligation of the Administrator, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in equity or at law) and no other authorization is required;

(3) the execution and delivery of the Program Administration Agreement and compliance with the provisions on the Administrator's part contained in the foregoing, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Administrator is a party or to which the Administrator or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption, enactment, or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Administrator or under the terms of any such law, regulation or instrument;

(4) to the best of its knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, government agency, public board or body, pending or threatened against or affecting the Administrator, nor is there to the best of its knowledge after due inquiry, any basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the validity of the Program Administration Agreement;

(5) all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities then required for the Administrator's adoption, execution and performance of its obligations under the Program Administration Agreement have been obtained or effected and it has no reason to believe that the Administrator will be unable to obtain or effect any such additional authorization, consent, approval or review that maybe required for performance under the foregoing by the Administrator.

(xxii) Such additional legal opinions, certificates, instruments and other documents as the Underwriters may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Date of Closing, of the Commission's representations contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the Commission on or prior to the Date of Closing of all the agreements then to be performed and conditions then to be satisfied by it pursuant to the Master Agreement, the Program Administration Agreement, the Indenture, the Bonds, the Loan Agreements, the Continuing Disclosure Certificates and this Contract of Purchase.

e. As of the Date of Closing, Moody's Investors Service, Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc., and Fitch Ratings, shall have assigned their underlying ratings of ["A1," "A+" and "AA-"], respectively, to the Commission [and their municipal ratings of "\_\_\_\_," "\_\_\_\_" and "\_\_\_\_", respectively, to the Bonds, and no material adverse change shall have occurred in the affairs of the Bond Insurer which would result in a reduction of the ratings to the Bonds.]

All the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Contract of Purchase shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriters.

If the Commission shall be unable to satisfy the conditions precedent to the obligation of the Underwriters to purchase the Bonds contained in this Contract of Purchase, or if the obligation of the Underwriters to purchase the Bonds shall be terminated for any reason permitted by this Contract of Purchase, this Contract of Purchase shall terminate, and neither the Underwriters nor the Commission shall be under any further obligation hereunder except that the Commission shall immediately return to the Representative the check delivered by the Representative pursuant to Section 2 hereof.

**9. Termination.** The Underwriters shall have the right to terminate their obligations under this Contract of Purchase by notifying the Commission of their election to do so if, after the execution hereof and prior to the Closing:

a. between the date hereof and the Closing, an amendment to the Constitution of the United States or any legislation shall be (A) enacted or adopted by the United States, (B) recommended to the Congress or otherwise endorsed for passage, by press release, other form of notice or otherwise, by the President of the United States, the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, the Treasury Department of the United States or the Internal Revenue Service or (C) favorably reported out of the appropriate Committee for passage to either House of the Congress by any full Committee of such House to which such legislation has been referred for consideration, or any decision of any court of the United States or any order, rule or regulation (final, temporary or proposed) on behalf of the Treasury Department of the United States, the Internal Revenue Service or any other authority or regulatory body of the United States shall be issued, or a release or announcement or communication shall be issued or sent by the Treasury Department or the Internal Revenue Service of the United States, or any comparable legislative, judicial or administrative development shall occur affecting the federal tax status of the Commission, its property or

income, obligations of the general character of the Bonds, as contemplated hereby, or the interest thereon, or any tax exemption, which, in the reasonable judgment of the Underwriters, materially adversely affects the market price of the Bonds or causes any information in the Official Statement to be misleading in any material respect, or

b. between the date hereof and the Closing, legislation shall be enacted or any action shall be taken by the Securities and Exchange Commission which, in the opinion of Counsel for the Underwriters, has the effect of requiring the contemplated issuance or distribution of the Bonds to be registered under the Securities Act of 1933, as amended or of requiring the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, or

c. an event described in paragraph (n) of Section 6 hereof shall have occurred which requires an amendment or supplement to the Official Statement and which, in the reasonable opinion of the Underwriters, materially adversely affects the marketability of the Bonds or the market price thereof, or

d. litigation not otherwise described in the Official Statement is instituted with respect to the Commission, or the Bonds which, in the reasonable opinion of the Underwriters, materially adversely affects the marketability of the Bonds or the market price thereof, or

e. in the reasonable opinion of the Underwriters, payment for and delivery of the Bonds is rendered impracticable or inadvisable because (A) trading in securities generally shall have been suspended on the New York Stock Exchange, Inc., or (B) a general banking moratorium shall have been established by Federal, New York or Florida authorities, or (C) there shall have occurred (1) an outbreak or escalation of hostilities involving the United States, a declaration by the United States of a national or international emergency or war (it being agreed by the parties hereto that no such situation currently exists); or (2) any other calamity or crisis in the United States or elsewhere; or

f. there shall have occurred any adverse change in the collection of Motor Vehicle License Taxes, the distribution thereof pursuant to the School Capital Outlay Amendment or in the State Transportation Trust Fund, which, in the reasonable judgment of the Representative, may reasonably be expected to have an adverse effect on the ability of the Borrowers to fulfill their obligations under their respective Loan Agreements, and which in the reasonable opinion of the Representative materially adversely affects the market price of the Bonds; or

g. between the date hereof and the Closing, the Commission has, without the prior written consent of the Underwriters, offered or issued any bonds, notes or other obligations for borrowed money, or incurred any material liabilities, direct or contingent, other than as described in the Official Statement, or

h. there shall have been any material adverse change in the affairs of the Commission that in the Underwriters' reasonable judgment will materially adversely affect the market for the Bonds or the ability of the Underwriters to enforce contracts for the sale of the Bonds, or

i. between the date hereof and the Closing, the President of the United States, the Office of Management and Budget, the Department of Treasury, the Internal Revenue Service or



any other governmental body, department, agency or commission of the United States or the State of Florida shall take or propose to take any action or implement or propose regulations, rules or legislation which, in the reasonable judgment of the Underwriters, materially adversely affects the market price of the Bonds or causes any information in the Official Statement, in light of the circumstances under which it appears, to be misleading in any material respect, or

j. between the date hereof and the Closing, any executive order shall be announced, or any legislation, ordinance, rule or regulation shall be proposed by or introduced in, or be enacted by any governmental body, department, agency or commission of the United States or the State of Florida or the State of New York, having jurisdiction over the subject matter, or a decision by any court of competent jurisdiction within the United States or within the State of Florida or the State of New York shall be rendered which, in the reasonable judgment of the Underwriters, materially adversely affects the market price of the Bonds or causes any information in the Official Statement to be misleading in any material respect, or

k. between the date hereof and the Closing a downgrading, withdrawal or suspension of any rating (without regard to credit enhancement) by Moody's Investor Services, Inc. ("Moody's"), Standard & Poor's Ratings Service ("S&P"), or Fitch Ratings ("Fitch") of any debt securities issued by the Commission; or

l. any state blue sky or securities commission shall have withheld registration, exemption or clearance of the offering which, in the reasonable judgment of the Representative, materially adversely affects the market for the Bonds; or

m. [negative information relating to the financial condition of the Bond Insurer, its parent or any subsidiary of it, is made available to the Underwriters, which, in the reasonable judgment of the Underwriters, could result in a downgrading of any of the ratings assigned to the Bonds, and which in the opinion of the Underwriters materially adversely affects the market price of the Bonds; or]

n. [the Bond Insurer shall inform the Underwriters or the Commission that it will not insure the Bonds.]

**10. Expenses.** The Underwriters shall be under no obligation to pay, and the Commission shall pay, any expense incident to the performance of the Commission's obligations hereunder, including, but not limited to, (a) the cost of preparation, printing and delivery of the Preliminary Official Statement and the Official Statement, and any supplement and amendments thereto; (b) the cost of preparation and delivery of the Bonds; (c) the fees and disbursements of Bond Counsel, Counsel to the Commission, and Counsel to the Trustee; (d) the fees and disbursements of First Southwest Company, Inc. their services as Financial Advisors to the Commission; (e) fees for bond ratings; (f) fees and charges of The Depository Trust Company; (g) expenses incurred on behalf of the Commission's employees which are incidental to implementing this Contract of Purchase, including, but not limited to, meals, transportation and lodging; and (h) the bond insurance premium or any other cost and expenses related to the bond insurance. The Underwriters are responsible for and shall pay (i) expenses of advertising in connection with the public offering of the Bonds; (ii) fees and expenses of their Counsel (including the cost of preparation and printing the blue sky and legal investment surveys, if any, prepared by such Counsel); (iii) all other expenses incurred by them in connection with their

public offering and distribution of the Bonds; and (iv) all expenses in relation to the assignment of CUSIP numbers to the Bonds.

**11. No Advisory or Fiduciary Role.** The Commission acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Contract of Purchase is an arm's-length commercial transaction between the Commission and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent or fiduciary of the Commission, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the Commission with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Commission on other matters) and the Underwriter has no obligation to the Commission with respect to the offering contemplated hereby except the obligations expressly set forth in this Contract of Purchase and (iv) the Commission has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

**12. Notices.** Any notice or other communications to be given to the Commission under this Contract of Purchase may be given by delivering the same in writing signed by the Representative at your address set forth above, and any such notice or other communication to be given to the Underwriters may be given by delivering the same in writing to \_\_\_\_\_, attention: \_\_\_\_\_.

**13. Parties in Interest.** This Contract of Purchase is made solely for the benefit of the Commission and the Underwriters and no other person, partnership, association or corporation shall acquire or have any right hereunder or by virtue hereof. All representations and agreements of the Commission in this Contract of Purchase shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriters and shall survive the delivery of and payment for the Bonds.

**14. Governing Law.** This Contract of Purchase, and the terms and conditions herein, shall constitute the full and complete agreement between the Commission and the Underwriters with respect to the purchase and sale of the Bonds. The Contract of Purchase shall be governed by and construed in accordance with the laws of the State of Florida.

[Remainder of page intentionally left blank]

**15. Miscellaneous.** The approval of the Underwriters when required hereunder and of the determination of their satisfaction with any document referred to herein shall be in writing signed by an officer of the Representative and delivered to you; otherwise, such approval shall be deemed given if the Underwriters accept delivery of and pay the purchase price for the Bonds at the Closing. This Contract of Purchase shall become legally effective upon its acceptance by you as evidenced by the signatures of the Chairman of the Commission and the Secretary-Treasurer of the Commission in the spaces provided therefor below.

**CITIGROUP GLOBAL MARKETS INC.  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH INCORPORATED  
MORGAN STANLEY & CO., INCORPORATED  
SIEBERT BRANDFORD SHANK & CO., L.L.C.**

BY: CITIGROUP GLOBAL MARKETS INC.

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

FLORIDA PORTS FINANCING COMMISSION

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

**EXHIBIT A**  
**MATURITY SCHEDULE**

**EXHIBIT B**  
**REDEMPTION PROVISIONS**

**EXHIBIT C**  
**DISCLOSURE STATEMENT**

[February] \_\_, 2011

Chairman and Other Representatives  
Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301

Re: \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds  
(State Transportation Trust Fund), Series 2011A (Non-Amt) and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds, (State Transportation Trust Fund), Series 2011B (AMT)

Ladies and Gentlemen:

In connection with the proposed issuance by the Florida Ports Financing Commission (the "Commission") of \$\_\_\_\_\_ aggregate principal amount of its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT) and \$\_\_\_\_\_ aggregate principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (collectively, the "Bonds"), Citigroup Global Markets, Inc., Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Morgan Stanley & Co., Incorporated and Siebert Brandford Shank & Co., L.L.C. (collectively, the "Underwriters") are underwriting a public offering of the Bonds.

The purpose of this letter is to furnish, pursuant to the provisions of Section 218.385(2), (3) and (6), Florida Statutes, certain information in respect of the arrangements contemplated for the underwriting of the Bonds as follows:

a. The nature and estimated amount of expenses to be incurred by the Underwriters in connection with the purchase and reoffering of the Bonds are set forth in Schedule I attached hereto.

b. No person has entered into an understanding with the Underwriters, or to the knowledge of the Underwriters, with the Commission, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Commission and the Underwriters or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Bonds.

c. The underwriting spread, the difference between the price at which the Bonds will be initially offered to the public by the Underwriters and the price to be paid to the Commission

for the Bonds, exclusive of accrued interest, will be approximately \$\_\_\_\_\_ per \$1,000 of Bonds issued.

d. As part of the estimated underwriting spread set forth in paragraph (c) above, the Underwriters will charge a management fee of \$\_\_\_\_\_ (\$\_\_\_\_\_ per \$1,000).

e. No other fee, bonus or other compensation is estimated to be paid by the Underwriters in connection with the issuance of the Bonds to any person not regularly employed or retained by the Underwriters (including any “finder” as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Underwriters, as set forth in paragraph (a) above.

f. The names and addresses of the Underwriters are:

Citigroup Global Markets Inc.  
390 Greenwich Street, 2<sup>nd</sup> Floor  
New York, New York 10013

Morgan Stanley & Co., Incorporated  
1221 Avenue of the Americas, 30<sup>th</sup> Floor  
New York, New York 10020

Bank of America Merrill Lynch  
300 South Orange Avenue, Suite 800  
Orlando, Florida 32801

Siebert Brandford Shank & Co., L.L.C.  
1625 K Street. N.W., Suite 904  
Washington. D.C. 20006

g. The information required to be provided pursuant to Section 218.385 (2) and (3), Florida Statutes is attached hereto as Schedule It.

[Remainder of page intentionally left blank]

We understand that you do not require any further disclosure from the Underwriters pursuant to Section 218.385(4), Florida Statutes.

Very truly yours,

**CITIGROUP GLOBAL MARKETS INC.  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH INCORPORATED  
MORGAN STANLEY & CO., INCORPORATED  
SIEBERT BRANDFORD SHANK & CO., L.L.C.**

BY: CITIGROUP GLOBAL MARKETS INC.

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



## **SCHEDULE I**

### **UNDERWRITERS' ESTIMATED EXPENSES**

Underwriters' Counsel Fees and Expenses	\$
Verification Report	
Day Loan	
Dalcomp	
PSA	
Munifacts (Wires)	
CUSIPs	
DTC Clearance Charge	
Out-Of-Pocket	
Syndicate Operations Cost	<u>                    </u>
	\$ <u>                    </u>
Total	

**SCHEDULE II**  
**TRUTH- IN-BONDING STATEMENT**

[February] \_\_, 2011

Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301

Re: \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds  
(State Transportation Trust Fund), Series 2011A (Non-AMT) and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds, (State Transportation Trust Fund), Series 2011B (AMT)

The Bonds will be issued by the Florida Ports Financing Commission for the purpose of providing funds to finance, refinance and reimburse the costs of acquisition, construction and installation of certain capital projects for the program Borrowers and paying certain costs of issuance with respect to the Bonds, as more fully described in the Contract of Purchase. This debt or obligation is expected to be repaid over a maximum period of \_\_\_\_\_ (\_\_) years. At a true interest cost of approximately \_\_\_\_\_%, total interest paid over the life of the debt or obligation will be \$\_\_\_\_\_ (exclusive of accrued interest).

The Bonds are expected to be paid solely from the payments of principal and interest by the Borrowers under the Loan Agreements between the Commission and the Borrowers and investment earnings to the extent provided in the Indenture. The Bonds are not secured by a pledge of the faith and credit of the Borrowers or of the State of Florida or of any political subdivision thereof, and do not create an indebtedness of the State or of any political subdivision thereof. Approving the Bonds will result in approximately \$\_\_\_\_\_, in aggregate, of such funds of the Borrowers not being available for other services or purposes of the Borrowers each year the Bonds are in effect, but in no event for longer than \_\_\_\_\_ (\_\_) years. It should be noted that the actual amount per Borrower will vary significantly in each year depending on the amount such Borrower has borrowed from the program.

[Remainder of page intentionally left blank]

The foregoing is provided for information purposes only and shall not affect or control the actual terms and conditions of the Bonds.

Very truly yours,

**CITIGROUP GLOBAL MARKETS  
INC.**, as representative of the Underwriters

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

## EXHIBIT D

[February] \_\_, 2011

Florida Ports Financing Commission

Morgan Stanley & Co. Incorporated

Citigroup Global Markets Inc.

Siebert Brandford Shank & Co., L.L.C.  
Washington, D.C.

Merrill Lynch, Pierce, Fenner & Smith,  
Incorporated

Re: \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds  
(State Transportation Trust Fund), Series 2011A (Non-AMT) and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds, (State Transportation Trust Fund), Series 2011B (AMT)

Ladies and Gentlemen:

We are counsel for \_\_\_\_\_, a national banking association organized and existing under the laws of the United States of America (the "Bank"). We have been asked to render our opinion as to certain matters relating to the authorization, execution and delivery by the Bank of (i) the First Amended and Restated Indenture of Trust dated as of the date of issuance, as supplemented (the "Indenture"), between the Bank, as Trustee, and Florida Ports Financing Commission (the "Commission") pursuant to which the captioned revenue bonds of the Commission are to be issued, and acceptance by the Bank of the trusts created under the terms of the Indenture; (ii) the Memorandum of Agreement between the State of Florida, Department of Transportation ("FDOT"), the State of Florida, Department of insurance, Division of Treasury, Florida Ports Financing Commission (the "Commission") and the Bank (the "Exhibit A Memorandum"), which is attached as Exhibit A to that certain Master Agreement, dated as of November 7, 1996, (the "Master Agreement"), between FDOT and the Commission; and (iii) the Memorandum of Agreement between FDOT, the Commission and the Bank (the "Exhibit B Memorandum"), which is attached as Exhibit B to the Master Agreement. The Exhibit A Memorandum and the Exhibit B Memorandum shall be referred to as the "Memorandums".

We have examined such documents as we have deemed to be appropriate and relevant as a basis for the opinion hereinafter set forth, including certified copies of certain resolutions of the Board of Directors of the Bank and a certificate of an officer of the Bank as to certain matters including the incumbency of the officers of the Bank who executed the Indenture and the Memorandums on behalf of the Bank.

In rendering the opinions expressed herein, we have assumed (i) in good faith the genuineness of the signatures of all persons executing instruments or documents examined or relied upon by us; and (ii) in good faith the conformity with the original documents of all

documents submitted to us as copies. In addition, we have relied in good faith upon certificates of public officials as to matters contained therein and upon certain certificates of representatives of the Bank as to matters of fact. Any opinion expressed herein as being made “to the best of our knowledge” is based upon our having made due inquiry of the Bank or our having actual knowledge as a result of our representation of the Bank in other matters, but not upon our having made an independent investigation,

Based upon and subject to the foregoing, it is our opinion that:

1. The Bank is national banking association duly organized and validly existing under the laws of the United States of America.

2. The Bank is authorized under the laws of the United States of America and the State of Florida, and has the corporate power and capacity, to execute and deliver the Indenture and the Memorandums and to accept the trusts and obligations created under the Indenture.

3. Execution and delivery of the Indenture and the Memorandums have been duly authorized by the Bank, the trust created under the Indenture and the obligations created under the Indenture and the Memorandums have been accepted on behalf of the Bank by an officer of the Bank pursuant to such authority, and the Indenture and the Memorandums (assuming the due and legal authorization, execution and delivery thereof by the other parties thereto, as to which we express no opinion) constitute the legal, valid and binding obligations of the Bank, enforceable in accordance with their terms, except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting generally the enforcement of creditors’ rights and by principles of equity relating to the availability of specific performance.

4. The Bank has the power and authority to exercise and perform all duties imposed upon it under the Indenture and the Memorandums.

The foregoing opinions are based solely on the laws of the United States of America and the State of Florida.

Very truly yours,

**EXHIBIT B**

**FORM OF INDENTURE OF TRUST**

---

**FLORIDA PORTS FINANCING COMMISSION,**  
Issuer

and

\_\_\_\_\_,  
Trustee

**FIRST AMENDED AND RESTATED  
INDENTURE OF TRUST**

\$ \_\_\_\_\_  
FLORIDA PORTS FINANCING COMMISSION  
REVENUE BONDS  
(STATE TRANSPORTATION TRUST FUND),

Dated as of \_\_\_\_\_, 2011

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This instrument also constitutes a security agreement under the laws of the State of Florida.

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## **FIRST AMENDED AND RESTATED INDENTURE OF TRUST**

**THIS FIRST AMENDED AND RESTATED INDENTURE OF TRUST**, dated as of \_\_\_\_\_, 2011 between the **FLORIDA PORTS FINANCING COMMISSION**, a legal entity organized and existing under the laws of the State of Florida (the "Commission"), and \_\_\_\_\_, \_\_\_\_\_, Florida, as trustee (the "Trustee").

### **WITNESSETH:**

**WHEREAS**, the Commission is duly created and existing pursuant to the Constitution and laws of the State of Florida, including, particularly, Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes (the "Interlocal Act"), and a first amended and restated interlocal agreement, dated as of September 15, 1997 (the "Interlocal Agreement"), among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County; and

**WHEREAS**, the Commission, pursuant to the authority of the Interlocal Act, the Interlocal Agreement and other applicable provisions of law, is authorized, among other things, to issue revenue bonds on behalf of and for the benefit of the ports located in the State of Florida (the "Ports") in order to finance, refinance or reimburse the cost of qualified projects of such Ports, such bonds to be secured by instruments evidencing and securing loans to the Ports and to be payable solely out of payments made by the Ports pursuant to Loan Agreements entered into between the Ports and the Commission or from other moneys designated as available therefor; and

**WHEREAS**, the Commission has determined that the public interest will be best served by the Commission's issuance of revenue bonds in order to provide funds to loan to the participating Ports to finance, refinance or reimburse the cost of qualifying projects pursuant to loan agreements between the respective Ports and the Commission; and

**WHEREAS**, the Commission has heretofore issued its \$222,320,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds") pursuant to an Indenture of Trust, dated as of December 1, 1996 (the "Original Indenture"), between the Commission and SunTrust Bank, as Trustee, to provide funds to finance, refinance or reimburse the cost of qualified projects of the participating Ports; and

**WHEREAS**, in order to secure the payment of the principal of, premium, if any, and interest on the Series 1996 Bonds and any additional parity bonds issued under the

Original Indenture, Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City), Port St. Joe Port Authority and St. Lucie County (collectively, the "Borrowers") have each entered into a loan agreement with the Commission (collectively, the "Loan Agreements") and have agreed in the Loan Agreements to assign, transfer and pledge moneys received by such Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, in order to provide for the payment of principal of, premium, if any, and interest on the Series 1996 Bonds and any additional parity bonds issued under the Original Indenture; and

**WHEREAS**, the Commission determines that is in its best interests to refinance the Series 1996 Bonds in order to achieve debt service savings; and

**WHEREAS**, the Commission deems it in its best interests to amend the Original Indenture in various respects and to restate such Original Indenture in the form of this First Amended and Restated Indenture of Trust (as amended and supplemented, the "Indenture") [and to replace U.S. Bank, National Association, as successor to SunTrust Bank, as Trustee with \_\_\_\_\_]; and

**WHEREAS**, the Commission shall issue its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT) (the "Series 2011A Bonds") and its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (the "Series 2011B Bonds" and together with the Series 2011A Bonds, the "Series 2011 Bonds") pursuant to the terms of this Indenture and the First Supplemental Indenture of Trust, dated as of \_\_\_\_\_, 2011 for the principal purposes of refinancing the Series 1996 Bonds and paying the costs of issuance of the Series 2011 Bonds; and

**WHEREAS**, the Series 2011 Bonds shall constitute Bonds pursuant to the terms of this Indenture and the Loan Agreements;

**NOW, THEREFORE**, in consideration of the premises, the Commission and the Trustee hereby further mutually covenant and agree as follows:

## **W I T N E S S E T H:**

### **GRANTING CLAUSES**

The Commission, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the Commission of all the covenants expressed or implied herein and in the Bonds, does hereby grant, bargain, sell, convey, mortgage, assign, pledge and grant, without recourse, a lien in the hereafter-described Trust Estate to the Trustee, and its successors in trust and assigns forever, for the securing of the performance of the obligations of the Commission hereinafter set forth:

#### **GRANTING CLAUSE FIRST**

All right, title and interest of the Commission under the Loan Agreements (excluding fees and expenses payable to, or on behalf of, the Commission and rights of the Commission to indemnity and notices thereunder and excluding any payments made by the Borrowers to comply with the rebate provisions of Section 148(f) of the herein defined Code) entered into by the Borrowers and any documents securing payment thereunder, including all extensions and renewals of any of the terms of the Loan Agreements and any documents securing payment thereunder and without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any income, issues and profits and other sums of money payable to or receivable by the Commission, to bring actions or proceedings under the Loan Agreements, any documents securing payment thereunder or for the enforcement thereof, and to do any and all things which the Commission is or may become entitled to do under or due to its ownership of the interests granted in the Loan Agreements; provided, however, that the Bonds shall be secured only by the right, title and interest of the Commission in the Loan Agreements relating thereto; and

#### **GRANTING CLAUSE SECOND**

All moneys and securities from time to time held by the Trustee under the terms hereof (except for moneys and securities held in the Rebate Fund and the Administrative Expense Fund), including any investment earnings thereon, all in accordance with the provisions hereof; and

### **GRANTING CLAUSE THIRD**

All of the herein defined Revenues (other than the herein defined Additional Payments), any proceeds of Bond Insurance (as herein defined), any and all other property, rights and interests of every kind and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, pledged, hypothecated or otherwise subjected hereto, as and for additional security herewith, by the Commission or any other person on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, to the Trustee and its respective successors in trust and assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future owners of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds, except as otherwise specifically provided herein with respect to the Bonds;

**PROVIDED, HOWEVER**, that the holders of the Bonds shall be entitled to payment only from the Loan Agreements more fully described in Granting Clause First hereof pledged for the payment of the Bonds, the Funds and Accounts set forth in Granting Clause Second hereof established for the Bonds and the Revenues, proceeds of Bond Insurance and other property, rights and interests described in Granting Clause Third pledged for the payment of such Bonds;

**AND FURTHER PROVIDED**, that if the Commission, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds and as provided in Article II hereof according to the true intent and meaning thereof, and shall cause the payments to be made as required under Article II hereof, or shall provide, as permitted hereby, for the payment thereof in accordance with Article VIII hereof, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms hereof to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due in accordance with the terms and provisions hereof, then upon such final payments or deposits as provided in Article VIII hereof, this Indenture of Trust and the rights hereby granted shall cease, terminate and be void and the Trustee shall thereupon cancel and discharge this Indenture and execute and deliver to the Commission such instruments in writing as shall be requisite to evidence the discharge hereof.

**THIS INDENTURE OF TRUST FURTHER WITNESSETH,** and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all of the Trust Estate is to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and the Commission has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective owners, from time to time, of the Bonds, or any part thereof, as follows:



## **ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION**

**SECTION 1.01. DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture, have the meanings herein specified.

**"Accountant"** or **"Accountants"** means an independent certified public accountant or a firm of independent certified public accountants.

**"Accounts"** means the accounts created pursuant to Section 4.02 hereof.

**"Act"** means the Interlocal Act and all other applicable provisions of law, including, without limitation, Part I of Chapter 159, Florida Statutes, and Chapters 311 and 315, Florida Statutes.

**"Additional Bonds"** means any Bonds issued pursuant to the terms of Section 13.09 hereof.

**"Additional Payments"** means payments required by Section 5.02 of the Loan Agreement.

**"Administrative Expense Fund"** means the fund by that name created by Section 4.02(b) hereof.

**"Administrator"** means such program administrator selected by the Commission in accordance with the terms of Section 6.02 hereof to provide certain services to the Commission with respect to the Program and to act as the Commission's agent as set forth in the Program Administration Agreement.

**"Administrator's Account"** means the account by that name created by Section 4.02(b) hereof.

**"Amortization Installment"** means an annual amount designated as such herein relating to redemption of Term Bonds.

**"Arbitrage Regulations"** means the income tax regulations promulgated, proposed or applicable pursuant to Section 148 of the Code, as the same may be amended or supplemented or proposed to be amended or supplemented from time to time.

**"Authorized Denominations"** means \$5,000 and integral multiples thereof.

**"Authorized Representative"** means, when used in respect to the Commission, the Chairman of the Commission and such other designated members, agents or

representatives, including the Administrator, as may hereafter be determined by Commission resolution and, when used with reference to a Borrower, means the person performing the function of the Port Director (or his or her designee) or such other person as may be designated by the Borrower.

**"Basic Payments"** means the payments denominated as such in Section 5.01 of the Loan Agreement.

**"Board"** means the governing body of a Borrower.

**"Bond Counsel"** means Nabors, Giblin & Nickerson, P.A., Tampa, Florida, or any other nationally recognized bond counsel which is selected by the Commission and acceptable to the Trustee to perform such role.

**"Bondholder"** or **"Holder"** or **"holder of Bonds"** or **"Owner"** or **"owner of Bonds"**, whenever used herein with respect to a Bond, means the Person in whose name such Bond is registered.

**"Bond Insurance"** or **"Bond Insurance Policy"** means a municipal bond new issue insurance policy issued by a Bond Insurer which guarantees payment of the principal of and interest on a Series of Bonds, or a portion thereof.

**"Bond Insurance Premium,"** with respect to the Bonds, means the premium payable to the Bond Insurer for the Bond Insurance.

**"Bond Insurer,"** or **"Insurer"** shall mean such Person as shall be in the business of insuring or guaranteeing the payment of principal of and interest on municipal securities and whose credit is such that, at the time of any action or consent required or permitted by the Insurer pursuant to the terms of this Indenture, all municipal securities insured or guaranteed by it are then rated, because of such insurance or guarantee, in one of the two highest rating categories (without regard to gradations, such as "plus" or "minus" of such categories) by Moody's and S&P, or any successor thereto.

**"Bonds"** means the Series 2011 Bonds, any refunding obligations issued hereunder pursuant to Section 2.10 hereof and any Additional Bonds issued pursuant to Section 13.09 hereof.

**"Bond Year"** means a 12-month period beginning on [June 1 and ending on and including the last day of May].

**"Borrowers"** means the Ports which have entered into Loan Agreements and which are borrowing and using the Loan proceeds to finance, refinance and/or be reimbursed for all or a portion of the Costs of one or more Projects. Subject to the provisions of Section 12.05 hereof, the Borrowers shall be Broward County (Port

Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City), Port St. Joe Port Authority and St. Lucie County.

**"Business Day"** means a day of the year which is not a Saturday or Sunday or a day on which banking institutions located in the State of New York or the State are required or authorized to remain closed or on which the New York Stock Exchange is closed.

**"Certificate," "Statement," "Request," "Requisition" and "Order"** of the Commission mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Commission by its Chairman, Secretary-Treasurer, Administrator or such other person as may be designated and authorized to sign for the Commission. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

**"Chairman"** means the Chairman of the Commission, and, in his or her unavailability or absence, the Vice-Chairman.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated, proposed, or applicable thereunder.

**"Commission"** means the Florida Ports Financing Commission, and any successors thereto.

**"Construction Fund"** means the fund by that name created by Section 4.02(f) hereof and all Accounts therein.

**"Cost,"** when used in connection with a Project financed by a Loan made to a Borrower, means (1) such Borrower's cost of physical construction; (2) costs of acquisition by or for the Borrower of such Project; (3) costs of land and interests therein and the cost of the Borrower incidental to such acquisition; (4) the cost of any indemnity and surety bonds and premiums for insurance during construction; (5) all interest due to be paid on the Loan and other obligations relating to such Project during the period of acquisition and construction of such Project and for such period subsequent to completion, all to the extent permitted by the Commission; (6) engineering, legal and other consultant fees and expenses related thereto; (7) costs and expenses of the financing of such Project, including fees and expenses of the Trustee or a Bond Insurer; (8)

amounts, if any, required by this Indenture to be paid into the Interest Account upon the issuance of the Bonds; (9) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any interim or temporary indebtedness of the Borrower (other than the Loan) incurred for such Project, to the extent permitted by the Commission; (10) costs of machinery, equipment and supplies and reserves required by the Borrower for the commencement of operation of such Project; and (11) any other costs properly attributable to such acquisition or construction, and shall include reimbursement to the Borrower for any such items of Cost heretofore paid by the Borrower relating to such Project to the extent permitted by the Loan Agreement. A Supplemental Indenture may provide for additional items to be included in the aforesaid Costs.

**"Cost of Issuance Fund"** means the fund by that name created by Section 4.02(d) hereof.

**"Counsel"** means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the Commission or the Borrower.

**"Default"** means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**"Department"** means the Florida Department of Transportation, and any successors or assigns thereto.

**"DTC"** means The Depository Trust Company, New York, New York, and its successors and assigns.

**"Event of Default"** means any occurrence or event specified in Section 9.01 hereof.

**"Excess Earnings"** shall have the meaning provided in Section 4.05 hereof.

**"Fiscal Year"** means the fiscal year of the Borrowers.

**"Fitch"** means Fitch Inc., and its successors and assigns.

**"FSTED"** means the Florida Seaport Transportation and Economic Development Council created pursuant to Section 311.09, Florida Statutes, and any successors thereto.

**"Funds"** means the funds created pursuant to Section 4.02 hereof.

**"Governmental Obligations"** means (1) cash and the United States obligations described below (the "Defeasance Obligations"), and (2) pre-refunded municipal

obligations (obligations of any state of the United States of America or of any agency, instrumentality, political subdivision or local government unit of such state) meeting the following criteria:

(a) the municipal obligations must be rated "AAA" by S&P and "Aaa" by Moody's and may not be callable prior to maturity or, alternatively, the trustee or escrow agent for such obligations has received irrevocable instructions concerning their calling and redemption;

(b) the municipal obligations are secured by cash or Defeasance Obligations which may be applied only to principal, interest and premium payments of such municipal obligations;

(c) the principal and interest of the Defeasance Obligations (plus any cash in the fund) has been verified by an Accountant as sufficient to pay the principal, interest and premium, if any, of the municipal obligations;

(d) the Defeasance Obligations serving as security for the municipal obligations must be held by an escrow agent or a trustee; and

(e) the Defeasance Obligations are not available to satisfy any other claims, including those of the trustee or escrow agent.

Defeasance Obligations shall consist of:

(1) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series -- "SLGs"); and

(2) Any other direct obligations of the United States of America and obligations fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged.

**"Indenture"** means this First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee, including any Supplemental Indentures.

**"Interest Account"** means the account by that name created pursuant to Section 4.02(c) hereof.

**"Interest Payment Date"** means [June 1 and December 1 of each year].

**"Interest Period"** means the period commencing on an Interest Payment Date and ending on the day preceding the next Interest Payment Date, provided that the initial Interest Period shall commence on the dated date of the Bonds.

**"Interlocal Act"** means Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes.

**"Interlocal Agreement"** means that certain First Amended and Restated Interlocal Agreement, dated as of September 15, 1997, among certain Ports executing it from time to time, the original parties to which are Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County, as amended and supplemented from time to time.

**"Investment Securities"** shall mean any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

1. (a) Cash (fully insured by the Federal Deposit Insurance Corporation), (b) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("U.S. Treasury Obligations"), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.
2. Federal Housing Administration debentures.
3. The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:
  - a) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped

mortgage securities which are purchased at prices exceeding their principal amounts);

- b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes;
  - c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations; and
  - d) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts).
- 4. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks which have capital and surplus of at least \$50 million.
  - 5. Commercial paper (having original maturities of not more than 270 days) rated "A-1+" by S&P and "Prime-1" by Moody's.
  - 6. Money market funds rated "AAAm" or "AAAm-G" by S&P, and if rated by Moody's rated "Aaa".
  - 7. "State Obligations", which means:
    - a) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated at least "A3" by Moody's and at least "A-" by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated;
    - b) Direct general short-term obligations of any state agency or subdivision or agency thereof described in (a) above and rated "A-1+" by S&P and "MIG-1" by Moody's; and
    - c) Revenue bonds of any state or state agency described in (b) above and rated "AA-" or better by S&P and "Aa3" or better by Moody's.

8. Pre-refunded municipal obligations described in the definition of Government Obligations.
9. Repurchase agreements: with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A-" by S&P and "A3" Moody's; or (2) any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A-" by S&P and "A3" by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated at least "A-" by S&P and "A3" Moody's (each an "Eligible Provider"), provided that:
  - a) (i) permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of SBA, GNMA, FNMA, FFCB, FHLB or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and (ii) collateral levels must be at least 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is SBA's and GNMA's and 104% of the total principal when the collateral type is FNMA, FHLB, FFCB, and FHLMC ("Eligible Collateral");
  - b) the Trustee or a third party acting solely as agent therefore or for the Commission (the "Custodian") has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor's books) and such collateral shall be marked to market;
  - c) the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the Commission setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;
  - d) the repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected security interest in the collateral, any substituted collateral and all proceeds thereof; and



- e) the repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A3" by Moody's, as appropriate, the provider must notify the Commission and the Trustee within five days of receipt of such notice. Within ten days of receipt of such notice, the provider shall either: (i) provide a written guarantee, surety bond, letter of credit or similar undertaking from an entity with equal or higher ratings, (ii) post Eligible Collateral, (iii) assign the agreement to an Eligible Provider, or (iv) take any action mutually agreeable by the parties . If the provider does not perform a remedy within ten business days, the provider shall, at the direction of the Trustee repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the Commission or the Trustee.
10. Investment agreements: with a domestic or foreign bank or corporation the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA-" by S&P and "Aa3" by Moody's (each an "Eligible Provider"); provided that:
- a) interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;
  - b) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice; the Commission and the Trustee hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;
  - c) the provider shall send monthly reports to the Trustee and the Commission setting forth the balance the Commission or Trustee has invested with the provider and the amounts and dates of interest accrued and paid by the provider;
  - d) the investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the

provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

- e) [reserved];
- f) the Commission and the Trustee shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms;
- g) the Commission and the Trustee shall receive an opinion of foreign counsel to the provider (if applicable) that (i) the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, (b) the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (c) any judgment rendered by a court in the United States would be recognized and enforceable in such country;
- h) the investment agreement shall provide that if during its term:
  - i) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3", the provider shall, at its option, within ten days of receipt of publication of such downgrade, either (i) provide a written guarantee, (ii) post Eligible Collateral with the Commission, the Trustee or a third party acting solely as agent therefore (the "Custodian") free and clear of any third party liens or claims, or (iii) assign the agreement to an Eligible Provider, or (iv) repay the principal of and accrued but unpaid interest on the investment;
  - ii) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A3", the provider must, at the direction of the Commission or the Trustee, within ten (10) days of receipt of such

direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Commission or Trustee.

- i) in the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the Commission setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;
- j) the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected security interest in the collateral, any substituted collateral and all proceeds thereof; and
- k) the investment agreement must provide that if during its term: (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Commission or the Trustee, be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Commission or Trustee, as appropriate, and (ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Commission or Trustee, as appropriate.

**"Loan"** means a loan to a Borrower from proceeds of Bonds to finance or refinance a Project or Projects pursuant to a Loan Agreement in the amount specified in

Section 3.01 of such Loan Agreement including the loan made from proceeds of Series 1996 Bonds.

**"Loans"** means all loans made by the Commission under this Indenture and the Loan Agreements to Borrowers. A description of the Loans made from proceeds of the Series 1996 Bonds is provided in Exhibit A attached hereto. Loans shall also include any loans made from proceeds of Additional Bonds in accordance with the terms of the Supplemental Indenture authorizing such Additional Bonds.

**"Loan Agreement" or "Loan Agreements"** means the Loan Agreement or Loan Agreements between the Commission and the Borrower(s) participating in the Program with respect to the Bonds (including the Series 1996 Bonds), and any amendments and supplements thereto.

**"Loan Repayment Date"** means [June 1, 2011, and each December 1 and June 1] thereafter or, if such day is not a Business Day, the next preceding Business Day.

**"Loan Repayments"** means the payments of principal and interest and other payments payable by the Borrowers pursuant to the provisions of the Loan Agreements. Loan Repayments shall include Basic Payments and Additional Payments.

**"Loan Term"** means the term provided for in Article IV of the Loan Agreement.

**"Master Agreement"** means the Master Agreement, dated as of November 7, 1996, between the Commission and the Department relating to the Program, as the same may be amended and supplemented from time to time.

**"Moody's"** means Moody's Investors Service and its successors and assigns.

**"Outstanding" or "Bonds Outstanding"** means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

- (a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;
- (b) Bonds deemed paid under Article VIII hereof; and
- (c) Bonds in lieu of which other Bonds have been authenticated under Section 2.05, 2.06 or 2.08 hereof.

**"Participant"** means any direct or indirect participant in the book-entry only registration system of DTC.

**"Person"** means any individual, corporation, partnership, association, trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**"Port"** means any port, port authority or port district as described in Section 311.09(1), Florida Statutes, which can participate in the Program pursuant to the laws of the State.

**"Principal Account"** means the account by that name created by Section 4.02(c) hereof.

**"Principal Payment Date"** means the maturity date or mandatory redemption date of any Bond.

**"Program"** means the Commission's program of making Loans under the Act and pursuant to this Indenture.

**"Program Administration Agreement"** means the Program Administration Agreement, dated as of December 1, 1996, between the Commission and the Administrator, relating to the Administrator's responsibilities.

**"Project"** or **"Projects"** means such capital improvements and facilities and such other governmental undertakings approved by FSTED in accordance with the Act, and by the Board of a Borrower which shall be financed or refinanced through the Program pursuant to the Loan Agreements between the Commission and such Borrower.

**"Proportionate Share"** means, at the time such calculation is made, with respect to any Borrower, a fraction the numerator of which is the outstanding principal amount of the Loan of such Borrower made from proceeds of the Bonds and the denominator of which is the outstanding principal amount of all Loans made from proceeds of the Bonds.

**"Rating Category"** means one of the generic rating categories of Moody's, S&P or Fitch, without regard of any refinement or graduation of such rating category by a numerical modifier or otherwise.

**"Rebate Fund"** means the fund by that name created by Section 4.02(e) hereof.

**"Record Date"** means, with respect to any Interest Payment Date, the fifteenth day of the calendar month preceding such Interest Payment Date.

**"Recurring Expense Account"** means the account by that name created by Section 4.02(b) hereof.

**"Redemption Account"** means the account by that name created by Section 4.02(c) hereof.

**"Redemption Price"** means, with respect to any Bond (or portion thereof), the principal amount of such Bond (or portion) plus the applicable premium, if any, payable upon redemption pursuant to the provisions of such Bond and this Indenture.

**"Revenue Fund"** means the fund by that name created by Section 4.02(a) hereof and all Accounts therein.

**"Revenues"** means all Loan Repayments paid to the Trustee for the respective Accounts of the Borrowers for deposit in the Revenue Fund to pay principal of, premium, if any, and interest on the Bonds, and all receipts of the Trustee credited to the Borrowers under the provisions of the Loan Agreements.

**"S&P"** means Standard & Poor's Financial Service LLC, a Division of McGraw-Hill Companies, Inc. and its successors and assigns.

**"Secretary-Treasurer"** means the Secretary-Treasurer of the Commission, and in his or her unavailability or absence, the Assistant Secretary-Treasurer or Vice-Chairman.

**"Serial Bonds"** means the Bonds designated as such pursuant to this Indenture.

**"Series"** shall mean each series of Bonds authorized pursuant to the terms hereof and the related Supplemental Indenture.

**"Sinking Fund"** means the fund by that name created pursuant to Section 4.02(c) hereof.

**"Special Record Date"** means the date established pursuant to Section 9.05 hereof as a record date for the payment of defaulted interest on the Bonds.

**"State"** means the State of Florida.

**"State Transportation Trust Fund"** means the State trust fund created pursuant to Chapter 206.46, Florida Statutes.

**"Supplemental Indenture"** means any indenture hereafter duly authorized and entered into between the Commission and the Trustee, supplementing, modifying or amending this Indenture, as provided in Article XI hereof.

**"Term Bonds"** means the Bonds designated as such pursuant to this Indenture.

**"Trustee"** means \_\_\_\_\_, as Trustee, or any successor thereto under this Indenture.

**"Trust Estate"** means the property, rights, revenues and other assets pledged and assigned to the Trustee pursuant to the Granting Clauses hereof.

**SECTION 1.02. RULES OF INTERPRETATION.** For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) "This Indenture" means this instrument as originally executed and as it may from time to time be supplemented, modified or amended by any Supplemental Indenture.

(b) All reference in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein", "hereof", "hereunder" and "herewith", and other words of similar import, refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles.

(e) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

(f) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(g) The headings or captions used in this Indenture are for convenience of reference only and shall not define, limit or describe any of the provisions hereof or the scope or intent hereof.

## **ARTICLE II THE BONDS**

**SECTION 2.01. AUTHORIZATION, ISSUANCE AND EXECUTION OF BONDS.** The Bonds shall be issued hereunder, from time to time, in such Series as may be authorized hereunder and under a Supplemental Indenture, in order to obtain moneys to carry out the purposes of the Program for the benefit of the Commission and the Borrowers. The Bonds shall be designated as "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series \_\_\_\_\_," with such additional nomenclature, as shall be provided by Supplemental Indenture. At any time after the execution of this Indenture, the Commission may execute and the Trustee shall authenticate and, upon request of the Commission, deliver the Bonds. This Indenture constitutes a continuing agreement with the Owners from time to time of the Bonds appertaining thereto to secure the full payment of the principal of, premium, if any, and interest on all such Bonds subject to the covenants, provisions and conditions herein contained.

The Bonds shall be issuable as fully registered bonds without coupons and shall be executed in the name and on behalf of the Commission with the manual or facsimile signature of its Chairman, under its seal attested by the manual or facsimile signature of its Secretary-Treasurer. Such seal may be in the form of a facsimile of the Commission's seal and may be reproduced, imprinted or impressed on the Bonds. The Bonds shall then be delivered to the Trustee for authentication by it.

In case any of the officers who shall have signed or attested any of the Bonds shall cease to be such officer or officers of the Commission before the Bonds so signed and attested shall have been authenticated or delivered by the Trustee or issued by the Commission, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Commission as though those who signed and attested the same had continued to be such officers of the Commission. Any Bond may be signed and attested on behalf of the Commission by such persons as at the actual date of execution of such Bond shall be the proper officers of the Commission although at the nominal date of such Bond any such person shall not have been such officer of the Commission.

Only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form hereinafter recited, manually executed by the Trustee as hereinafter defined, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.



The Bonds shall be issued in the form of a separate single certificated fully registered Bond for each of the maturities of each Series of the Bonds. Upon issuance, the ownership of each such Bond shall be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC. Except as provided in this Section 2.01, all of the outstanding Bonds shall be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC. The Trustee shall have no responsibility or obligation to any Participant. The Commission and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (b) the delivery to any Participant or any other person other than a Bondholder, as shown in the registration books kept by the Trustee, of any notice with respect to the Bonds, including any notice of redemption, or (c) the payment to any Participant or any other person, other than a Bondholder, as shown in the registration books kept by the Trustee, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Commission and the Trustee may treat and consider the person in whose name each Bond is registered in the registration books kept by the Trustee as the holder and absolute Owner of such Bond for the purpose of payment of principal, premium and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Holders, as shown in the registration books kept by the Trustee, or their respective attorneys duly authorized in writing, as provided herein and all such payments shall be valid and effective to fully satisfy and discharge the Commission's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Holder, as shown in the registration books kept by the Trustee, shall receive a certificated Bond evidencing the obligation of the Commission to make payments of principal, premium, if any, and interest pursuant to the provisions hereof. Upon delivery by DTC to the Commission of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." in this Indenture shall refer to such new nominee of DTC; and upon receipt of such a notice the Commission shall promptly deliver a copy of the same to the Trustee.

Upon receipt by the Trustee of written notice (a) to the effect that DTC has received written notice from the Commission to the effect that it has determined, in its sole discretion, to discontinue the book-entry only system of registration and compliance by the Commission with applicable DTC rules and procedures, or (b) to the effect that DTC is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of DTC hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or

names Holders transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

**SECTION 2.02. TERMS AND DETAILS OF BONDS.** The terms and details of a Series of Bonds shall be established by Supplemental Indenture.

**SECTION 2.03. PAYMENT PROVISIONS.** The principal of, premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Principal of and premium, if any, on the Bonds shall be payable at the designated corporate trust office of the Trustee, and payment of the interest on each Bond shall be made by the Trustee on each Interest Payment Date to the person appearing as the registered Owner thereof on the bond registration books maintained by the Trustee as of the close of business on the Record Date preceding the Interest Payment Date (or, if interest on the Bonds is in default and the Bond Insurer is in default under the Bond Insurance, a Special Record Date established pursuant to Section 9.05 hereof), by check mailed to such registered Owner at his address as it appears on such registration books or, at the prior written request and expense of an Owner, by bank wire transfer to a domestic bank account, notwithstanding the cancellation of any such Bonds upon any exchange or transfer thereof subsequent to the Record Date or Special Record Date and prior to such Interest Payment Date. Payment of the principal (or Redemption Price) of all Bonds shall be made upon the presentation and surrender of such Bonds as the same shall become due and payable.

**SECTION 2.04. BOND INSURANCE.** The terms and provisions of any Bond Insurance relating to a Series of Bonds shall be established by Supplemental Indenture.

**SECTION 2.05. MUTILATED, LOST, STOLEN OR DESTROYED BONDS.** If any Bond is mutilated, lost, stolen or destroyed, the Commission shall execute and the Trustee shall authenticate a new Bond of the same date, maturity, Series 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 Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Commission and the Trustee evidence of such loss, theft or destruction satisfactory to the Commission and the Trustee, together with an indemnity satisfactory to them. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate Bond, the Trustee may pay the same. The Commission and the Trustee may charge the Owner of such Bond with their reasonable fees and expenses in connection with replacing any Bond mutilated, lost, stolen or destroyed.

**SECTION 2.06. TRANSFER AND EXCHANGE OF BONDS; PERSONS TREATED AS OWNERS.** The Commission shall cause books for the registration and

transfer of the Bonds, as provided in this Indenture, to be kept by the Trustee. Upon surrender for transfer of any Bond at the designated corporate trust office of the Trustee, accompanied by an assignment duly executed by the registered Owner or his attorney duly authorized in writing, the Commission shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds for a like aggregate principal amount.

Bonds may be exchanged at the designated corporate trust office of the Trustee for a like aggregate principal amount of Bonds of other Authorized Denominations. The Commission shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously outstanding.

The Trustee shall not be required to transfer or exchange any Bonds (a) during the ten days next preceding any day upon which notice of redemption of Bonds is to be mailed, (b) selected, called or being called for redemption in whole or in part, or (c) during a period beginning at the opening of business on the Record Date or Special Record Date next preceding an Interest Payment Date and ending at the close of business on such Interest Payment Date.

The Person in whose name any Bond shall be registered shall be deemed and regarded by the Trustee and the Commission as the absolute Owner thereof for all purposes, and payment of or on account of the principal of, premium, if any, or interest on any Bond shall be made only to or upon the written order of the registered Owner thereof or his legal representative, subject to Section 2.03 hereof, and neither the Commission nor the Trustee shall be affected by any notice to the contrary, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums paid.

A reasonable transfer charge may be made for any exchange or transfer of any Bond and the Trustee shall require the payment by any Bondholder requesting exchange or transfer of a sum sufficient to cover any tax or other governmental charge required to be paid with respect to such exchange or transfer.

**SECTION 2.07. CANCELLATION OF BONDS.** Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount thereof or for replacement pursuant to Section 2.05 hereof or for transfer or exchange pursuant to Sections 2.06 or 2.08 hereof, such Bond shall be canceled by the Trustee, and evidence of such cancellation shall be furnished by the Trustee to the Commission.

**SECTION 2.08. TEMPORARY BONDS.** Pending the preparation of definitive Bonds, the Commission may execute and the Trustee shall authenticate and

deliver temporary Bonds. Temporary Bonds shall be issuable as fully registered Bonds, of any Authorized Denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the Commission. Temporary Bonds may be issued without specific terms and may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Commission and authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable, the Commission shall execute and shall furnish definitive Bonds and thereupon temporary Bonds may be surrendered in exchange therefor without charge at the designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds a like aggregate principal amount of definitive Bonds. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds.

**SECTION 2.09. NONPRESENTMENT OF BONDS.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, or if any interest check shall not be cashed, if funds sufficient to pay such Bond or interest shall have been made available by the Commission to the Trustee for the benefit of the Owner thereof, all liability of the Commission to the Owner thereof for the payment of such Bond or interest, as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, uninvested and without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture. Such unclaimed moneys shall be disposed of in accordance with applicable law.

**SECTION 2.10 REFUNDING OBLIGATIONS.** The Commission reserves the right hereunder to issue Bonds for the purpose of refunding all or a portion of the Outstanding Bonds; provided such refunding Bonds result in no increase in debt service in each year in which the Bonds to be refunded shall be Outstanding. As part of said refunding the Commission may issue Bonds to fund additional Projects provided the aforementioned debt service requirements are not increased or the Trustee is provided a certificate of an Authorized Representative as described in Section 13.09 hereof.

**SECTION 2.11. FORM OF BONDS.** A Series of Bonds to be issued hereunder, and the certificate of authentication by the Trustee to be endorsed on all such Bonds, shall be substantially in the form set forth as Exhibit C hereto, with such variations, omissions and insertions as are permitted by this Indenture or are required to conform the form of Bond to the provisions of this Indenture (any portion of such form of Bond may be printed on the back of the Bonds).

### **ARTICLE III REDEMPTION OF BONDS**

**SECTION 3.01. OPTIONAL REDEMPTION OF THE BONDS.** Each Series of Bonds may be subject to optional redemption as provided by the Supplemental Indenture authorizing such Bonds.

**SECTION 3.02. MANDATORY REDEMPTION OF THE BONDS.** Each Series of Bonds may be subject to mandatory redemption as provided by the Supplemental Indenture authorizing such Bonds.

**SECTION 3.03. SELECTION OF BONDS TO BE REDEEMED.** When Bonds are redeemed by lot, selection of Bonds for redemption shall be in such manner as the Trustee shall determine; provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or any whole multiple thereof, except as otherwise provided by Supplemental Indenture.

**SECTION 3.04. NOTICE AND EFFECT OF REDEMPTION.** Notice of redemption shall specify the Bond or Bonds (or portions thereof) to be redeemed and the date and place for redemption, which shall be given by the Trustee on behalf of the Commission, and shall be mailed first class, postage prepaid, at least 30 days prior to the redemption date to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books held by the Trustee as of the date of mailing of such notice. Failure to mail such notice to the Holders of the Bonds to be redeemed, or any defect therein, shall not affect the proceedings for redemption of Bonds as to which no such failure or defect has occurred.

Each notice of redemption shall state: (i) the CUSIP numbers of all Bonds being redeemed, (ii) the original issue date of such Bonds, (iii) the maturity date and rate of interest borne by each Bond being redeemed, (iv) the redemption date, (v) the Redemption Price, (vi) the date on which such notice is mailed, (vii) if less than all Outstanding Bonds are to be redeemed, the certificate number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed, (viii) that on such redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable, (ix) that the Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated office of the Trustee at an address specified, and (x) the name and telephone number of a person designated by the Trustee to be responsible for such redemption.

Within 60 days of the date of redemption, the Trustee shall give a second notice of redemption by mailing another copy of the redemption notice to the Holders of Bonds called for redemption but which have not been presented for payment within 30 days after the date set for redemption.

In addition to the mailing of the notice described above, each notice of redemption and payment of the Redemption Price shall meet the following requirements; provided, however, the failure to provide such further notice of redemption or to comply with the terms of this paragraph shall not in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed above:

(a) Each further notice of redemption shall be sent by certified mail or overnight delivery service or telecopy to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to two or more national information services which disseminate notices of prepayment or redemption of obligations such as the Bonds.

(b) Each further notice of redemption shall be sent to such other Person, if any, as shall be required by applicable law or regulation.

Except as otherwise provided by Supplemental Indenture, the Commission may provide that a notice of redemption may be contingent upon the occurrence of certain condition(s) and that if such condition(s) do not occur the notice will be rescinded, provided notice of rescission shall be mailed in the manner described above to all affected Bondholders within a reasonable time period after the Commission determines that such conditions will not be satisfied.

**SECTION 3.05. EFFECT OF CALLING FOR REDEMPTION.** On or before the date fixed for redemption, funds shall be deposited with the Trustee to pay the principal of, premium, if any, and interest accruing thereon to the redemption date of the Bonds called for redemption. On the date fixed for redemption, notice having been given in the manner and under the conditions hereinabove provided, the Bonds or portions thereof called for redemption shall be due and payable at the Redemption Price provided therefor, plus accrued interest to such date. If money sufficient to pay the Redemption Price of the Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption, are held by the Trustee in trust for the Owners of Bonds to be redeemed, interest on the Bonds called for redemption shall cease to accrue; such Bonds shall cease to be entitled to any benefits or security under this Indenture; and the Owners of such Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price thereof, plus accrued interest to the date fixed for redemption from the moneys held therefor.

**SECTION 3.06. REDEMPTION OF PORTION OF BONDS.** If a portion of an Outstanding Bond shall be selected for redemption, the Owner thereof or his

attorney or legal representative shall present and surrender such Bond to the Trustee for payment of the principal amount thereof so called for redemption and the premium, if any, on such principal amount, and the Trustee shall authenticate and deliver to or upon the order of such Owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond of the same maturity and bearing interest at the same rate; provided, however, that if the Owner is a securities depository nominee, the securities depository, in its discretion, (a) may surrender such Bond to the Trustee and request that the Trustee authenticate and deliver a new Bond for the unredeemed portion of the principal amount of the Bond so surrendered, or (b) shall make an appropriate notation on the Bond indicating the dates and amounts of such reduction in principal.

**SECTION 3.07. CANCELLATION.** Bonds so redeemed, presented and surrendered shall be cancelled upon the surrender thereof.

## **ARTICLE IV REVENUES AND FUNDS**

**SECTION 4.01. SOURCE OF PAYMENT OF BONDS.** This Indenture creates and shall be and constitute a continuing, irrevocable lien and claim upon, pledge of and grant of the Trust Estate, to the extent provided in this Indenture, to secure first the full payment of the principal of and interest on the Bonds as the same shall become due and then all other amounts due hereunder. The Bonds are, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction, so that the Bonds at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be secured hereby with like effect.

**THE BONDS ARE SOLELY AND EXCLUSIVELY A SPECIAL AND LIMITED OBLIGATION OF THE COMMISSION PAYABLE SOLELY FROM THE TRUST ESTATE AND DO NOT CREATE NOR CONSTITUTE, NOW OR IN THE FUTURE, AN OBLIGATION OR DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS) OTHER THAN THE COMMISSION TO THE EXTENT PROVIDED IN THIS INDENTURE; NOR SHALL THE BONDS CONSTITUTE THE GIVING, PLEDGING OR LOAN OF THE FAITH AND CREDIT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE, BUT SHALL BE PAYABLE SOLELY FROM THE TRUST ESTATE. THE ISSUANCE OF THE BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS). NONE OF THE OBLIGATIONS OF THE BORROWERS UNDER THEIR RESPECTIVE LOAN AGREEMENTS ARE SECURED BY A PLEDGE OF THEIR TAXING POWERS, IF ANY, AND NONE ARE PAYABLE FROM AD VALOREM TAXES. THE LOAN AGREEMENTS DO NOT REPRESENT JOINT LIABILITIES OF THE BORROWERS EXECUTING LOAN AGREEMENTS WITH THE COMMISSION, AND SHALL BE PAYABLE SOLELY AS PROVIDED IN SUCH LOAN AGREEMENTS.**



**SECTION 4.02. CREATION OF FUNDS AND ACCOUNTS.** There are hereby established by the Commission the following Funds and Accounts to be held by the Trustee:

(a) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Revenue Fund." The Trustee shall maintain a separate Account in the Revenue Fund for each Borrower.

(b) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Administrative Expense Fund." The Trustee shall maintain two separate accounts in the Administrative Expense Fund: the "Administrator's Account" and the "Recurring Expense Account."

(c) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Sinking Fund." The Trustee shall maintain three separate accounts in the Sinking Fund: the "Interest Account," the "Principal Account," and the "Redemption Account."

(d) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Cost of Issuance Fund."

(e) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Rebate Fund."

(f) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series Construction Fund." The Trustee shall maintain a separate Account in the Construction Fund for each Borrower.

Moneys in the aforementioned Funds and Accounts (except for moneys in the Rebate Fund and Administrative Expense Fund), until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

**SECTION 4.03. CONSTRUCTION FUND.** The Trustee shall establish a subaccount separate Account in the Construction Fund for each Borrower. Proceeds of Additional Bonds shall be deposited into such Accounts as provided by Supplemental Indenture. At the direction of the Commission, the Trustee shall establish a separate subaccount in an Account of the Construction Fund if Additional Bonds are issued pursuant to Section 13.09 hereof. The Trustee is hereby authorized and directed to disburse moneys from the appropriate Account in the Construction Fund to pay the Costs of the Project or Projects of a Borrower to be financed or refinanced from moneys in such Account; provided that such disbursements shall be made only upon requisition of an Authorized Representative of such Borrower meeting the requirements of and submitted

in accordance with Section 3.03 of the Loan Agreement. Moneys shall be disbursed only from the Account indicated in the requisition.

The Trustee is authorized to rely upon the requisition without independently confirming compliance with or satisfaction of the requirements set forth in this Indenture or the Loan Agreements. The Trustee may also rely upon the certification of the Borrowers in the requisitions or in any documents, certificates or instruments submitted in connection therewith as to the factual conditions precedent to any disbursements hereunder and shall have no responsibility or duty to review the attachments to such requisitions (but must determine that all required attachments are present) or investigate the basis for such certifications or representations.

In the event the Commission or the Administrator gives the Trustee notice that a Loan or a portion thereof is being reassigned from one Borrower to another pursuant to Section 12.05 hereof and Section 3.05 of a Loan Agreement, the Trustee shall transfer moneys to the appropriate Account in the Construction Fund as provided in such notice.

**SECTION 4.04. FLOW OF FUNDS.** The Trustee shall deposit, immediately upon receipt, all Loan Repayments received from a Borrower into such Borrower's Account in the Revenue Fund. Basic Payments received by the Trustee from the State Transportation Trust Fund shall be deposited to the Borrower's Accounts of the Revenue Fund in accordance with the requirements of Exhibit D to the Loan Agreements, as the same may be amended from time to time, and the Master Agreement. The Trustee agrees to draw moneys from the escrow account established pursuant to the Master Agreement in the amounts provided in Exhibit C to such Master Agreement. Such moneys are the Basic Payments to be made by the Borrowers and shall be transferred to the Revenue Fund as soon as they become available pursuant to the terms of the Master Agreement. Additional Payments in a Borrower's Account of the Revenue Fund representing such Borrower's Proportionate Share of obligations owing to the Rebate Fund pursuant to Section 4.05 hereof shall be deposited as soon as practicable into such Fund. All other Additional Payments in each Borrower's Account of the Revenue Fund shall be deposited as soon as practicable into the Administrative Expense Fund. The moneys in the Accounts of the Revenue Fund of the Borrowers representing Basic Payments shall be maintained in such Accounts and deposited in the Interest Account and Principal Account as hereinafter described.

Interest Account. On each Interest Payment Date the Trustee shall transfer to the Interest Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all moneys on deposit in the Interest Account, shall be sufficient to pay the interest on all Outstanding Bonds due on such Interest Payment Date as the same become due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Interest Account at such times and in such amounts (a) to pay interest on the Bonds which has become due

and for which insufficient moneys have been deposited, and (b) to pay interest on Bonds which shall be purchased or redeemed in accordance with the terms hereof to the extent insufficient moneys are on deposit therein.

Principal Account. On each Principal Payment Date the Trustee shall transfer to the Principal Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all amounts on deposit in the Principal Account, shall be sufficient to pay the principal or Amortization Installment due on such Principal Payment Date. Moneys in the Principal Account shall be used for the payment of principal of or Amortization Installment on the Bonds when the same become due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Principal Account at such times and in such amounts (a) to pay the principal of the Bonds which has become due and for which insufficient moneys have been deposited, and (b) to pay principal on Bonds which shall be purchased or redeemed in accordance with the terms hereof. Amounts accumulated in the Principal Account with respect to any Amortization Installment (together with amounts accumulated in the Interest Account with respect to interest, if any, on the Term Bonds for which such Amortization Installment was established) shall be applied by the Trustee, at the direction of the Commission, on or prior to the 35th day preceding the due date of such Amortization Installment, (i) to the purchase of Term Bonds of the maturity for which such Amortization Installment was established at a price not exceeding par plus accrued interest, or (ii) to the redemption at the applicable Redemption Prices of such Term Bonds, if then redeemable by their terms at a price not exceeding par plus accrued interest. The applicable Redemption Price (or principal amount of maturing Term Bonds) of any Term Bonds so purchased or redeemed shall be deemed to constitute part of the Principal Account or Redemption Account until such Amortization Installment date, for the purposes of calculating the amount of such Account. As soon as practicable after the 35th day preceding the due date of any Amortization Installment, the Trustee shall proceed to call for redemption on such due date, by causing notice to be given as provided in Section 3.04 hereof, Term Bonds of the maturity for which such Amortization Installment was established (except in the case of Term Bonds maturing on an Amortization Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Amortization Installment. The Trustee shall withdraw out of the Principal Account and the Interest Account on or before the day preceding such redemption date (or maturity date), the amount required for the redemption (or for the payment of such Term Bonds then maturing), and such amount shall be applied by the Trustee to such redemption (or payment). All expenses in connection with the purchase or redemption of Term Bonds shall be paid by the Trustee from the Administrative Expense Fund.

**SECTION 4.05. REBATE FUND.** To the extent the Commission determines there may be a rebate liability pursuant to Section 4.05, within 15 days of the end of each Bond Year and within 15 days after the payment in full of all Outstanding Bonds, the

Commission shall engage an independent certified public accounting firm, firm of attorneys or other consultant, in each case experienced in making these types of calculations, to calculate the amount of the Commission's Excess Earnings as of the end of that Bond Year or the date of such payment in full. Upon the occurrence of an Event of Default or upon the release of this Indenture in accordance with Article VIII hereof, the Commission shall engage an independent certified public accounting firm, firm of attorneys or other consultant, in each case experienced in making these types of calculations, to calculate the amount of the Commission's Excess Earnings as of the date determined by the Commission or as of the date of release of this Indenture under Article VIII hereof, as applicable. The Trustee shall make available to such independent certified public accounting firm, firm of attorneys or other consultant all necessary information and data relating to the Funds and Accounts and investments therein in order that the amount of Excess Earnings may be determined as required by this Section 4.05. After each such calculation, the Trustee on behalf of the Commission, upon written advice of such firm or other consultant, shall notify each Borrower in writing of the amount of each Borrower's Proportionate Share of Excess Earnings; provided, however, Excess Earnings in a Borrower's Account of the Construction Fund shall be payable solely by such Borrower. If the amount then on deposit in the Rebate Fund is in excess of the Excess Earnings, the Trustee shall forthwith pay to each Borrower its Proportionate Share of such excess amount; provided, any such excess moneys relating to a Borrower's Account of the Construction Fund shall be paid to the Borrower's Account of the Construction Fund if it has not been closed, otherwise to the Borrower. If the amount then on deposit in the Rebate Fund is less than the Excess Earnings, the Trustee shall notify each Borrower of such deficiency and each Borrower shall be required to make up its Proportionate Share of such deficiency which shall be billed to the Borrower in accordance with this Section 4.05 and Section 4.09 hereof; provided, however, Excess Earnings in a Borrower's Account of the Construction Fund shall be payable solely by such Borrower.

Within 30 days after the end of the fifth Bond Year for the Bonds and every such fifth Bond Year thereafter, the Trustee, acting on behalf of the Commission, shall pay to the United States, in accordance with Section 148(f) of the Code, from the moneys then on deposit in the Rebate Fund an amount equal to 90% (or such greater percentage not in excess of 100% as the Commission may direct the Trustee to pay) of the Excess Earnings earned from the date of the original delivery of the Bonds to the end of such fifth Bond Year (less the amount of Excess Earnings, if any, previously paid to the United States with respect to the Bonds pursuant to this Section 4.05). Within 60 days after the payment in full of all Outstanding Bonds, the Trustee, acting on behalf of the Commission, shall pay to the United States, in accordance with Section 148(f) of the Code, from the moneys then on deposit in the Rebate Fund an amount equal to 100% of the Excess Earnings earned from the date of the original delivery of the Bonds to the date of such payment (less the amount of Excess Earnings, if any, previously paid to the United States with respect to the Bonds pursuant to this Section 4.05). Any moneys

remaining in the Rebate Fund following such payment shall be paid to each Borrower in an amount equal to their Proportionate Shares. All computations of Excess Earnings shall treat the amount or amounts, if any, previously paid to the United States pursuant to this Section 4.05 as amounts on deposit in the Rebate Fund.

The Trustee shall maintain such records of the investment and disbursement of moneys in each Fund and Account created under this Indenture necessary for such calculations and shall obtain and keep such records of the computations made pursuant to this Section 4.05 as are required under Section 148(f) of the Code.

The procedures provided herein may be modified to the extent necessary to comply with the Arbitrage Regulations as determined in an opinion of Bond Counsel delivered to the Trustee or as set forth in the tax compliance certificate delivered in connection with the issuance of the Bonds.

Amounts on deposit in the Rebate Fund shall be held in trust by the Trustee and used solely to make required rebates to the United States (except to the extent the same may be transferred to the account of a Borrower) and the Bondholders shall have no right to have the same applied for debt service on the Bonds. Under Section 5.02 of the Loan Agreements, each Borrower is required to make the payments described in this Section 4.05.

For purposes of this Section 4.05, "Excess Earnings" means, as of each Computation Date (as defined in the Arbitrage Regulations) for the Bonds, an amount determined in accordance with Section 148(f) of the Code equal to the sum of (a) plus (b) where:

(a) Is the excess of:

(i) the aggregate amount earned from the date the Bonds are invested in "nonpurpose investments," as defined in Treasury Regulations Section 1.148-1 (other than investments attributable to an excess described in this clause (a)), taking into account any gain or loss on the disposition of nonpurpose investments, over

(ii) the amount that would have been earned if the amount of the gross proceeds of the Bonds of such issue invested in those nonpurpose investments (other than investments attributable to an excess described in this clause (a)) had been invested at a rate equal to the yield on the Bonds; and

(b) any income attributable to the excess described in clause (a) above, taking into account any gain or loss on the disposition of investments.

The foregoing sums shall be determined in accordance with Section 148(f) of the Code. As used herein, the terms "gross proceeds," "nonpurpose investments" and "yield" have the meanings assigned to them under Section 148 of the Code and the Arbitrage Regulations.

**SECTION 4.06. ADMINISTRATIVE EXPENSE FUND.** Additional Payments representing fees and expenses payable to the Administrator shall be deposited in the Administrator's Account and shall be used to pay the fees and expenses of the Administrator pursuant to the terms of the Program Administration Agreement; provided the Administrator may, in its discretion, utilize such moneys for other Program expenses. All other Additional Payments transferred to the Administrative Expense Fund shall be deposited in the Recurring Expense Account and shall be used to pay costs and expenses of operating the Program and servicing the Loans and the Bonds (including payments to the Administrator for its out-of-pocket costs and expenses, to the extent not paid from the Administrator's Account). All costs and expenses described in this Section 4.06 shall be paid upon the submission of a requisition by the Administrator or an Authorized Representative of the Commission stating the amount to be paid, the Account from which it is payable, to whom it is to be paid and the reason for such payments, and that the amount of such requisition is justly due and owing and has not been the subject of another requisition which was paid and is a proper expense of such Account of the Administrative Expense Fund. The Commission shall provide the Trustee with all necessary information as to the amount of such costs and expenses to bill to the Borrowers.

**SECTION 4.07. REDEMPTION ACCOUNT.** The Trustee shall deposit to the Redemption Account for redemption of Bonds (a) any amounts deposited by a Borrower for the purpose of paying the Redemption Price of all or a portion of its Loan on an optional prepayment date in accordance with the Loan Agreement, and (b) any moneys required to be transferred to the Redemption Account as a result of an opinion of Bond Counsel that such redemption is necessary to preserve the exclusion of interest on the Bonds from gross income for Federal income taxation. Said moneys shall be set aside in the Redemption Account solely for the purpose of redeeming the Bonds in advance of their maturity and shall be applied to the redemption at the applicable Redemption Price of such Bonds being redeemed on such redemption date. Interest on such redeemed Bonds shall be paid from the Interest Account, except to the extent moneys for payment of interest were deposited to the Redemption Account, in which case it shall be paid from such Redemption Account.

**SECTION 4.08. COST OF ISSUANCE FUND.** The Trustee shall establish a separate Account in the Cost of Issuance Fund for each Series of Bonds. Moneys in an Account of the Cost of Issuance Fund shall be used to pay costs of issuing the related Series of Bonds to the extent not paid from other sources, which costs may include, (a) all printing expenses in connection with this Indenture, the Loan Agreements, the

preliminary and final Official Statements for such Series of Bonds; (b) expenses of the Commission and the Administrator relating to the Program and such Series of Bonds; (c) legal fees and expenses of Counsel to the Commission, Bond Counsel and any disclosure counsel and the fees and expenses of the financial advisor to the Commission; (d) any accounting expenses incurred in connection with the issuance of such Series of Bonds; (e) the Trustee's initial fees and expenses (including attorney's fees); and (f) any other costs associated with the establishment of the Program and the issuance of such Series of Bonds. Such costs shall be paid upon the submission of a requisition by the Administrator or an Authorized Representative of the Commission stating the amount to be paid, to whom it is to be paid and the reason for such payment, and that the amount of such requisition is justly due and owing and has not been the subject of another requisition which was paid and is a proper expense of issuing such Bonds or establishing the Program. Any monies remaining in an Account of the Cost of Issuance Fund six months after the issuance of a Series of Bonds which funded such Account shall be transferred to the Interest Account of the Sinking Fund and be credited on a pro rata basis toward each Borrower's obligation to pay Loan interest.

**SECTION 4.09. NOTIFICATION OF LOAN REPAYMENTS.** On or prior to the 15th day of each month next preceding each Interest Payment Date (or at such time as may be directed by the Commission or the Administrator), the Trustee shall notify each Borrower in writing of the amount of the Borrower's Loan Repayment due during the next ensuing Interest Period. Such notice shall specify the components of the Loan Repayment, including the amount of Basic Payments and any Additional Payments as provided in Sections 5.01 and 5.02 of the Loan Agreements. Basic Payments shall be payable as provided in Exhibit D to the Loan Agreements, as the same may be amended from time to time, and the Master Agreement. Additional Payments shall be due at such times as the Commission shall advise the Trustee such Payments are needed. Such notice shall provide credits for investment earnings and shall state the amount of Excess Earnings to be paid to the Borrowers. Each Borrower shall receive a credit for its Proportionate Share of investment earnings in the Revenue Fund and the Sinking Fund during the preceding Interest Period. The Commission shall advise the Trustee how such investment earnings shall be credited to the Loan Repayments.

**SECTION 4.10. APPLICATION OF BOND PROCEEDS.** Proceeds of a Series of Bonds shall be applied in accordance with the Supplemental Indenture authorizing such Bonds.

**SECTION 4.11. MONEYS TO BE HELD IN TRUST.** With the exception of moneys deposited in the Rebate Fund and the Administrative Expense Fund, all moneys required to be deposited with or paid to the Trustee relating to any Fund or Account established under any provision of this Indenture shall be held by the Trustee, in trust, and except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, and except as otherwise

provided in Section 2.09 hereof, shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the provisions hereof.

**SECTION 4.12. REPORTS FROM TRUSTEE.** Unless otherwise advised in writing, the Trustee shall furnish monthly to the Commission, any Bond Insurer and to any Borrower, upon request, on the 15th day of the month following the month in which the Bonds are delivered, and on the 15th day of each month thereafter, a report on the status of each of the Funds or Accounts established under this Article IV which are held by the Trustee, showing at least the balance in each such Fund or Account as of the first day of the preceding month, the total of deposits to and the total of disbursements from each such Fund or Account, the dates of such deposits and disbursements, and the balance in each such Fund or Account on the last day of the preceding month.

**SECTION 4.13. CERTAIN VERIFICATIONS.** The Commission, the Trustee and/or a Bond Insurer from time to time may cause an Accountant to provide the Commission, the Trustee and said Bond Insurer with such information as the Commission, the Trustee or said Bond Insurer may request in order to determine in a manner reasonably satisfactory to the Commission, the Trustee and the Bond Insurer all matters relating to (a) the sufficiency of projected cash flow receipts and disbursements on the Loans and Funds and Accounts described herein to pay the principal of and interest on the Bonds and (b) the actuarial yields on the Loans and on the Bonds as the same may relate to any data or conclusions necessary to verify that the Bonds are not arbitrage bonds within the meaning of Section 148 of the Code. Payment for costs and expenses incurred in connection with supplying the foregoing information shall be paid from moneys in the Administrative Expense Fund pursuant to Section 4.06 hereof.



## **ARTICLE V PROJECT LOANS**

**SECTION 5.01. TERMS AND CONDITIONS OF LOANS.** The Commission will make Loans to the Borrowers in order to (a) finance the acquisition, installation and construction of Projects by Borrowers and (b) refund or refinance debt incurred by Borrowers to acquire, install and construct Projects, all in accordance with provisions more fully set forth in the Loan Agreements. Proceeds of such Loans may also be used to capitalize interest on the Bonds, acquire Bond Insurance and pay costs of issuance of the Bonds. Exhibit D to the Loan Agreements may be amended from time to time to take into account the assignment of Loans provided in the Loan Agreements, issuance of refunding bonds pursuant to Section 2.10 hereof, and issuance of Additional Bonds pursuant to Section 13.09 hereof.

**SECTION 5.02. LOAN CLOSING SUBMISSION.** No Loan shall be made by the Commission unless and until the documents required by Section 4.03 of the Loan Agreements are submitted to the Commission.

## **ARTICLE VI LOANS AND ADMINISTRATOR**

### **SECTION 6.01. PURPOSE, TERMS AND CONDITIONS OF LOANS.**

The Commission shall make Loans to the Borrowers to finance, refinance or reimburse the Costs of the Projects and shall enter into Loan Agreements and make Loans thereunder on the terms and conditions and upon submission of the documents as provided in the Loan Agreements.

**SECTION 6.02. ADMINISTRATOR.** The Florida Ports Council shall be the initial Administrator for the Program. If such Administrator shall be removed in accordance with the terms of the Program Administration Agreement, the Commission shall by resolution appoint as Administrator any person to act in such capacity as it deems appropriate. The Program Administration Agreement shall provide that resignation by, or removal of, the Administrator shall be accomplished upon 60 days' notice to the affected party, as well as to the Trustee.

The Administrator shall agree in writing to all the duties and obligations of the Administrator set forth in this Indenture and the Program Administration Agreement, such Agreement to be enforceable by the Trustee and to inure to the benefit of the Trustee, any Bond Insurer and the Bondholders. The Program Administration Agreement may provide that any of the duties, rights, obligations and responsibilities of the Commission provided hereunder and in the Loan Agreements may be assigned by the Commission to the Administrator.

**SECTION 6.03. SERVICES OF ADMINISTRATOR.** The Commission appoints the Administrator to provide various services with respect to the Loans and the Program and the Administrator agrees to provide such services pursuant to the terms hereof and of the Program Administration Agreement.

**SECTION 6.04. ENFORCEMENT.** The Trustee and the Commission shall diligently enforce, and take all reasonable steps, actions and proceedings necessary for the enforcement of, all terms, covenants and conditions of all Loan Agreements, including the prompt payment of all Loan Repayments and all other amounts due thereunder. Upon receipt of satisfactory indemnity for its costs and expenses, the Trustee shall, pursuant to the direction of the Commission, diligently enforce, and take all reasonable steps, actions and proceedings necessary for the enforcement of, all terms, covenants and conditions of all Loan Agreements, including the prompt payment of all Loan Repayments and all other amounts due thereunder. The Trustee shall not, without the prior written consent of each Bond Insurer, if any, release any Borrower from any obligations under any Loan Agreement and shall at all times, to the extent permitted by law, defend, enforce, preserve and protect the rights and privileges under each Loan Agreement of the Commission and any Bond Insurer.

**SECTION 6.05. LOAN FILES.** The Administrator shall retain all the documents it receives under the Loan Agreements. All documents with regard to a particular Loan shall be retained by the Administrator in a file pertaining to that Loan.

## **ARTICLE VII INVESTMENT OF MONEYS**

**SECTION 7.01. INVESTMENTS.** All moneys in any of the Funds and Accounts shall be invested by the Trustee in Investment Securities. All Investment Securities shall be acquired subject to the limitations set forth in Section 13.07 hereof, at the direction of the Commission, which may be telephonically made and promptly confirmed in writing. Moneys in the Funds and Accounts shall be invested in Investment Securities with respect to which payments of principal thereof and interest thereon are scheduled or otherwise payable not later than the dates on which it is estimated that such moneys will be required by the Trustee for the purposes specified in this Indenture.

Investment Securities acquired as an investment of moneys in any Fund or Account shall be credited to such Fund or Account. For the purpose of determining the amount in any Fund or Account, all Investment Securities credited to any such Fund or Account shall be valued at cost. All interest, profits and other income earned from investment of all moneys in any Fund or Account shall be retained in such Fund or Account; provided, however, investment earnings on moneys in the Revenue Fund and Sinking Fund may be transferred, at the direction of the Commission, to the Administrative Expense Fund or Rebate Fund. All amounts representing accrued interest shall be held by the Trustee in the Interest Account and invested only in Government Obligations.

Subject to Section 13.07 hereof and except as provided herein, investments in any and all Funds and Accounts may be commingled for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in particular Funds and Accounts of amounts received or held by the Trustee hereunder; provided that, notwithstanding any such commingling, the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts to which they are credited and otherwise as provided in this Indenture. The Trustee may act as principal or agent in the acquisition or disposition of Investment Securities. The Trustee may sell, or present for redemption, any Investment Securities so purchased whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the Fund or Account to which such Investment Security is credited, and the Trustee shall not be liable or responsible for any loss resulting from any investment made pursuant to this Article VII.

## **ARTICLE VIII DISCHARGE OF INDENTURE**

**SECTION 8.01. DISCHARGE.** If the Commission shall pay or cause to be paid to the Owner of any Bond secured hereby the principal of and interest due and payable, and thereafter to become due and payable, upon such Bond, or any portion of such Bond in the principal amount of \$5,000 or any integral multiple thereof, such Bond or portion thereof shall cease to be entitled to any lien, benefit or security under this Indenture. If the Commission shall pay or cause to be paid to the Owners of all the Bonds secured hereby the principal of and interest due and payable, and thereafter to become due and payable thereon, and shall pay or cause to be paid all other sums payable hereunder by the Commission, then, and in that case, the right, title and interest of the Trustee and the Bondholders in the Trust Estate shall thereupon cease, terminate and become void. In such event, the Trustee shall assign, transfer and turn over to the Commission the Trust Estate.

Notwithstanding the release and discharge of the lien of this Indenture as provided above, those provisions of this Indenture relating to the maturity of the Bonds, interest payments and dates thereof, exchange and transfer of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of moneys in trust, and the duties of the Trustee in connection with all of the foregoing, remain in effect and shall be binding upon the Trustee and the Bondholders.

Any Bond or portion thereof shall be deemed to be paid within the meaning of this Article VIII and for all purposes of this Indenture when (a) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided herein), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment (A) moneys sufficient to make such payment and/or (B) Governmental Obligations maturing as to principal and interest in such amounts and at such time as will provide for the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation and expenses of the Trustee and the Commission pertaining to such Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. The sufficiency of moneys and Government Obligations deposited with the Trustee as described above shall be verified by a nationally recognized Accountant. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Governmental Obligations.

Notwithstanding the foregoing paragraph, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed a payment of such Bond as aforesaid until the Commission shall have given the Trustee, in form satisfactory to the Trustee, irrevocable instructions:

(i) stating the date when the principal of each such Bond is to be paid, whether at maturity or on a redemption date (which shall be any redemption date permitted by this Indenture);

(ii) to call for redemption pursuant to this Indenture any Bonds to be redeemed prior to maturity pursuant to (i) hereof; and

(iii) if all the Bonds are not to be redeemed within 60 days, to mail, as soon as practicable, in the manner prescribed by Article III hereof, a notice to the Owners of such Bonds that the deposit required by (a)(ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Article VIII and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal or Redemption Price, if applicable, of said Bonds.

No deposit under this Article VIII shall be made or accepted hereunder and no use made of any such deposit unless the Trustee shall have received an opinion of Bond Counsel to the effect that such deposit and use would not cause the Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Article VIII, all moneys or Governmental Obligations set aside and held in trust pursuant to the provisions of this Article VIII for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds with respect to which such moneys or obligations have been so set aside in trust; provided any surplus moneys may be paid to the order of the Commission.

Anything to the contrary provided elsewhere in this Indenture notwithstanding, this Indenture shall not be discharged as long as any amounts are owing to any Bond Insurer and no Bond shall be deemed paid under this Indenture if any Bond Insurer shall have made any payment under its Bond Insurance in respect of the principal of or interest on such Bond until the amount of such principal or interest, together with interest thereon provided for herein and in the Bonds on past-due principal and interest, shall have been paid to such Bond Insurer.

**ARTICLE IX**  
**DEFAULT PROVISIONS AND REMEDIES OF**  
**TRUSTEE AND BONDHOLDERS**

**SECTION 9.01. DEFAULTS; EVENTS OF DEFAULT.** If any of the following events occurs with respect to the Bonds, it is hereby defined as and declared to be and to constitute an "Event of Default" with respect to such Bonds:

(a) Default in the payment of the principal of or interest on any Bond after the principal or interest has become due, whether at maturity or upon call for redemption.

(b) Default in the performance or observance of any covenant, agreement or condition on the part of the Commission contained in this Indenture or in the Bonds (other than defaults described in Sections 9.01(a) and (c) hereof) and failure to remedy the same after notice of the default pursuant to Section 9.10 hereof.

(c) If the Commission shall file a petition seeking a composition of indebtedness under the federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State, or the commission by the Commission of any act of bankruptcy, or adjudication of the Commission as a bankrupt, or assignment by the Commission for the benefit of its creditors or the approval by a court of competent jurisdiction of a petition applicable to the Commission in any proceeding for its reorganization instituted under federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State.

In determining whether a payment default has occurred as described in (a) above or whether a payment on the Bonds has been made under this Indenture, no effect shall be given to payments made under any Bond Insurance Policy.

**SECTION 9.02. REMEDIES; RIGHTS OF BONDHOLDERS.** Upon the occurrence of an Event of Default with respect to the Bonds, the Trustee shall have the following rights and remedies:

(a) The Trustee may, and in the case of Event of Default under Section 9.01(c) above shall, pursue any available remedy at law or in equity or by statute, including the federal bankruptcy laws or other applicable law or statute of the United States of America or of the State, to enforce the payment of principal of and interest on the Bonds then Outstanding, including enforcement of any rights of the Commission or the Trustee under the Loan Agreements.

(b) The Trustee may by action or suit in equity require the Commission to account as if it were the trustee of an express trust for the Owners of the Bonds and may then take such action with respect to the related Loan Agreements as the Trustee shall

deem necessary or appropriate and in the best interest of the Bondholders, subject to the terms of the Loan Agreements.

(c) Upon the filing of a suit or other commencement of judicial proceedings to enforce any rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the Revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

(d) The Trustee shall give written notice of any Event of Default to the Commission and the Bond Insurer as promptly as practicable after the occurrence of an Event of Default becomes known to the Trustee.

If an Event of Default shall have occurred, and if requested so to do by the Bond Insurer or by the Owners of a majority in aggregate principal amount of Outstanding Bonds affected thereby and indemnified as provided in Section 10.01(k) hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section 9.02 as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders. No acceleration of the Bonds may occur hereunder.

No right or remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders or any Bond Insurer) is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute. The assertion or employment of any right or remedy shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

No delay or omission in exercising any right or remedy accruing upon any default or Event of Default shall impair any such right or remedy or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon. No waiver of any default or Event of Default hereunder by the Trustee shall be effective without the approval of the Bond Insurer, if any.

**SECTION 9.03. RIGHT OF BONDHOLDERS TO DIRECT PROCEEDINGS.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Outstanding Bonds affected thereby shall have the right, at any time during the continuance of an Event of Default, by an instrument or instruments in writing executed and delivered to the Trustee, to direct



the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**SECTION 9.04. APPOINTMENT OF RECEIVERS.** Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce any rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the Revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**SECTION 9.05. APPLICATION OF MONEYS.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article IX, including by virtue of action taken under provisions of any Loan Agreement, shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees (including reasonable Trustee's fees), expenses, liabilities and advances payable to, incurred or made by the Trustee (including reasonable fees and disbursements of its counsel), be applied, along with any other moneys available for such purposes, as follows:

(a) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST -- To the payment to the persons entitled to unpaid installments of interest due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at stated maturity or pursuant to a call for redemption (other than such Bonds called for redemption for the payment of which moneys are held pursuant to the other provisions of this Indenture), in the order of their due dates and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

THIRD -- To payment to the persons entitled thereto of all administrative expenses payable pursuant to Section 4.06; and

FOURTH -- To be held as provided in Article IV hereof for the payment to the persons entitled thereto as the same shall become due of the amounts payable pursuant to this Indenture (including principal of such Bonds due upon call for redemption) and, if the amount available shall not be sufficient to pay in full amounts due on any particular date, payment shall be made ratably according to the priorities set forth in subparagraphs FIRST, SECOND and THIRD above.

(b) If the principal of all the Bonds shall have become due, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid upon the Bonds and amounts payable pursuant to Section 4.06, with Bond principal and interest to be paid first, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, and with the items enumerated in Section 4.06 to be paid second to the persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this Section 9.05, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal and past-due interest to be paid on such date shall cease to accrue. Defaulted interest on a Bond shall be payable to the person in whose name such Bond is registered at the close of business on a Special Record Date for the payment of defaulted interest established by notice mailed by the Trustee to the registered Owners of Bonds not more than 15 days preceding such Special Record Date. Such notice shall be mailed to the person in whose name the Bonds are registered at the close of business on the fifth day preceding the date of mailing. The Trustee shall not be required to make payment of principal of any Bond to the Owner of such Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of and interest on all Bonds have been paid under the provisions of this Section 9.05 and all expenses and charges of the Trustee and the Bond Insurer have been paid, any balance remaining in the Funds and Accounts shall be transferred to the Commission as provided in Article VIII hereof.

**SECTION 9.06. REMEDIES VESTED IN TRUSTEE.** All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding related thereto and any trial or other proceeding related thereto and any such suit or proceeding instituted by the Trustee shall

be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Owners of all the Outstanding Bonds affected thereby.

**SECTION 9.07. RIGHTS AND REMEDIES OF BONDHOLDERS.** No Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred, (b) such default shall have become an Event of Default and the Owners of not less than a majority in aggregate principal amount of Outstanding Bonds affected thereby, made a written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (c) such Owners of Bonds shall have offered to the Trustee indemnity as provided in Section 10.01(k) hereof, and (d) the Trustee shall for 60 days after receipt of such request and indemnification fail or refuse to exercise the rights and remedies hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder. It being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the Owners of all Outstanding Bonds affected thereby. However, nothing contained in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of and interest on any Bond at and after the maturity or redemption date of such principal or interest, or the obligation of the Commission to pay the principal of and interest on each of the Bonds issued hereunder to the respective registered Owners thereof at the time, place, from the source and in the manner in this Indenture and in the Bonds expressed.

**SECTION 9.08. TERMINATION OF PROCEEDINGS.** In case the Trustee or any Owner of any Bonds shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Commission, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and with regard to the property herein subject to this Indenture, and all rights, remedies and powers of the Trustee and Owners of Bonds shall continue as if no such proceedings had been taken.

**SECTION 9.09. WAIVERS OF EVENTS OF DEFAULT.** The Trustee may, at its discretion, waive any Event of Default hereunder (other than an Event of Default specified in Section 9.01(c) above) and its consequences and may rescind any declaration of maturity of all the Bonds affected thereby and shall do so upon the written request of the Owners of (a) more than two-thirds in aggregate principal amount of all Outstanding Bonds affected thereby in the case of default in the payment of principal or interest, or (b) more than a majority in aggregate principal amount of all Outstanding Bonds affected thereby in the case of any other default; provided, however, that there shall not be waived (i) any default in the payment of the principal of any such Outstanding Bond at the date of maturity specified therein or (ii) any default in the payment when due of the interest on any such Outstanding Bond, unless prior to such waiver all arrears of interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then, and in every such case, the Commission, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. No such waiver shall affect the rights of third parties to payment of amounts provided for hereunder.

**SECTION 9.10. NOTICE OF DEFAULTS UNDER SECTION 9.01(b); OPPORTUNITY OF COMMISSION TO CURE SUCH DEFAULTS.** Anything herein to the contrary notwithstanding, no default under Section 9.01(b) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given to the Commission by the Trustee or the Owners of not less than a majority in aggregate principal amount of all Outstanding Bonds affected thereby and the Commission shall have had 30 days after receipt of such notice to correct the default or cause the default to be corrected, and shall not have corrected the default or caused the default to be corrected within the applicable period; provided, however, if the default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Commission within the applicable period and diligently pursued until the default is corrected.

With regard to any alleged default concerning which notice is given to the Commission under the provisions of this Section 9.10, the Commission hereby grants the Trustee full authority for the account of the Commission (but the Trustee shall not be required) to perform any covenant or obligation alleged in said notice to constitute a default, in the name and stead of the Commission with full power to do any and all things and acts to the same extent that the Commission could do and perform any such things and acts and with power of substitution.

**SECTION 9.11. BOND INSURER TO BE DEEMED BONDOWNER; RIGHTS OF BOND INSURER.** Notwithstanding any provisions of this Indenture to the contrary, unless a Bond Insurer is in default under its Bond Insurance, such Bond Insurer shall at all times be deemed the exclusive Owner of all Bonds it insures for all purposes except for the purpose of payment of the principal of and premium, if any, and interest on the Bonds prior to the payment by such Bond Insurer of the principal of and interest on the Bonds. A Bond Insurer shall have the exclusive right to direct any action or remedy to be undertaken by the Trustee, by the Owners of Bonds insured by it or by any other party pursuant to the Indenture and the Loan Agreements, and no Event of Default shall be waived, without each Bond Insurer's consent. All rights to collect, receive and dispose of such collateral shall be independent of any rights to effect acceleration of the Bonds. Any notice that is required to be given to the Bondholders or the Trustee pursuant to this Indenture shall also be provided to each Bond Insurer.

A Bond Insurer shall be subrogated to any and all of the rights of the Owners of any and all of the Bonds insured by such Bond Insurer (unless such Bond Insurer is in default under the Bond Insurance) at all times for the purpose of the execution and delivery of a Supplemental Indenture or of any amendment, change or modification of the Loan Agreements or the initiation by Bondholders of any action to be undertaken by the Trustee at the Bondholder's request.

## **ARTICLE X THE TRUSTEE**

**SECTION 10.01. ACCEPTANCE OF THE TRUSTS.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may but need not be the attorney or attorneys for the Commission, any Bond Insurer or a Borrower) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for the validity of the execution by the Commission of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee.

(e) Unless an officer of the corporate trust department of the Trustee shall have actual knowledge thereof, the Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except defaults under Section 9.01(a) hereof unless the Trustee shall be specifically notified in writing of such default by the Commission or a Bond Insurer or a court of law or by any Owner of Bonds. All notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the designated corporate trust office of the Trustee and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid. The Trustee shall provide copies of any such notices as soon as practicable to the Commission, any Bond Insurer and the Borrowers.

(f) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. The Trustee shall not withhold unreasonably its consent, approval or action to any reasonable request of the Commission. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the registered Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(g) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled in good faith to rely upon a certificate signed by an authorized officer of the Commission as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has knowledge, or is deemed to have notice pursuant to Section 10.01(e), shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Administrator or Secretary-Treasurer of the Commission under its seal to the effect that a resolution in the form therein set forth has been adopted by the Commission as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(h) All moneys received by the Trustee hereunder, until used or applied as herein provided, shall be held in trust for the purposes for which they were received.

(i) At any and all reasonable times, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives and any Bond Insurer, shall have the right to inspect any and all of the books, papers and records of the Commission pertaining to the Revenues and receipts under the Loan Agreements and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Before taking the action referred to in Sections 9.02 or 9.07 hereof, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

**SECTION 10.02. FEES, CHARGES AND EXPENSES OF TRUSTEE.** The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably

and necessarily made or incurred by the Trustee but solely from moneys available therefor pursuant to Section 4.06 hereof or Section 9.05 hereof and pursuant to the Loan Agreements.

**SECTION 10.03. NOTICE TO BONDHOLDERS IF DEFAULT OCCURS UNDER INDENTURE.** If the Trustee becomes aware of an Event of Default, then the Trustee shall promptly give written notice thereof by registered or certified mail to any Bond Insurer and by first-class mail to the Owners of all Outstanding Bonds affected thereby, as shown by the bond registration books.

**SECTION 10.04. INTERVENTION BY TRUSTEE.** In any judicial proceeding to which the Commission is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Owners of the Bonds, the Trustee may intervene on behalf of the Bondholders, and shall do so if requested in writing by the Owners of at least a majority of the aggregate principal amount of Bonds then Outstanding.

**SECTION 10.05. SUCCESSOR TRUSTEE.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become, to the extent permitted by law, successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 10.06. RESIGNATION BY TRUSTEE.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 90 days' written notice by registered or certified mail to the Commission and each Bond Insurer and by first- class mail to the registered Owner of each Bond, and such resignation shall take effect upon the appointment of a successor Trustee as hereinafter provided and the acceptance of such appointment by such successor.

**SECTION 10.07. REMOVAL OF TRUSTEE.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee and signed by the Commission or the Owners of a majority in aggregate principal amount of all Bonds then Outstanding.

**SECTION 10.08. APPOINTMENT OF SUCCESSOR TRUSTEE.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver



appointed by a court, a successor may be appointed by a resolution of the Commission, or if the Commission shall not have appointed a successor Trustee, by filing with the Commission an instrument or concurrent instruments in writing signed by Owners of not less than a majority in principal amount of Bonds outstanding, or by their attorneys in fact, duly authorized. Notice of the appointment of a successor Trustee shall be given in the same manner as provided by Section 10.06 hereof with respect to the resignation of a Trustee. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing having a corporate trust office in the State, having combined capital, surplus and undivided profits of not less than \$50,000,000 and subject to examination by federal or State authority, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. The Bond Insurer shall be notified immediately upon the resignation or termination of the Trustee and the appointment of a successor Trustee.

**SECTION 10.09. CONCERNING ANY SUCCESSOR TRUSTEE.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Commission an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the Commission, or of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities, moneys, documents and other property held by it as the Trustee hereunder to its or his successor hereunder. Should any instrument in writing from the Commission be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Commission. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Indenture shall have been filed or recorded. Such successor Trustee shall give notice of such successors to Moody's, S&P and Fitch.

**SECTION 10.10. PRESERVATION AND INSPECTION OF DOCUMENTS.** All documents received by the Trustee under the provisions of the Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Commission and any Bond Insurer, at reasonable hours and under reasonable conditions.

## **ARTICLE XI SUPPLEMENTAL INDENTURES**

**SECTION 11.01. SUPPLEMENTAL INDENTURES NOT REQUIRING CONSENT OF BONDHOLDERS.** The Commission and the Trustee may, without the consent of or notice to any of the Bondholders, enter into any indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

(a) To cure or correct any ambiguity or omission or formal defect in this Indenture;

(b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or the Trustee, or to make any change which, in the judgment of the Trustee, is not to the material prejudice of the Bondholders;

(c) To subject to this Indenture additional revenues, properties or collateral;

(d) To make such changes as shall be necessary to issue refunding obligations pursuant to Section 2.10 hereof;

(e) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute;

(f) To make such changes as shall be necessary to issue Additional Bonds pursuant to Section 13.09 hereof and loan the proceeds thereof to Borrowers pursuant to the Loan Agreements; or

(g) To make any other change that, in the opinion of the Commission, would not materially adversely affect the security for the Bonds.

Amendments to this Indenture resulting from reassignment of Loans as provided in Section 12.05 hereof shall not require the consent of either any Bond Insurer or the Owners of the Bonds.

**SECTION 11.02. SUPPLEMENTAL INDENTURES REQUIRING CONSENT OF BONDHOLDERS.** Exclusive of Supplemental Indentures covered by Sections 11.01 or 11.03 hereof and subject to the terms and provisions contained in this

Section 11.02, and not otherwise, the Owners of not less than a majority aggregate principal amount of the Outstanding Bonds affected thereby shall have the right, from time to time, to consent to and approve the execution by the Commission and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular manner, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section 11.02 contained shall permit, or be construed as permitting (a) without the consent of the Owners of all then Outstanding Bonds affected thereby, of (i) an extension of the maturity date of the principal of or the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or (iii) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, or (v) the creation of any lien hereunder other than a lien ratably securing all of the Bonds at any time Outstanding hereunder, or (b) any modification of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee without the written consent of the Trustee.

If at any time the Commission shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section 11.02, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed by registered or certified mail to each Owner of a Bond affected thereby at the address shown on the registration books. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Bondholders. If, within 60 days, or such longer period as shall be prescribed by the Commission, following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Outstanding Bonds affected thereby at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Commission from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as in this Section 11.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**SECTION 11.03. SUPPLEMENTAL INDENTURE WITH CONSENT OF BOND INSURER ONLY.** If one or more Bond Insurer has honored all its obligations under its Bond Insurance involving a majority of Bonds Outstanding, the Commission and the Trustee may enter into one or more Supplemental Indentures which amends all or any part of this Indenture with the written consent of such Bond Insurer(s). The consent

of the Owners of the Bonds shall not be necessary. The foregoing right of amendment does not apply to any amendments to Section 13.07 hereof nor may such amendment permit modifications described in clauses (a) and (b) of the first paragraph of Section 11.02 hereof. Upon filing with the parties hereto of the consent of such Bond Insurer(s) as aforesaid, a Supplemental Indenture may be entered into. Subsequent to execution of such Supplemental Indenture notice thereof shall be mailed to the Owners in the same manner as notice of amendment under Section 11.02 hereof.

**SECTION 11.04. NOTICE TO S&P, MOODY'S AND FITCH.** The Trustee shall give notice to S&P, Moody's and Fitch of any Supplemental Indentures or any amendments to any Loan Agreement. The Trustee shall also provide notice to such rating agencies of any situation that requires the consent of a Bond Insurer.

## **ARTICLE XII**

### **AMENDMENT OF LOAN AGREEMENTS**

**SECTION 12.01. AMENDMENTS NOT REQUIRING CONSENT OF BONDHOLDERS.** The Commission and the Trustee may, without the consent of or notice to the Bondholders consent to any amendment, change or modification of any Loan Agreement that may be required (a) by the provisions of such Loan Agreement or to conform to the provisions of this Indenture, (b) for the purpose of curing any ambiguity or inconsistency or formal defect or omission, (c) so as to add additional rights acquired in accordance with the provisions of such Loan Agreement or (d) in connection with any other change therein which, in the judgment of the Commission, is not to the material prejudice of the Trustee or the Owners of the Bonds. Amendments to the Loan Agreements provided in Sections 12.04 or 12.05 hereof shall not require the consent of either any Bond Insurer or the Owners of the Bonds.

**SECTION 12.02. AMENDMENTS REQUIRING CONSENT OF BONDHOLDERS.** Except for amendments, changes or modifications provided for in Sections 12.01 or 12.03 hereof, neither the Commission nor the Trustee shall consent to any amendment, change or modification of any Loan Agreement without the mailing of notice and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and procured as in this Section 12.02 provided. If at any time the Commission and a Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of a Loan Agreement, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be mailed in the same manner as provided by Section 11.02 hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file with the Trustee for inspection by all Bondholders. Nothing contained in this Section 12.02 shall permit, or be construed as permitting, a reduction of the aggregate principal amount of Bonds the Owners of which are required to consent to any amendment, change or modification of a Loan Agreement, a reduction in, or a postponement of, the payments under any Loan Agreement or any changes that affect the exclusion of interest on the Bonds from the gross income of the Holders thereof for purposes of Federal income taxation, without the consent of the Owners of all of the Bonds then Outstanding.

Nothing contained in this Section 12.02 shall be construed to prevent the Trustee, with the consent of the Commission and any Bond Insurer, from settling a default under any Loan Agreement on such terms as the Trustee may determine to be in the best interests of the Owners of the Bonds.

**SECTION 12.03. BOND INSURER CONSIDERED BONDHOLDER.** If the Bond Insurer has honored its obligations under its Bond Insurance, for purposes of Section 12.02 hereof, the Bond Insurer shall be considered the sole Owner of the Bonds and may consent as such Owner to any amendments to the Loan Agreements; provided such right does not apply to amendments requiring the consent of all Owners.

**SECTION 12.04. MODIFICATION OF PROJECTS.** In accordance with Section 3.04 of the Loan Agreements, the Borrower may, from time to time, amend a Project payable from the Loan made to such Borrower. Prior to amending such Project, the Commission or the Borrower shall provide the Trustee and the Department the documentation required by Section 3.04 of the Loan Agreement. If the Commission provides such documentation to the Trustee and the Department, no Bondholder or any Bond Insurer consent to the amended Project shall be required.

**SECTION 12.05. REASSIGNMENT OF LOANS.** In accordance with Section 3.05 of the Loan Agreements, the Administrator may reassign all or a portion of a Loan made to a Borrower to a Port which shall thereupon become the Borrower of such Loan or portion thereof. Prior to reassigning such Loan or portion thereof the Administrator shall provide the Trustee and the Department the documentation required by Section 3.05 of the Loan Agreement. If the Administrator provides such documentation to the Trustee and the Department, no Bondholder or any Bond Insurer consent to the Loan reassignment shall be required. The Loan Agreements relating to the Borrowers to which and from which the Loan or portion thereof is reassigned shall reflect the Loan Repayments incorporating such reassignment. Accounts and subaccounts established in the Construction Fund shall be adjusted by the Trustee to reflect the reassignment. Notwithstanding anything herein to the contrary, the Loan or portion thereof may be reassigned to a Port which shall not be a Borrower prior to the time of such reassignment. If the Loan or portion thereof is reassigned to such a Port, such Port shall enter into a Loan Agreement with the Commission and comply with the provisions of Section 4.03 thereof. At such time as such Port shall execute the Loan Agreement, it shall become a Borrower under the Program.

**SECTION 12.06. REPAYMENT OF UNALLOWABLE COSTS.** In accordance with Section 3.06 of the Loan Agreements, each Borrower has agreed to repay to the Trustee, on behalf of the Commission, all Project Costs which are found to be unallowable pursuant to a final Project audit. The Trustee shall deposit such repaid amounts into the Borrower's Account (or subaccount) of the Construction Fund; provided, however, at the request of FSTED, such amounts may be deposited to the Account (or subaccount) of the Construction Fund of another Borrower. If such repaid amounts are deposited in another Borrower's Account (or subaccount) of the Construction Fund, such deposit shall be considered a reassignment of a portion of a Loan pursuant to Section 12.05 hereof and the Administrator shall provide the Trustee and the Department the documentation required by said Section.

## **ARTICLE XIII GENERAL COVENANTS**

**SECTION 13.01. PAYMENT OF PRINCIPAL AND INTEREST.** The Commission covenants that it will promptly pay the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof; provided that the principal and interest are payable by the Commission solely from the Trust Estate as provided in this Indenture, and nothing in the Bonds or this Indenture shall be considered as assigning or pledging any other funds or assets of the Commission other than such Trust Estate.

**SECTION 13.02. PERFORMANCE OF COVENANTS; THE COMMISSION.** The Commission covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The Commission covenants that it is duly authorized under the Constitution and laws of the State, including particularly the Act, to issue the Bonds authorized hereby and to execute this Indenture, to execute and deliver Loan Agreements, to assign the Loan Agreements and collateral documents and amounts payable thereunder, and to pledge the Revenues and any other property hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the Commission according to the terms thereof and hereof.

**SECTION 13.03. INSTRUMENTS OF FURTHER ASSURANCE.** The Commission agrees that the Trustee may defend its rights to the payments of the Revenues for the benefit of the Owners of the Bonds, against the claims and demands of all persons whomsoever. The Commission covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the rights assigned hereby and the amounts and other property pledged hereby to the payment of the principal of and interest on the Bonds. The Commission covenants and agrees that, except as provided herein or in the Loan Agreements, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the Revenues or the proceeds of the Bonds or its rights under the Loan Agreements.

**SECTION 13.04. RIGHTS UNDER THE LOAN AGREEMENTS.** The Loan Agreements, which have been filed with the Trustee, as required by Section 13.05

hereof, set forth the covenants and obligations of the Commission and the Borrowers, and reference is hereby made to the Loan Agreements for a detailed statement of said covenants and obligations of the Borrowers under the Loan Agreements, and the Commission agrees that the Trustee in its name or to the extent permitted by law, in the name of the Commission, may enforce all rights of the Commission and all obligations of the Borrowers under the Loan Agreements (and waive the same except for rights expressly granted to the Commission) on behalf of the Bondholders whether or not the Commission is in default hereunder. The Trustee shall perform any obligations required of it pursuant to the terms of the Loan Agreements.

**SECTION 13.05. POSSESSION AND INSPECTION OF LOAN AGREEMENTS.** The Trustee shall retain possession of an executed copy of each Loan Agreement to which it is a party or in which it has an interest and release them only in accordance with the provisions of this Indenture. The Commission and the Trustee covenant and agree that all books and documents in their possession relating to the Loan Agreements and to the distribution of proceeds thereof shall at all times be open to inspection by such accountants or other agencies or persons as the other party or the Bond Insurer may from time to time designate.

**SECTION 13.06. PROVISION OF DOCUMENTS TO BONDHOLDERS.** If any Bondholder shall request of the Commission or Trustee a copy of the Indenture, any Bond Insurance or any Loan Agreement, the Trustee shall, at the expense of the Bondholder, provide such Bondholder with a photocopy or other copy of any such document requested.

**SECTION 13.07. TAX COVENANTS.** The Commission shall not use or permit the use of any proceeds of the Bonds or any other funds of the Commission, and the Trustee shall not use or permit the use of any proceeds of the Bonds or any other funds of the Commission held by the Trustee, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the Commission or Trustee with respect to the Loan Agreements in any manner, and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148, or "federally guaranteed" within the meaning of the Code. If at any time the Commission is of the opinion that for purposes of this paragraph it is necessary to restrict or limit the yield on or change in any way the investment of any moneys held by the Trustee under this Indenture, the Commission shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

The Commission covenants that it will maintain adequate accounting records, and rebate investment income from the investment of proceeds of the Bonds to the United States Treasury within the time allowed and in the manner specified by the Code and regulations and will otherwise comply with such laws and regulations.



The Commission shall take all action within its control that is necessary in order that the interest on the Bonds be excludable from gross income for purposes of Federal income taxation (other than interest on the Bonds (which are private activity bonds) held by a person who is deemed a "substantial user" of such Project or a "related person" to a "substantial user" of such Project within the meaning of Section 147(a) of the Code) and shall refrain from taking any action which results in such interest becoming so taxable.

The Commission shall provide in each Loan Agreement the requirement that the Borrower take all action within its control that is necessary in order that the interest on the Bonds be excludable from gross income for purposes of Federal income taxation (other than interest on the Bonds (which are private activity bonds) held by a person who is deemed a "substantial user" of such Project or a "related person" to a "substantial user" of such Project within the meaning of Section 147(a) of the Code) and shall refrain from taking any action which results in such interest becoming so taxable.

In order to insure compliance with the rebate provisions of Section 148(f) of the Code, the Commission shall create the Rebate Fund. Such Fund may be held by the Commission or, at the option of the Commission, by the Trustee. The Rebate Fund need not be maintained if the Commission shall have received an opinion of Bond Counsel acceptable to the Commission to the effect that failure to maintain the Rebate Fund shall not adversely affect the exclusion of interest on the Bonds from gross income for purposes of Federal income taxation. Moneys in the Rebate Fund shall not be considered moneys held under the Indenture and shall not constitute a part of the Trust Estate held for the benefit of the Bondholders or the Commission. Moneys in the Rebate Fund (including earnings and deposits therein) shall be held for future payment to the United States Government as required by the regulations and as set forth in instructions delivered to the Commission upon issuance of the Bonds.

**SECTION 13.08. LIMITED LIABILITY OF OFFICERS OF THE COMMISSION.** No Bondholder shall look to any officer, agent, member or employee of the Commission, including the Administrator, or of any Borrower for damages suffered by such Bondholder as a result of the failure of the Commission, or any officer, agent or employee thereof, while acting in good faith, to perform any covenant, undertaking or obligation under this Indenture, the Bonds or any instrument pertaining to the issuance, sale and deliver of the Bonds, nor as a result of any officer, agent or employee thereof, including the Administrator, in good faith, in any such instrument. In acting under this Indenture, or in refraining from acting under this Indenture, the Commission, its officers, agents, members and employees, including the Administrator, may conclusively rely on advice of counsel. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future employee, member, officer or agent of the Commission, including the Administrator, in his individual capacity, and neither the

members of the Commission or any Borrower or any officer executing this Indenture or the Bonds shall be subject to any personal liability or accountability by reason hereof.

**SECTION 13.09. ADDITIONAL BONDS.** The Basic Payments made by the Borrowers pursuant to their respective Loan Agreements are derived from moneys transferred by the State to the Trustee from the State Transportation Trust Fund in accordance with the terms of the Loan Agreements and Section 320.20(3), Florida Statutes. The Commission agrees that it will not issue any obligations which are payable, directly or indirectly, from the State Transportation Trust Fund as provided in Section 320.20(3), Florida Statutes, unless an Authorized Representative of the Commission shall certify to the Trustee that (a) no Event of Default has occurred and is ongoing and (b) the maximum annual amount of moneys available in the State Transportation Trust Fund to pay debt service on the Outstanding Bonds in accordance with the terms of the Loan Agreements and any other obligations of the Commission or any Ports which are payable principally from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, including the obligations proposed to be issued, will be sufficient for such purpose. The Commission shall not issue any variable rate debt which is secured by moneys in the State Transportation Trust Fund pursuant to the provisions of Section 320.20(3), Florida Statutes.

## **ARTICLE XIV MISCELLANEOUS**

**SECTION 14.01. CONSENTS OF BONDHOLDERS.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Commission, the Trustee and any subsequent Owners of the Bonds with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of Bonds, and the date of owning the same shall be proved by the registration books of the Commission maintained by the Trustee.

**SECTION 14.02. LIMITATION OF RIGHTS.** With the exception of rights herein expressly conferred or as otherwise provided herein, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto and the owners of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners of the Bonds as herein provided.

**SECTION 14.03. SEVERABILITY.** If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

**SECTION 14.04. NOTICES.** Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram or telex, addressed to the parties as follows:

Commission: Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301  
Telephone: 850/222-8028  
Telecopy: 850/222-7552

Administrator: Florida Ports Council  
502 East Jefferson Street  
Tallahassee, Florida 32301  
Telephone: 850/222-8028  
Telecopy: 850/222-7552

Trustee:

Bond Counsel: Nabors, Giblin & Nickerson, P.A.  
2502 Rocky Point Drive, Suite 1060  
Tampa, Florida 33607  
Telephone: 813/281-2222  
Telecopy: 813/281-0129

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**SECTION 14.05. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS.** In any case where the date of payment of principal of or interest on the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or a legal holiday in the city of payment or a day or on which banking institutions are authorized by law to close in the city of payment, then payment of interest or principal shall be made on the succeeding Business Day with the same force and effect as if made on the interest payment date or the date of maturity or the date fixed for redemption.

**SECTION 14.06. COUNTERPARTS.** This Indenture may be simultaneously executed in several counterparts, each of which, when so executed and delivered, shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 14.07. APPLICABLE PROVISIONS OF LAW.** This Indenture shall be governed by and construed in accordance with the laws of the State.

**IN WITNESS WHEREOF**, the Commission has caused this Indenture to be executed on its behalf by its Chairman and the seal of the Commission to be hereunto affixed and duly attested by its Secretary-Treasurer; and the Trustee, to evidence its acceptance of the trusts created hereunder, has caused this Indenture to be executed in its name by its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the day and year first above written.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

(SEAL)

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

## **EXHIBIT A**

### **DESCRIPTION OF LOANS**

**EXHIBIT B**

**DEPOSIT OF LOAN PROCEEDS**

## EXHIBIT C

No. R-\_\_\_\_\_

\$

FLORIDA PORTS FINANCING COMMISSION  
REFUNDING REVENUE BOND  
(STATE TRANSPORTATION TRUST FUND)  
SERIES \_\_\_\_\_

Maturity Date

Interest Rate

Dated Date

CUSIP

Registered Owner:

Principal Amount:

FLORIDA PORTS FINANCING COMMISSION, a legal entity duly created and existing under the Constitution and laws of the State of Florida (the "Commission"), for value received, hereby promises to pay (but only out of the Revenues and other assets pledged therefor as hereinafter described) to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above (subject to any right of prior redemption hereinafter mentioned), the Principal Amount identified above, in lawful money of the United States of America; and to pay interest thereon in like lawful money from the Dated Date, until payment of said Principal Amount has been made or duly provided for, at the Interest Rate set forth above, on \_\_\_\_\_, and on each October 1 and April 1 thereafter (the "Interest Payment Dates"), unless interest on this Bond is in default, in which event it shall bear interest from the last date to which interest has been paid until payment of such Principal Amount shall be discharged as provided in the hereinafter described Indenture. The principal (or redemption price) hereof is payable upon presentation hereof at the designated corporate trust office of SunTrust Bank, Central Florida, National Association, as Trustee. Interest hereon is payable by check mailed, except as provided in the Indenture, to the person whose name appears on the bond registration books maintained by the Trustee as the Registered Owner hereof as of the close of business on the 15th day of the calendar month preceding each Interest Payment Date, at such person's address as it appears on such registration books.

This Bond is one of a duly authorized issue of bonds of the Commission designated as "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series \_\_\_\_\_" (the "Bonds"), issued in the aggregate principal



amount of \$\_\_\_\_\_, pursuant to the provisions of Section 320.20(3), Florida Statutes, Part I of Chapter 163, Florida Statutes, and other applicable provisions of law (collectively, the "Act"), and pursuant to a First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee (together with any supplements or amendments thereto, the "Indenture"). The Bonds are issued for the purpose of providing funds to make loans to Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City), Port St. Joe Port Authority and St. Lucie County (collectively, the "Borrowers") to finance, refinance or reimburse the costs of various capital projects, pursuant to loan agreements between the Commission and such Borrowers (together with any supplements or amendments thereto, the "Loan Agreements").

Capitalized terms used but not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture (a copy of which is on file at the designated corporate trust office of the Trustee) and to the Act for a description of the rights and remedies thereunder (and limitations thereon) of the registered owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Commission thereunder, to all the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds and the interest thereon are payable from the Trust Estate (as defined in the Indenture) and are secured by a lien on said Trust Estate, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Bonds are further secured by an assignment of the right, title and interest of the Commission in the Loan Agreements to the Trustee, to the extent and as more particularly described in the Indenture.

The Bonds maturing before October 1, \_\_\_\_ are not subject to optional redemption prior to their respective maturities. The Bonds maturing on and after October 1, \_\_\_\_ are subject to redemption at the option of the Commission on or after October 1, \_\_\_\_, as a whole or in part at any time, and if in part, in any manner or order of maturity determined by the Commission (or the Trustee if the Commission makes no determination) in its discretion and by lot within a maturity if less than an entire maturity is being redeemed, during the following periods and at the following redemption prices, expressed as a

percentage of the principal amount of the Bonds to be redeemed, plus accrued interest to the redemption date:

Redemption Period  
(Both Dates Inclusive)

Redemption Price

The Bonds that mature on October 1, \_\_\_\_ are subject to mandatory redemption, in part, by lot, at redemption prices equal to 100% of the principal amount thereof, plus interest accrued to the redemption date, beginning on October 1, \_\_\_\_, and on each October 1 thereafter, in the following Amortization Installments in the following years:

Year

Amortization  
Installment

\_\_\_\_\_  
\*Maturity

The Bonds that mature on October 1, \_\_\_\_ are subject to mandatory redemption, in part, by lot, at redemption prices equal to 100% of the principal amount thereof, plus interest accrued to the redemption date, beginning on October 1, \_\_\_\_, and on each October 1 thereafter, in the following Amortization Installments in the following years:

Year

Amortization  
Installment

\_\_\_\_\_  
\*Maturity

In the case of every redemption, the Trustee shall cause notice of such redemption to be given to the registered owner of any Bonds designated for redemption in whole or

in part as provided in the Indenture. The failure of the Trustee to give notice to a Bondholder or any defect in such notice shall not affect the validity of the redemption of any other Bonds. On the redemption date, the principal amount and premium, if any, of each Bond to be redeemed, together with the accrued interest thereon to such date, shall become due and payable; from and after such date of redemption (such notice having been given and moneys available solely for such redemption being on deposit with the Trustee), the Bonds or portions thereof to be redeemed shall not be deemed to be outstanding under the Indenture, and the Commission shall be under no further liability in respect thereof.

The Commission has established a book-entry system of registration for the Bonds. Except as specifically provided otherwise in the Indenture, an agent will hold this Bond on behalf of the beneficial owner hereof. By acceptance of a confirmation of purchase, delivery or transfer, the beneficial owner of this Bond shall be deemed to have agreed to such arrangement.

The Indenture and the rights and obligations of the Commission and of the Bondholders and of the Trustee may be modified or amended from time to time and at any time, without consent of the Bondholders in the manner, to the extent and upon the terms provided in the Indenture.

The Bonds are solely and exclusively a special and limited obligation of the Commission payable solely from the Trust Estate and do not create nor constitute, now or in the future, an obligation or debt of the State or any political subdivision thereof or any public corporation, port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective loan agreements) other than the Commission; nor shall the Bonds constitute the giving, pledging or loan of the faith and credit of the State or any political subdivision thereof or any public corporation, port or governmental agency existing under the laws of the State, but shall be payable solely from the Trust Estate. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the State or any political subdivision thereof or any public corporate, port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective loan agreements). None of the obligations of the Borrowers under their respective loan agreements are secured by a pledge of their taxing powers, if any, and none are payable from ad valorem taxes. The loan agreements do not represent joint liabilities of the Borrowers executing loan agreements with the Commission, and shall be payable solely as provided in such loan agreements.

It is further agreed between the Commission and the Registered Owner of this Bond that this Bond and the indebtedness evidenced hereby shall not constitute a lien upon any property of the Commission or of or in any of the Borrowers (except to the

extent otherwise provided in the Loan Agreements), but shall be payable only from the Trust Estate and bond insurance.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Act, as hereinafter defined, and by the Constitution and laws of the State of Florida, and that the amount of this Bond, together with all other indebtedness of the Commission, does not exceed any limit prescribed by the Act, or by the Constitution and laws of the State of Florida, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been signed by the Trustee.

**IN WITNESS WHEREOF**, FLORIDA PORTS FINANCING COMMISSION has caused this Bond to be executed in its name and on its behalf by the manual signature of its Chairman and its seal to be imprinted hereon and attested by the manual signature of its Secretary-Treasurer, all as of the Dated Date of the Bonds.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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Chairman

ATTEST:

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Secretary-Treasurer

## CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Bonds described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by the authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

### ASSIGNMENT

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto

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Insert Social Security or Other Identifying Number of Assignee

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(Name and Address of Assignee)

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the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, as attorneys to register the transfer of the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

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**NOTICE:** Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

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**NOTICE:** The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or other identifying number of such assignee must be supplied.

**EXHIBIT C**

**FORM OF FIRST SUPPLEMENTAL INDENTURE**

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**FLORIDA PORTS FINANCING COMMISSION,  
Issuer**

**TO**

\_\_\_\_\_,  
**Trustee**

**FIRST SUPPLEMENTAL INDENTURE OF TRUST**

**Dated as of \_\_\_\_\_, 2011**

**\$ \_\_\_\_\_  
FLORIDA PORTS FINANCING COMMISSION  
REFUNDING REVENUE BONDS  
(STATE TRANSPORTATION TRUST FUND),  
SERIES 2011A (NON-AMT)**

**and**

**\$ \_\_\_\_\_  
FLORIDA PORTS FINANCING COMMISSION  
REFUNDING REVENUE BONDS  
(STATE TRANSPORTATION TRUST FUND),  
SERIES 2011B (AMT)**

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## **FIRST SUPPLEMENTAL INDENTURE OF TRUST**

**THIS FIRST SUPPLEMENTAL INDENTURE OF TRUST**, dated as of \_\_\_\_\_, 2011 (the "First Supplemental Indenture"), supplementing the First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_ (together with this First Supplemental Indenture and all supplements and amendments thereto, the "Indenture"), between the **FLORIDA PORTS FINANCING COMMISSION**, a legal entity organized and existing under the laws of the State of Florida (the "Commission"), and \_\_\_\_\_, \_\_\_\_\_, Florida, as trustee (the "Trustee").

### **W I T N E S S E T H:**

**WHEREAS**, the Commission is duly created and existing pursuant to the Constitution and laws of the State of Florida, including, particularly, Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes (the "Interlocal Act"), and a first amended and restated interlocal agreement, dated as of September 15, 1997 (the "Interlocal Agreement"), among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County; and

**WHEREAS**, the Commission, pursuant to the authority of the Interlocal Act, the Interlocal Agreement and other applicable provisions of law, is authorized, among other things, to issue revenue bonds on behalf of and for the benefit of the ports located in the State of Florida (the "Ports") in order to finance, refinance or reimburse the cost of qualified projects of such Ports, such bonds to be secured by instruments evidencing and securing loans to the Ports and to be payable solely out of payments made by the Ports pursuant to Loan Agreements entered into between the Ports and the Commission or from other moneys designated as available therefor; and

**WHEREAS**, the Commission has determined that the public interest will be best served by the Commission's issuance of revenue bonds in order to provide funds to loan to the participating Ports to finance, refinance or reimburse the cost of qualifying projects pursuant to loan agreements between the respective Ports and the Commission; and

**WHEREAS**, the Commission has heretofore issued its \$222,320,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds"), pursuant to an Indenture of Trust, dated as of December 1, 1996 (the "Original Indenture"), between the Commission and SunTrust Bank, as

Trustee, to provide funds to finance, refinance or reimburse the cost of qualified projects of the participating Ports; and

**WHEREAS**, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds and any additional parity bonds issued under the Original Indenture, Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City), Port St. Joe Port Authority and St. Lucie County (collectively, the "Borrowers") have each entered into a loan agreement with the Commission (collectively, the "Loan Agreements") and have agreed in the Loan Agreements to assign, transfer and pledge moneys received by such Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, in order to provide for the payment of principal of, premium, if any, and interest on the Series 1996 Bonds and any additional parity bonds issued under the Original Indenture; and

**WHEREAS**, the Commission determines that it is in its best interests to refinance the Series 1996 Bonds in order to achieve debt service savings; and

**WHEREAS**, the Commission has deemed it in its best interests to amend the Original Indenture in various respects and restate such Original Indenture in the form of the First Amended and Restated Indenture of Trust; and

**WHEREAS**, the Commission shall issue its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT) (the "Series 2011A Bonds") and its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (the "Series 2011B Bonds" and together with the Series 2011A Bonds, the "Series 2011 Bonds") pursuant to the terms of the First Amended and Restated Indenture of Trust and this First Supplemental Indenture (collectively, the "Indenture") for the principal purposes of refinancing the Series 1996 Bonds and paying the costs of issuance of the Series 2011 Bonds; and

**WHEREAS**, proceeds of the Series 2011 Bonds, together with other available moneys of the Commission, shall be deposited into an escrow deposit trust fund (the "Escrow Fund") in accordance with the terms of an Escrow Deposit Agreement, between the Commission and the Trustee, as escrow agent; and

**WHEREAS**, moneys in the Escrow Fund shall be invested in Government Obligations such that the principal and interest on such Government Obligations shall be

sufficient to pay the principal of and interest on the Series 1996 Bonds as same becomes due or are redeemed; and

**WHEREAS**, the Series 2011 Bonds shall constitute Bonds pursuant to the terms of the Indenture and the Loan Agreements;

**NOW, THEREFORE**, in consideration of the premises, the Commission and the Trustee hereby further mutually covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

**SECTION 101. DEFINITIONS.** Words and terms which are defined in the Indenture shall have the same meanings ascribed to them when used herein unless the context or use indicates a different meaning or intent. In addition to the words and terms elsewhere defined in this First Supplemental Indenture or the Indenture, the following words and terms as used in this First Supplemental Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

**"Escrow Deposit Agreement"** shall mean the Escrow Deposit Agreement, dated as of \_\_\_\_\_, between the Commission and the Trustee, as escrow agent, relating to the Refunded Bonds.

**"Escrow Fund"** shall mean the escrow deposit trust fund established pursuant to the Escrow Deposit Agreement.

**"First Supplemental Indenture"** shall mean this First Supplemental Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee.

**"Indenture"** shall mean the First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee.

**"Refunded Bonds"** shall mean all of the Outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996.

**"Series 2011A Bonds"** shall mean the Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT), in the aggregate principal amount of \$\_\_\_\_\_ authorized to be issued by the Commission pursuant to the terms and conditions of the Indenture and this First Supplemental Indenture.

**"Series 2011B Bonds"** shall mean the Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT), in the aggregate principal amount of \$\_\_\_\_\_ authorized to be issued by the Commission pursuant to the terms and conditions of the Indenture and this First Supplemental Indenture.

**"Series 2011 Bonds"** shall mean the Series 2011A Bonds and the Series 2011B Bonds.

## **ARTICLE II**

### **THE SERIES 2011 BONDS**

**SECTION 201. ISSUANCE OF SERIES 2011A BONDS.** The Series 2011A Bonds are hereby authorized to be issued and shall be designated "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT)." The Series 2011A Bonds shall be in the aggregate principal amount of \$\_\_\_\_\_ and shall be issuable as fully registered bonds, without coupons, in the denominations of \$5,000 and integral multiples thereof. Unless the Commission shall otherwise direct, the Series 2011A Bonds shall be numbered RA-1 upward.

The Series 2011A Bonds shall be dated as of \_\_\_\_\_, 2011. The Series 2011A Bonds issued on or after the first Interest Payment Date therefor shall be dated as of the first Interest Payment Date preceding the date of authentication thereof to which interest has been paid or duly provided for; provided, however, if such date of authentication shall be an Interest Payment Date to which interest has been paid or duly provided for, then such Series 2011A Bonds shall be dated as of such date of authentication. However, if, as shown by the records of the Trustee, the Commission shall be in default with respect to the payment of interest on such Series 2011A Bonds, Series 2011A Bonds issued in exchange for Series 2011A Bonds surrendered for transfer or exchange shall be dated as of the date to which interest has been paid or duly provided for in full on the Series 2011A Bonds so surrendered or, if no interest has been paid or duly provided for on the Series 2011A Bonds, from the dated date thereof.

The Series 2011A Bonds shall bear interest from their dated date at the respective rates per annum set forth in the Maturity Table below. Notwithstanding the foregoing, if a Series 2011A Bond is authenticated after a Record Date and before the following Interest Payment Date, such Series 2011A Bond shall bear interest from such Interest Payment Date; provided, however, that if the Commission shall default in the payment of interest due on such Interest Payment Date, then such Series 2011A Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest shall have been paid or duly provided for, from the dated date. Interest shall be payable semiannually on the Interest Payment Dates which shall be [June 1 and December 1 of each year, commencing December 1, 2011].

The Series 2011A Bonds shall mature on the respective dates, in the respective principal amounts and bear interest at the respective rates as follows:

#### MATURITY TABLE

Principal Maturity Date <u>(June 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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**SECTION 202. ISSUANCE OF SERIES 2011B BONDS.** The Series 2011B Bonds are hereby authorized to be issued and shall be designated "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT)." The Series 2011B Bonds shall be in the aggregate principal amount of \$\_\_\_\_\_ and shall be issuable as fully registered bonds, without coupons, in the denominations of \$5,000 and integral multiples thereof. Unless the Commission shall otherwise direct, the Series 2011B Bonds shall be numbered RB-1 upward.

The Series 2011B Bonds shall be dated as of \_\_\_\_\_, 2011. The Series 2011B Bonds issued on or after the first Interest Payment Date therefor shall be dated as of the first Interest Payment Date preceding the date of authentication thereof to which interest has been paid or duly provided for; provided, however, if such date of authentication shall be an Interest Payment Date to which interest has been paid or duly provided for, then such Series 2011B Bonds shall be dated as of such date of authentication. However, if, as shown by the records of the Trustee, the Commission shall be in default with respect to the payment of interest on such Series 2011B Bonds, Series 2011B Bonds issued in exchange for Series 2011B Bonds surrendered for transfer or exchange shall be dated as of the date to which interest has been paid or duly provided for in full on the Series 2011B Bonds so surrendered or, if no interest has been paid or duly provided for on the Series 2011B Bonds, from the dated date thereof.

The Series 2011B Bonds shall bear interest from their dated date at the respective rates per annum set forth in the Maturity Table below. Notwithstanding the foregoing, if a Series 2011B Bond is authenticated after a Record Date and before the following Interest Payment Date, such Series 2011B Bond shall bear interest from such Interest Payment Date; provided, however, that if the Commission shall default in the payment of interest due on such Interest Payment Date, then such Series 2011B Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest shall have been paid or duly provided for, from the

dated date. Interest shall be payable semiannually on the Interest Payment Dates which shall be [June 1 and December 1 of each year, commencing June 1, 2011].

The Series 2011B Bonds shall mature on the respective dates, in the respective principal amounts and bear interest at the respective rates as follows:

#### MATURITY TABLE

Principal Maturity Date <u>(June 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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**SECTION 203. EXECUTION.** The Series 2011 Bonds shall be executed in the name of the Commission as provided in Section 2.01 of the Indenture. The Commission hereby directs the Trustee to authenticate and deliver the Series 2011 Bonds as provided in Section 2.01 of the Indenture.

**SECTION 204. SECURITY.** The Series 2011 Bonds shall be secured equally and ratably by a lien on the Trust Estate with all Bonds which may be Outstanding from time to time as provided in the Indenture.

**SECTION 205. BOOK-ENTRY ONLY REGISTRATION FOR SERIES 2011 BONDS.** The Commission hereby elects to issue the Series 2011 Bonds as book-entry obligations in accordance with the provisions of this Section 205. So long as the Series 2011 Bonds remain in book-entry-only form with DTC, the following provisions shall be applicable:

The Series 2011 Bonds shall be initially issued in the form of a separate single certificated fully registered Bond for each of the maturities of the Series 2011 Bonds. Upon initial issuance, and (except as provided below in this Section 205) so long as such Bonds are Outstanding, the ownership of each such Bond shall be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC. As long as the Series 2011 Bonds shall be registered in the name of Cede & Co., all payments of principal, redemption premium, if any, and interest on the Series 2011 Bonds shall be made by the Trustee by check or draft or by bank wire transfer to Cede & Co., as Holder of the Series 2011 Bonds, upon presentation of the Series 2011 Bonds to the Trustee of the Series 2011 Bonds to be paid.



With respect to the Series 2011 Bonds registered in the name of Cede & Co., as nominee of DTC, the Commission and the Trustee shall have no responsibility or obligation to any direct or indirect participant in the DTC book-entry program (the "Participants"). Without limiting the immediately preceding sentence, the Commission and the Trustee shall have no responsibility or obligation with respect to (A) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest on the Series 2011 Bonds, (B) the delivery to any Participant or any other Person other than a Bondholder, as shown in the registration books kept by the Trustee, of any notice with respect to the Series 2011 Bonds, including any notice of redemption, or (C) the payment to any Participant or any other Person, other than a Series 2011 Bondholder, as shown in the registration books kept by the Trustee, of any amount with respect to principal of, redemption premium, if any, or interest on the Series 2011 Bonds. The Commission and the Trustee may treat and consider the Person in whose name each Series 2011 Bond is registered in the registration books kept by the Trustee as the Holder and absolute Holder of such Bond for the purpose of payment of principal of, redemption premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of, redemption premium, if any, and interest on the Series 2011 Bonds only to or upon the order of the respective Holders, as shown in the registration books kept by the Trustee, or their respective attorneys duly authorized in writing, as provided herein and all such payments shall be valid and effective to fully satisfy and discharge the Commission's obligations with respect to payment of principal, redemption premium, if any, and interest on the Series 2011 Bonds to the extent of the sum or sums so paid. No Person other than a Holder, as shown in the registration books kept by the Trustee, shall receive a certificated Bond evidencing the obligation of the Commission to make payments of principal, redemption premium, if any, and interest pursuant to the provisions of the Indenture. Upon delivery by DTC to the Commission of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to transfers during the 15 days next preceding an Interest Payment Date or mailing of notice of redemption, the words "Cede & Co." shall refer to such new nominee of DTC; and upon receipt of such notice, the Commission shall promptly deliver a copy of the same to the Trustee.

In the event the Commission determines that it is in the best interest of the beneficial owners of the Series 2011 Bonds to obtain Series 2011 Bond certificates, the Commission may notify DTC and the Trustee, whereupon DTC will notify the Participants, of the availability through DTC of Series 2011 Bond certificates. In such event, the Commission shall prepare and execute and the Trustee shall authenticate, transfer and exchange Series 2011 Bond certificates as requested by DTC in appropriate amounts within the guidelines set forth in the Indenture. DTC may determine to

discontinue providing its services with respect to the Series 2011 Bonds at any time by giving written notice to the Commission and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the Commission and the Trustee shall be obligated to deliver Series 2011 Bond certificates. In the event Series 2011 Bond certificates are issued, the provisions of the Indenture shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of and interest on such certificates. Whenever DTC requests the Commission and the Trustee to do so, the Commission will direct the Trustee to cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the Series 2011 Bonds to any Participant having such Series 2011 Bonds credited to its DTC account; or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the Series 2011 Bonds.

**ARTICLE III**  
**APPLICATION OF SERIES 2011 BOND PROCEEDS**

**SECTION 301. APPLICATION OF SERIES 2011A BOND PROCEEDS.**

The Commission shall deposit the proceeds from the sale of the Series 2011A Bonds, net of any underwriting discount, with the Trustee which shall transfer such proceeds as follows:

(A) An amount equal to \$\_\_\_\_\_ for deposit to the "2011A Account" which is hereby established in the Cost of Issuance Fund to pay the costs of issuance associated with the Series 2011A Bonds as provided in Section 4.08 of the Indenture; and

(B) An amount equal to \$\_\_\_\_\_ shall be deposited in the Escrow Fund established pursuant to the Escrow Deposit Agreement, which amount shall be used in accordance with the terms of the Escrow Deposit Agreement to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds.

**SECTION 302. APPLICATION OF SERIES 2011B BOND PROCEEDS.**

The Commission shall deposit the proceeds from the sale of the Series 2011B Bonds, net of any underwriting discount, with the Trustee which shall transfer such proceeds as follows:

(A) An amount equal to \$\_\_\_\_\_ for deposit to the "2011B Account" which is hereby established in the Cost of Issuance Fund to pay the costs of issuance associated with the Series 2011B Bonds as provided in Section 4.08 of the Indenture; and

(B) An amount equal to \$\_\_\_\_\_ shall be deposited in the Escrow Fund established pursuant to the Escrow Deposit Agreement, which amount shall be used in accordance with the terms of the Escrow Deposit Agreement to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds.

**ARTICLE IV**  
**REDEMPTION OF SERIES 2011 BONDS**

**SECTION 401. REDEMPTION DATES AND PRICES OF SERIES 2011A BONDS.** The Series 2011A Bonds shall be redeemable prior to their maturity as provided in Article III of the Indenture and on the following terms and conditions:

(A) Optional Redemption of Series 2011A Bonds. The Series 2011A Bonds maturing on or after June 1, 20\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after June 1, 20\_\_, if in part by maturities to be selected by the Commission, and by lot within a maturity if less than a full maturity, at a Redemption Price of 100% of the principal amount of the Series 2011A Bonds redeemed together with accrued interest to the redemption date.

(B) Mandatory Amortization Redemption of Series 2011A Term Bonds. The Series 2011A Term Bonds maturing on June 1, 20\_\_ shall be subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011A Term Bonds on the following dates:

Year (June 1)	<u>Amortization Installment</u>
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\*Maturity

The Redemption Price shall be 100% of the principal amount of the Series 2011A Term Bonds or portions thereof so redeemed, plus accrued interest to the redemption date, and without redemption premium. The particular Series 2011A Term Bonds or portions thereof to be redeemed on each particular redemption date shall be selected by the Trustee by lot. The Trustee shall give notice of the call for such redemptions in the manner provided in Section 3.04 of the Indenture, and if applicable, such notice shall state that any redemption is conditional on such funds being deposited with the Trustee on or prior to the redemption date and that a failure to make such deposit shall not constitute an Event of Default.

**SECTION 402. REDEMPTION DATES AND PRICES OF SERIES 2011B BONDS.** The Series 2011B Bonds shall be redeemable prior to their maturity as provided in Article III of the Indenture and on the following terms and conditions:

(A) Optional Redemption of Series 2011B Bonds. The Series 2011B Bonds maturing on or after June 1, 20\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after June 1, 20\_\_, if in part by maturities to be selected by the Commission, and by lot within a maturity if less than a full maturity, at a Redemption Price of 100% of the principal amount of the Series 2011B Bonds redeemed together with accrued interest to the redemption date.

(B) Mandatory Amortization Redemption of Series 2011B Term Bonds. The Series 2011B Term Bonds maturing on June 1, 20\_\_ shall be subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011B Term Bonds on the following dates:

<u>Year</u> <u>(June 1)</u>	<u>Amortization Installment</u>
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\*Maturity

The Redemption Price shall be 100% of the principal amount of the Series 2011B Term Bonds or portions thereof so redeemed, plus accrued interest to the redemption date, and without redemption premium. The particular Series 2011B Term Bonds or portions thereof to be redeemed on each particular redemption date shall be selected by the Trustee by lot. The Trustee shall give notice of the call for such redemptions in the manner provided in Section 3.04 of the Indenture, and if applicable, such notice shall state that any redemption is conditional on such funds being deposited with the Trustee on or prior to the redemption date and that a failure to make such deposit shall not constitute an Event of Default.

**ARTICLE V**  
**GENERAL COVENANTS**

**SECTION 501. WARRANTIES.** The Commission represents that it is duly authorized under the Constitution and laws of the State of Florida, including particularly the Act, to issue the Series 2011 Bonds authorized hereby and to execute, deliver and perform this First Supplemental Indenture, and that all action on its part for the issuance of the Series 2011 Bonds and the execution and delivery of this First Supplemental Indenture has been duly and effectively taken.

**SECTION 502. CERTIFICATION.** The Commission hereby certifies to the Trustee that it is current on all deposits into the various funds and accounts established by the Indenture and all payments required to have been deposited or made by it under the provisions of the Indenture have been deposited or made and have complied with the covenants and agreements of the Indenture.

## **ARTICLE VI MISCELLANEOUS**

**SECTION 601. APPLICABILITY OF THE INDENTURE.** In all respects not inconsistent with the terms and provisions of this First Supplemental Indenture, the provisions of the Indenture are hereby ratified, approved and confirmed and, except as otherwise provided in this First Supplemental Indenture, shall be applicable to the authorization, execution, authentication, issuance, redemption, payment, sale and delivery of the Series 2011 Bonds, the custody and distribution of the proceeds and the security, payment and enforcement of payment thereof.

**SECTION 602. SEVERABILITY.** If any provision of this First Supplemental Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this First Supplemental Indenture contained, shall not affect the remaining portions of this First Supplemental Indenture, or any part thereof.

**SECTION 603. PURPOSE; EXCLUSIVE BENEFIT OF THE PARTIES.** Except as herein otherwise specifically provided, nothing in this First Supplemental Indenture expressed or implied is intended or shall be construed to confer upon any Person other than the Commission, the Trustee and the Holders of the Bond, any right, remedy or claim under or by reason of this First Supplemental Indenture, this First Supplemental Indenture being intended to be for the sole and exclusive benefit of the Commission, the Trustee and the Holders of the Series 2011 Bonds issued hereunder.

**SECTION 604. COUNTERPARTS.** This First Supplemental Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Commission has caused this First Supplemental Indenture to be executed in its name and on its behalf by its Chairman and its Secretary thereunto duly authorized and its seal to be hereunto affixed, and the Trustee has caused this First Supplemental Indenture to be executed in its name and behalf by its duly authorized officers and its corporate seal to be hereunto affixed, all as of the date first above written.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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

Attest:

By: \_\_\_\_\_  
Secretary-Treasurer

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer



**EXHIBIT D**

**FORM OF ESCROW DEPOSIT AGREEMENT**

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**ESCROW DEPOSIT AGREEMENT**

**BETWEEN**

**FLORIDA PORTS FINANCING COMMISSION**

**AND**

\_\_\_\_\_,  
**as Trustee and Escrow Agent**

\_\_\_\_\_  
**Dated as of \_\_\_\_\_, 2011**

\_\_\_\_\_

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## **ESCROW DEPOSIT AGREEMENT**

**ESCROW DEPOSIT AGREEMENT**, dated as of \_\_\_\_\_, 2011 (the "Escrow Agreement"), by and between **FLORIDA PORTS FINANCING COMMISSION**, a legal entity duly created and validly existing under the laws of the State of Florida (the "Commission"), and \_\_\_\_\_, as Trustee under the hereinafter defined Original Indenture and Escrow Agent (the "Escrow Agent"), [a State of \_\_\_\_\_/national banking corporation/association] authorized to exercise trust powers in the State of Florida, as escrow agent hereunder.

**WHEREAS**, pursuant to the Indenture of Trust, dated as of December 1, 1996, (the "Original Indenture"), by and between the Commission and \_\_\_\_\_ (the "Trustee"), the Commission has heretofore issued its \$222,320,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996, \$\_\_\_\_\_ of which are currently outstanding (the "Refunded Bonds"); and

**WHEREAS**, the Commission has determined to provide for the payment in full of the debt service on all of the outstanding Refunded Bonds; and

**WHEREAS**, Article VIII of the Original Indenture provides that the Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Original Indenture upon compliance with the provisions contained therein and relating thereto; and

**WHEREAS**, pursuant to the First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, by and between the Commission and the Trustee, the Commission has determined to issue its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-AMT) and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (collectively, the "Series 2011 Bonds"), the proceeds of which Series 2011 Bonds, [together with certain other available funds,] will be used to purchase certain government securities in order to provide for payment in full of the Refunded Bonds and discharge and satisfy the Original Indenture; and

**WHEREAS**, the issuance of the Series 2011 Bonds, the purchase by the Escrow Agent of the hereinafter defined Escrow Securities, the deposit of such Escrow Securities into an escrow deposit trust fund to be held by the Escrow Agent and the termination of the right, title and interest of the holders of the Refunded Bonds in the Trust Estate (as defined in the Original Indenture) under the Original Indenture in regard to the Refunded Bonds shall occur as a simultaneous transaction; and

**WHEREAS**, this Escrow Agreement is intended to effectuate such simultaneous transaction;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**SECTION 1. PREAMBLES.** The recitals stated above are true and correct and are incorporated by reference herein.

**SECTION 2. RECEIPT OF ORIGINAL INDENTURE AND VERIFICATION REPORT.** Receipt of a true and correct copy of the above-mentioned Original Indenture and this Escrow Agreement is hereby acknowledged by the Escrow Agent. The applicable and necessary provisions of the Original Indenture, including, in particular, Articles III and VIII of the Original Indenture, are incorporated herein by reference. The Escrow Agent also acknowledges receipt of the verification report of \_\_\_\_\_, a firm of independent certified public accountants, dated \_\_\_\_\_, 2011 (the "Verification Report") which is attached hereto as EXHIBIT A. Reference herein to or citation herein of any provisions of the Original Indenture or the Verification Report shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein. Capitalized terms used herein shall have the meanings ascribed thereto by the Original Indenture, except to the extent such terms are defined herein or the context indicates another meaning.

**SECTION 3. DISCHARGE OF LIEN OF HOLDERS OF REFUNDED BONDS.** In accordance with Articles III and VIII of the Original Indenture, the Commission by this writing, exercises the option to have the rights, title and interests in the Trust Estate that were granted to the holders of the Refunded Bonds under the terms and provisions of the Original Indenture to cease, terminate and become void.

**SECTION 4. ESTABLISHMENT OF ESCROW FUND.** There is hereby created and established with the Escrow Agent a special, segregated and irrevocable escrow fund designated the "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 Escrow Deposit Trust Fund" (the "Escrow Fund") to be held in the custody of the Escrow Agent as a trust fund for the benefit of the holders of the Refunded Bonds, separate and apart from other funds of the Commission and the Escrow Agent. The Escrow Agent hereby accepts the Escrow Fund and acknowledges the receipt of and deposit to the credit of the Escrow Fund the sum of \$\_\_\_\_\_, consisting of (A) \$\_\_\_\_\_ received from the Commission from proceeds of the Series 2011 Bonds (the "Bond Proceeds"), (B) other available funds of the Commission heretofore deposited in the Sinking Fund established for the Refunded Bonds pursuant to the Original Indenture in the amount of \$\_\_\_\_\_ (the "Commission Funds").

**SECTION 5. DEPOSIT OF MONEYS AND SECURITIES IN ESCROW FUND.** The Escrow Agent represents and acknowledges that, concurrently with the deposit of the moneys under Section 4 above, and pursuant to the written directions of the Commission, it has used all of the Commission Funds and \$\_\_\_\_\_ of the Bond Proceeds to purchase on behalf of and for the account of the Commission certain United States Treasury obligations – State and Local Government Series (collectively, together with any other securities which may be on deposit, from time to time, in the Escrow Fund, the "Escrow Securities"), which are described in SCHEDULE 1 hereto, and the Escrow Agent will deposit such Escrow Securities and \$\_\_\_\_ of the remaining Bond Proceeds (the "Cash Deposit") in the Escrow Fund. For purposes of this Escrow Agreement, Escrow Securities shall consist only of direct, noncallable obligations of the United States of America to which the full faith and credit of the United States of America has been pledged.

In the event any of the Escrow Securities described in SCHEDULE 1 hereto are not available for delivery on \_\_\_\_\_, 2011, the Escrow Agent may, with the prior written approval of Bond Counsel, substitute other United States Treasury obligations and shall credit such other obligations to the Escrow Fund and hold such obligations until the aforementioned Escrow Securities have been delivered. Bond Counsel may, as a condition precedent to giving its approval, require the Commission to provide it with a revised Verification Report in regard to the adequacy of the Escrow Securities, taking into account the obligations substituted to pay the Refunded Bonds in accordance with the terms hereof and of the Original Indenture. The Escrow Agent shall in no manner be responsible or liable for failure or delay of Bond Counsel or the Commission to promptly approve the substitutions of other United States Treasury obligations for the Escrow Fund.

**SECTION 6. SUFFICIENCY OF ESCROW SECURITIES.** In reliance upon the Verification Report, the Commission represents that the interest on and the principal amounts successively maturing on the Escrow Securities in accordance with their terms (without consideration of any reinvestment of such maturing principal and interest), are sufficient such that moneys will be available to the Escrow Agent in amounts sufficient and at the times required to pay the amounts of principal of, redemption premium, and interest due and to become due on the Refunded Bonds as described in SCHEDULE 2 attached hereto. If the Escrow Securities shall be insufficient to make such payments, the Commission shall timely deposit to the Escrow Fund, solely from legally available funds of the Commission, such additional amounts as may be required to pay the Refunded Bonds as described in SCHEDULE 2 hereto. Notice of any insufficiency shall be given by the Escrow Agent to the Commission as promptly as possible, but the Escrow Agent shall in no manner be responsible for the Commission's failure to make such deposits.

**SECTION 7. ESCROW SECURITIES IN TRUST FOR HOLDERS OF REFUNDED BONDS.** The deposit of the Escrow Securities in the Escrow Fund shall constitute an irrevocable deposit of Governmental Obligations by the Commission in accordance with Articles III and VIII of the Original Indenture in trust solely for the payment of the principal, redemption premium and interest due and to become due on the Refunded Bonds on the Redemption Date as set forth in SCHEDULE 2 hereto, and, except as provided in Section 9 hereof, the principal of and interest earnings on such Escrow Securities shall be used solely for such purposes.

**SECTION 8. ESCROW AGENT TO PAY REFUNDED BONDS FROM ESCROW FUND.** The Commission hereby directs, and the Escrow Agent hereby agrees, that it will take all actions required to be taken by it as Escrow Agent under the provisions hereof and as Trustee under the Original Indenture, including the timely payment of the Refunded Bonds in the amounts and at the times provided in SCHEDULE 2 hereto. The Escrow Securities shall be used to pay the principal of, interest and redemption premium, on the Refunded Bonds as the same may mature or be redeemed. If any payment date shall be a day on which the Escrow Agent is not open for the acceptances or delivery of funds, then the Escrow Agent shall make payment on the next succeeding business day. The liability of the Escrow Agent for the payment of the principal of, redemption premium and interest due and to become due on the Refunded Bonds pursuant to this Escrow Agreement shall be limited to the application of the Escrow Securities and the interest earnings thereon and the Cash Deposit available for such purposes in the Escrow Fund solely in accordance with this Escrow Agreement.

**SECTION 9. REINVESTMENT OF MONEYS AND SECURITIES IN ESCROW FUND.** Money deposited in the Escrow Fund shall be invested only in the Escrow Securities listed in SCHEDULE 1 hereto and this Section 9, and neither the Commission nor the Escrow Agent shall otherwise invest or reinvest any money in the Escrow Fund. In no event may moneys in the Escrow Fund be invested or reinvested in any securities other than Government Obligations.

Except as provided in Section 5 hereof and this Section 9, the Escrow Agent may not sell or otherwise dispose of any or all of the Escrow Securities in the Escrow Fund and reinvest the proceeds thereof in other securities nor may it substitute securities for any of the Escrow Securities, except upon prior written direction of the Commission and where, prior to any such reinvestment or substitution, the Escrow Agent has received the following:

(a) a written verification report by an independent certified public accountant or firm of independent certified public accountants, of recognized standing, appointed by the Commission, to the effect that after such reinvestment or substitution the principal amount of Escrow Securities, together with the interest thereon, will be sufficient to pay the Refunded Bonds as described in SCHEDULE 2 hereto (such verification shall not be

necessary in the event the Commission shall determine to reinvest cash in Escrow Securities which mature on or before the next principal and/or interest payment date for the Refunded Bonds); and

(b) a written opinion of nationally recognized Bond Counsel to the effect that (i) such investment will not cause the Refunded Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code, as amended, and the regulations promulgated thereunder or otherwise cause the interest on the Refunded Bonds or the Series 2011 Bonds to be subject to federal income tax, and (ii) such investment does not violate any provision of Florida law or of the Original Indenture.

In the event the above-referenced verification concludes that there are surplus moneys in the Escrow Fund, such surplus moneys shall be released to the Commission upon its written direction. The Escrow Fund shall continue in effect until the date upon which the Escrow Agent makes the final payment of the Refunded Bonds as described in SCHEDULE 2 hereto, whereupon the Escrow Agent shall sell or redeem any Escrow Securities remaining in the Escrow Fund, and shall remit to the Commission the proceeds thereof, together with all other money, if any, then remaining in the Escrow Fund.

**SECTION 10. REDEMPTION OF REFUNDED BONDS.** The Commission hereby irrevocably instructs the Escrow Agent, as Trustee, to give at the appropriate times the notice or notices required by Section 3.04 of the Original Indenture in connection with the redemption of the Refunded Bonds. Such notice of redemption shall be given in accordance with said Section 3.04 of the Original Indenture and shall, at a minimum, contain the information set forth in EXHIBIT B attached hereto. All of the Refunded Bonds shall be redeemed on \_\_\_\_\_, 2011 at the prepayment price equal to 100% of the par amount thereof plus interest accrued thereon to the date set for redemption.

**[SECTION 11. DEFEASANCE NOTICE TO HOLDERS OF REFUNDED BONDS.** Upon the deposit of the Escrow Securities set forth in Section 5 hereof, the Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Original Indenture. Pursuant to Section 8.01 of the Original Indenture, the Escrow Agent, as Trustee, shall, within three business days of deposit of the Escrow Securities in the Escrow Fund, cause to be mailed to the Holders of the Refunded Bonds a notice substantially in the form provided in EXHIBIT C attached hereto. MAY NOT NEED DEPENDING ON TIMING]

**SECTION 12. ESCROW FUND IRREVOCABLE.** The Escrow Fund hereby created shall be irrevocable and the holders of the Refunded Bonds shall have an express lien on all cash and Escrow Securities deposited in the Escrow Fund pursuant to the terms hereof and the interest earnings thereon until paid out, used and applied in accordance with this Escrow Agreement and the Original Indenture and neither the

Commission nor the Escrow Agent shall cause nor permit any other lien or interest whatsoever to be imposed upon the Escrow Fund.

**SECTION 13. AMENDMENTS TO ESCROW AGREEMENT.** This Escrow Agreement is made for the benefit of the Commission and the holders from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the prior written consent of all such holders; provided, however, that the Commission and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Escrow Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Escrow Agreement, for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Escrow Agreement;

(b) to grant, or confer upon, the Escrow Agent for the benefit of the holders of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent;

(c) to subject to this Escrow Agreement additional funds, securities or properties; and

(d) in order to reflect a transaction being entered into pursuant to Section 9 hereof.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of Bond Counsel with respect to compliance with this Section 13, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section 13.

**SECTION 14. FEES AND EXPENSES OF ESCROW AGENT; INDEMNIFICATION.** In consideration of the services rendered by the Escrow Agent under this Escrow Agreement, the Commission agrees to and shall pay to the Escrow Agent the fees and expenses as shown on the attached SCHEDULE 3. The Escrow Agent shall have no lien or right of set-off whatsoever upon any of the cash or Escrow Securities in said Escrow Fund for the payment of such proper fees and expenses. The Commission further agrees to indemnify and save the Escrow Agent harmless, to the extent allowed by law, against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its gross negligence or willful misconduct. Indemnification provided under this Section 14 shall survive the termination of this Escrow Agreement.



Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Commission. The Escrow Agent may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, opinion or other document furnished to the Escrow Agent pursuant to any provision of this Escrow Agreement; the Escrow Agent shall be protected and shall not be liable for acting or proceeding, in good faith, upon such reliance; and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Escrow Agent may consult with counsel, who may be counsel to the Commission or independent counsel, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance herewith. Prior to retaining such independent counsel, the Escrow Agent shall notify the Commission of its intention to retain counsel.

**SECTION 15. REPORTING REQUIREMENTS OF ESCROW AGENT.**

As soon as practicable after \_\_\_\_\_, 2011 the Escrow Agent shall forward in writing to the Borrower a statement in detail of the withdrawals of money from the Escrow Fund.

**SECTION 16. RESIGNATION OR REMOVAL OF ESCROW AGENT.**

The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than 45 days' written notice to the Commission and mailing notice thereof, specifying the date when such resignation will take effect, to the Commission, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the Commission and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent, signed by either the Commission or by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding. Such instrument shall provide for the appointment of a successor Escrow Agent, which appointment shall occur simultaneously with the removal of the Escrow Agent.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the Commission. The Commission shall mail notice of any such

appointment made by it at the times and in the manner described in the first paragraph of this Section 16.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by the Commission pursuant to the foregoing provisions of this Section 16 within 60 days after written notice of resignation of the Escrow Agent has been given to the Commission, the holder of any of the Refunded Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

In the event of replacement or resignation of the Escrow Agent, the Escrow Agent shall remit to the Commission the prorated portion of prepaid fees not yet incurred or payable less any termination fees and expenses at the time of discharge and shall have no further liability hereunder and the Commission shall indemnify and hold harmless Escrow Agent from any such liability, including reasonable costs or expenses incurred by Escrow Agent or its counsel.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers organized under the banking laws of the United States or any State, and shall have at the time of appointment capital and surplus of not less than \$75,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Commission an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of such successor Escrow Agent or the Commission execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trust of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Escrow Agent shall be paid in full. Should any transfer, assignment or instrument in writing from the Commission be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the Commission.

Any corporation into which the Escrow Agent, or any successor to it in the trusts created by this Escrow Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party or any corporation to which the Escrow Agent or successor to it shall sell or transfer all or substantially all of its corporate trust business, shall be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 17. TERMINATION OF ESCROW AGREEMENT.** This Escrow Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made. Upon such termination, all moneys remaining in the Escrow Fund shall be released to the Commission.

**SECTION 18. GOVERNING LAW.** This Escrow Agreement shall be governed by the applicable laws of the State of Florida.

**SECTION 19. SEVERABILITY.** If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Commission or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

**SECTION 20. COUNTERPARTS.** This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

**SECTION 21. NOTICES.** Any notice, authorization, request or demand required or permitted to be given in accordance with the terms of this Escrow Agreement shall be in writing and sent by registered or certified mail addressed to:

If to the Escrow Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to the Commission: Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301  
Attention: Chairman

**IN WITNESS WHEREOF**, Florida Ports Financing Commission has caused these presents to be signed in its name and on its behalf by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary and \_\_\_\_\_, has caused these presents to be signed in its name by its Authorized Signatory, all as of the day and year first above written.

(SEAL)

**FLORIDA      PORTS      FINANCING  
COMMISSION**

ATTEST:

\_\_\_\_\_  
Secretary

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

\_\_\_\_\_, as Trustee and  
Escrow Agent

By: \_\_\_\_\_  
Authorized Officer

## **SCHEDULE 1**

### **ESCROW SECURITIES**

**SCHEDULE 2**

**DEBT SERVICE REQUIREMENTS FOR REFUNDED BONDS**

**SCHEDULE 3**

**SCHEDULE OF FEES AND EXPENSES**

Administration Fee \$\_\_\_\_\_

**EXHIBIT A**

**VERIFICATION REPORT**



**EXHIBIT B**  
**(FORM OF)**  
**NOTICE OF FULL REDEMPTION**  
**\$222,320,000**  
**FLORIDA PORTS FINANCING COMMISSION**  
**REVENUE BONDS (STATE TRANSPORTATION TRUST FUND), SERIES 1996**  
**DATED DECEMBER 1, 1996**

**NOTICE IS HEREBY GIVEN** on behalf of the Florida Ports Financing Commission (the "Commission"), pursuant to Articles III and VIII of the Indenture of Trust, dated as of December 1, 1996 (the "Original Indenture"), by and between the Commission and \_\_\_\_\_ (the "Trustee") that all of the outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996, dated December 1, 1996 (the "Bonds") will be redeemed on \_\_\_\_\_, 2011 (the "Redemption Date") at the redemption price of 100% of the principal amount of each Bond to be redeemed together with the interest accrued thereon to the Redemption Date.

The Bonds to be redeemed are:

<u>Maturity</u>	<u>Interest Rate</u>	<u>Amount</u>	<u>CUSIP No.</u>
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Payment of the redemption price, including redemption premium and interest, of such Bonds will be made on or after such redemption date at the office of the Trustee set forth below, as paying agent for the Bonds upon surrender thereof. Interest on such Bonds will cease to accrue from and after such redemption date. The Bonds are deemed to be paid within the meaning of Articles III and VIII of said Original Indenture, shall no longer be secured from the Trust Estate (as such term is defined in the Original Indenture), and shall only be secured from the deposit in irrevocable escrow of cash and United States Treasury obligations made by the Commission pursuant to said Articles III and VIII of the Original Indenture.

Pursuant to the governing documents, payment of the Redemption Price on the Bonds called for redemption will be paid without presentation of the Bonds if presentment is not required and upon presentation of the Bonds if presentment is required. If presentment is required, surrender thereof can be made in the following manner:

If by Mail:

If by Hand or Overnight Mail:

[Bondholders presenting their bonds in person for same day payment **must** surrender their bond(s) by 1:00 P.M. on the Redemption Date and a check will be available for pick up after 2:00 P.M. Checks not picked up by 4:30 P.M. will be mailed out to the bondholder via first class mail. If payment of the Redemption Price is to be made to the registered owner of the Bond, you are not required to endorse the Bond to collect the Redemption Price.]

### **REQUIREMENT INFORMATION**

For a list of redemption requirements please visit our website at \_\_\_\_\_ and click on the [**"Bondholder Information"**] link.

### **IMPORTANT NOTICE**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

\*The Undersigned shall not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in the Redemption Notice. It is included solely for the convenience of the Holders.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

**By:** \_\_\_\_\_, *as Trustee or Agent*

**EXHIBIT C**  
**(FORM OF)**  
**NOTICE OF DEFEASANCE**  
**\$222,320,000**  
**FLORIDA PORTS FINANCING COMMISSION**  
**REVENUE BONDS (STATE TRANSPORTATION TRUST FUND), SERIES 1996**  
**DATED DECEMBER 1, 1996**

**NOTICE IS HEREBY GIVEN** pursuant to Articles III and VIII of the Indenture of Trust, dated as of December 1, 1996 (the "Original Indenture"), by and between the by and between the Commission and \_\_\_\_\_ (the "Trustee") that all of the outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996, dated December 1, 1996 (the "Bonds") are deemed to be paid within the meaning of Articles III and VIII of said Original Indenture, shall no longer be secured from the Trust Estate (as such term is defined in the Original Indenture), and shall only be secured from the deposit in irrevocable escrow of cash and United States Treasury obligations made by the Florida Ports Financing Commission pursuant to said Articles III and VIII of the Original Indenture.

**NOTICE IS HEREBY FURTHER GIVEN**, on behalf of Florida Ports Financing Commission that the Bonds will be redeemed on \_\_\_\_\_, 2011 at the redemption price equal to 100% of the principal amount of each Bond to be redeemed, plus interest accrued thereon to such date.

Payment of the redemption price, including redemption premium and interest, of such Bonds will be made on or after such redemption date at the office of \_\_\_\_\_, the paying agent for the Bonds upon surrender thereof. Interest on such Bonds will cease to accrue from and after such redemption date.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_, as Trustee

**EXHIBIT E**

**PRELIMINARY OFFICIAL STATEMENT**

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2010**

**NEW ISSUE - BOOK-ENTRY ONLY**

In the opinion of Bond Counsel, under existing statutes, regulations, rulings and court decisions, and subject to the conditions described herein under "TAX MATTERS," interest on the Series 2011 Bonds (as hereinafter defined) is excluded from gross income of the holders of such Series 2011 Bonds for federal income tax purposes, except that such exclusion shall not apply during any period such Series 2011B Bonds are held by a "substantial user" of the facilities refinanced with proceeds of the Series 2011B Bonds or a "related person" within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended. Interest on the Series 2011A Bonds will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. However, interest on the Series 2011B Bonds is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. Such interest may be subject to other federal income tax consequences referred to herein under "TAX MATTERS."

\$ \_\_\_\_\_ \*

**Florida Ports Financing Commission  
Refunding Revenue Bonds (State Transportation Trust Fund),  
Series 2011A (NON-AMT)**

**and**

\$ \_\_\_\_\_ \*

**Florida Ports Financing Commission  
Refunding Revenue Bonds (State Transportation Trust Fund),  
Series 2011B (AMT)**

**Dated: Date of Delivery**

**Due: As shown on Inside cover page**

The Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (NON-AMT) (the "Series 2011A Bonds") and the Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (the "Series 2011B Bonds" and, collectively with the Series 2011A Bonds, the "Series 2011 Bonds") are being issued as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. The Series 2011 Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Series 2011 Bonds. Purchasers will not receive certificates representing their beneficial ownership interests in the Series 2011 Bonds when purchased. Interest on the Series 2011 Bonds will be paid semi-annually on April 1 and October 1 of each year, commencing [April 1, 2011]. The principal of, premium, if any, and interest on the Series 2011 Bonds are payable by \_\_\_\_\_, \_\_\_\_\_, Florida, as Trustee, or its successor, to DTC, which in turn is to remit such payments to the herein described DTC Participants, who are in turn to remit such payments to the Beneficial Owners (as defined herein) of the Series 2011 Bonds, as described herein. The Series 2011 Bonds are subject to redemption prior to maturity as more fully described herein.

This cover page contains information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement, including the appendices to obtain information essential to the making of an informed investment decision.

The Florida Ports Financing Commission (the "Commission") previously issued its \$222,320,000 original aggregate principal amount of Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds") to make loans to certain participating Ports (as defined herein) in Florida or the political subdivisions of the State of Florida (the "State") which own and operate such Ports (each, a "Borrower" and collectively, the "Borrowers") pursuant to separate loan agreements (collectively, the "Loan Agreements") to finance, refinance or reimburse the cost of approved capital projects and to pay certain costs of issuing the Series 1996 Bonds, all as more fully described herein. The Series 2011 Bonds are being issued by the Commission to refinance and redeem all of the outstanding Series 1996 Bonds, as described herein and to pay certain costs of issuance on the Series 2011 Bonds.

The Series 2011 Bonds are solely and exclusively a special and limited obligations of the Commission payable solely from and secured by (a) all right, title and interest of the Commission under the Loan Agreements (excluding fees and expenses payable to, or on behalf of, the Commission and rights of the Commission to indemnity and notices thereunder and excluding any payments made by the Borrowers to comply with the rebate provisions of Section 148(f) of the herein defined Code), as more particularly described herein (b) all moneys and securities from time to time held by the Trustee under the terms of the Indenture (except for moneys and securities held in the Rebate Fund and the Administrative Expense Fund), including any investment earnings thereon, all in accordance with the provisions of the Indenture and (c) all of the Revenues (as defined herein) (other than the herein defined Additional Payments), any proceeds of Bond Insurance (as herein defined), any and all other property, rights and interests of every kind and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, pledged, hypothecated or otherwise subjected to the Indenture, as and for additional security therewith, by the Commission or any other person on its behalf or with its written consent (collectively, the "Trust Estate"). See "SECURITY FOR THE SERIES 2011 BONDS."

**The Series 2011 Bonds do not create nor constitute, now or in the future, an obligation or debt of the State or any political subdivision thereof or any public corporation, Port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective Loan Agreements) other than the Commission to the extent provided in the**

Indenture; nor shall the Series 2011 Bonds constitute the giving, pledging or loan of the faith and credit of the State or any political subdivision thereof or any public corporation, port or governmental agency existing under the laws of the State, but shall be payable solely from the Trust Estate under the Indenture. The issuance of the Series 2011 Bonds shall not, directly, indirectly or contingently, obligate the State or any political subdivision thereof or any public corporation, Port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective Loan Agreements). None of the obligations of the Borrowers under their respective Loan Agreements are secured by a pledge of their taxing powers, if any, and none are payable from ad valorem taxes. The Loan Agreements do not represent joint liabilities of the Borrowers executing Loan Agreements with the Commission, and shall be payable solely as provided in such Loan Agreements.

The Series 2011 Bonds are limited and special obligations of the Commission payable solely from payments of principal and interest ("Basic Payments") by the Borrowers under Loan Agreements between the Commission and the Borrowers and investment earnings to the extent provided in the herein described Indenture. Basic Payments are required to be paid by the Borrowers solely from moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, which provides that \$15,000,000 in certain revenues derived from the registration of motor vehicles in Florida be deposited annually in the State Transportation Trust Fund for funding certain Port projects and to secure the payment of refunding bonds issued to refinance the Series 1996 Bonds. The obligation of the State to make such deposit is subordinate to the satisfaction of other obligations of the State payable from revenues derived from the registration of motor vehicles including certain bonds issued by the State Board of Education and the Florida Ports Financing Commission. See "SECURITY FOR THE BONDS" herein.

[Payment of the principal of and interest on the Series 2011 Bonds, when due, will be guaranteed by a municipal bond insurance policy to be issued by \_\_\_\_\_ simultaneously with the delivery of the Series 2011 Bonds. See "MUNICIPAL BOND INSURANCE" herein.]

[Insurer logo]

*The Series 2011 Bonds are being offered by the Underwriters when, as and if issued by the Commission and accepted by the Underwriters subject to the delivery an approving opinion by Nabors, Giblin & Nickerson, P.A., Tampa, Florida, Bond Counsel. Certain legal matters will be passed upon for the Commission by \_\_\_\_\_, and for the Underwriters by their counsel, Squire, Sanders & Dempsey (US) LLP, Miami, Florida. First Southwest Company, Aventura, Florida is serving as Financial Advisor to the Commission. It is expected that the Series 2011 Bonds will be available for delivery in New York, New York on or about \_\_\_\_\_, 2011.*

**CITI**

**BofA Merrill Lynch**

**Morgan Stanley**

**Siebert Brandford Shank & Co.,  
L.L.C.**

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\* Preliminary, subject to change.

**FLORIDA PORTS FINANCING COMMISSION**  
**Refunding Revenue Bonds (State Transportation Trust Fund),**  
**Series 2011A (NON-AMT)**

**MATURITY DATES, AMOUNTS, INTEREST RATES, YIELDS AND CUSIP NOS.**

\$ \_\_\_\_\_ **Serial Series 2011A Bonds**

<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>	<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>
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\$ \_\_\_\_\_ Term Series 2011A Bond due October 1, \_\_\_\_\_, at \_\_\_\_\_%, Yield \_\_\_\_\_%, Cusip No. \_\_\_\_\_.

**FLORIDA PORTS FINANCING COMMISSION**  
**Refunding Revenue Bonds (State Transportation Trust Fund),**  
**Series 2011B (AMT)**

**MATURITY DATES, AMOUNTS, INTEREST RATES, YIELDS AND CUSIP NOS.**

\$ \_\_\_\_\_ **Serial Series 2011B Bonds**

<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>	<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>
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\$ \_\_\_\_\_ Term Series 2011B Bond due October 1, \_\_\_\_\_, at \_\_\_\_\_%, Yield \_\_\_\_\_%, Cusip No. \_\_\_\_\_.

No dealer, salesperson, or other person has been authorized to give any information or to make any representation, other than the information contained in this Official Statement, in connection with the offering of the Series 2011 Bonds, and, if given or made, such information or representation must not be relied upon as having been authorized by the Underwriters. The information in this Official Statement is subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the such entities or others since the date hereof. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation.

**IN MAKING ANY INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE VARIOUS ENTITIES DESCRIBED ABOVE AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE SERIES 2011 BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2011 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF THE SECURITIES LAWS OF THE STATES, IF ANY, IN WHICH THE SERIES 2011 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN CERTAIN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2011 BONDS OR THE ACCURACY, ADEQUACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

**THE PRICES AT WHICH THE SERIES 2011 BONDS ARE OFFERED TO THE PUBLIC BY THE UNDERWRITERS MAY VARY FROM THE INITIAL PUBLIC OFFERING PRICES APPEARING ON THE INSIDE COVER PAGE HEREOF. IN ADDITION, THE UNDERWRITERS MAY ALLOW CONCESSIONS OR DISCOUNTS FROM SUCH INITIAL PUBLIC OFFERING PRICES TO DEALERS AND OTHERS. IN CONNECTION WITH THE OFFERING OF THE SERIES 2011 BONDS, THE UNDERWRITERS MAY EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2011 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

The information set forth herein has been obtained from the Florida Ports Financing Commission (the "Commission") and other sources which are believed to be reliable. The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information. The information and expressions of opinion stated herein are



subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in the affairs of the Commission or the Borrowers since the date hereof or the earliest date as of which such information is given or the implication that any information herein is correct as of any time subsequent to its date.

This Official Statement contains certain “forward-looking statements” concerning the Commission’s or the Borrower’s operations, performance and financial condition, including its future economic performance, plans and objectives. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Commission. The words “may,” “could,” “will,” “expect,” “anticipate,” “believe,” “intend,” “plan,” “estimate” and similar expressions are meant to identify these forward-looking statements. Actual results may differ materially from those expressed or implied by these forward-looking statements.

The Commission has deemed this Preliminary Official Statement “final,” except for permitted omissions, within the contemplation of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

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## OFFICIAL STATEMENT

*relating to*

\$ \_\_\_\_\_ \*

**FLORIDA PORTS FINANCING COMMISSION**  
**Refunding Revenue Bonds (State Transportation Trust Fund),**  
**Series 2011A (NON-AMT)**

**and**

\$ \_\_\_\_\_ \*

**FLORIDA PORTS FINANCING COMMISSION**  
**Refunding Revenue Bonds (State Transportation Trust Fund),**  
**Series 2011B (AMT)**

## INTRODUCTORY STATEMENT

The purpose of this Official Statement is to set forth certain information concerning the issuance and sale by the Florida Ports Financing Commission (the “Commission”) of its \$ \_\_\_\_\_\* original aggregate principal amount of Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (NON-AMT) (the “Series 2011A Bonds”) and its \$ \_\_\_\_\_\* original aggregate principal amount of Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (the “Series 2011B Bonds” and, together with the Series 2011A Bonds, the “Series 2011 Bonds”). The Series 2011 Bonds are being issued pursuant to the Constitution and laws of the State of Florida (the “State”), particularly Section 320.20(3), Florida Statutes, and Chapter 163, Part I, Florida Statutes (collectively, the “Interlocal Act”), and other applicable provisions of law, including, without limitation, Part I of Chapter 159, Florida Statutes, Chapter 311, Florida Statutes, and Chapter 315, Florida Statutes (together with the Interlocal Act, the “Act”), and under an Indenture of Trust dated as of December 1, 1996 (the “Original Indenture”), as amended and restated by the First Amended and Restated Indenture of Trust, dated as of the date of issuance of the Bonds, as supplemented by the First Supplemental Indenture of Trust, dated as of the date of issuance of the Bonds (collectively, the “Indenture”), each between the Commission and \_\_\_\_\_, \_\_\_\_\_, Florida, as trustee (the “Trustee”).

The Commission was created pursuant to the Interlocal Act through an Interlocal Agreement dated July 17, 1996, as amended and restated by a First Amended and Restated Interlocal Agreement dated as of September 15, 1997, (collectively, the “Interlocal Agreement”) by and among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority (Port Manatee), Panama City Port Authority, Port of Palm Beach District (Port of Palm Beach) and St. Lucie County (Port of Ft. Pierce). The Commission has established a financing program under the Act (the “Program”) pursuant to which the

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\* Preliminary, subject to change.

Commission issued under the Original Indenture its \$222,320,000 original aggregate principal amount of Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds") and lent the proceeds thereof to ports, port authorities and port districts in Florida described in Section 311.09(1), Florida Statutes (each, a "Port" and collectively, the "Ports") in order to finance, refinance or reimburse the cost of acquiring and constructing capital projects pursuant to Section 320.20, Florida Statutes (each a "Project" and collectively, the "Projects"), for certain participating Ports and to pay certain costs of issuing the Series 1996 Bonds. See "THE COMMISSION-- Loans from Proceeds of the Series 1996 Bonds" herein. The Commission accomplished such financing, refinancing and reimbursement for such Projects through loans to such Ports or the political subdivisions of the State (each a "Loan" and collectively the "Loans") which own and operate such Ports (each, a "Borrower" and collectively, the "Borrowers") pursuant to separate loan agreements entered into between each Borrower and the Commission (each, an "Original Loan Agreement" and collectively, the "Original Loan Agreements").

The Series 2011 Bonds are being issued to provide funds to refund all of the Outstanding Series 1996 Bonds, as described herein. Upon the issuance of the Series 2011 Bonds and the refunding of the Series 1996 Bonds, the Commission and the Borrowers pursuant to certain resolutions of the Borrowers will revise the payment schedules under the Original Loan Agreements to provide for the new debt service schedule for the Series 2011 Bonds. The Original Loan Agreements as revised are hereinafter referred to as the "Loan Agreements". The Series 2011 Bonds, together with any Additional Bonds issued pursuant to the Indenture are referred to herein as the "Bonds".

All capitalized words and phrases used herein and not otherwise defined herein shall have the meaning ascribed to them in the Indenture and the Loan Agreements, the forms of which are included in APPENDIX A and APPENDIX B attached hereto, respectively.

In addition to the Series 1996 Bonds, on October 14, 1999, the Commission issued, pursuant to a separate Indenture, \$153,115,000 in aggregate principal amount of its Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999 (the "Series 1999 Bonds"). Concurrently with the issuance of the Series 2011 Bonds, the Commission intends to issue pursuant to a separate indenture, refunding bonds to refund all or a portion of the Series 1999 Bonds. See "THE COMMISSION - Prior Financing" herein.

The Borrowers of the proceeds of the Series 1999 Bonds are Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Miami-Dade County (Port of Miami), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Ocean Highway and Port Authority, Port of Fernandina, Port of Palm Beach District (Port of Palm Beach) and Panama City Port Authority (Port of Panama City). Under the provisions of the Original Loan Agreements, all or portions of the original Loans were reassigned to another Port, however none of the proceeds of the Loans were reassigned to a Port which was not a Borrower under the Original Loan Agreements.

This Official Statement contains brief descriptions of, among other things, the Commission, the Series 2011 Bonds, [the Bond Insurance Policy,] [the Bond Insurer,] DTC and

the book-entry only system of registration, the Ports, the Projects, the Loan Agreements and the Indenture. Such descriptions do not purport to be comprehensive or definitive. All descriptions in this Official Statement of the Indenture, the Loan Agreements and any other documents relating to the Series 2011 Bonds are qualified in their entirety by reference to the Indenture, the Loan Agreements and such other documents. Until the issuance and delivery of the Series 2011 Bonds, copies of the forms of documents relating to the Series 2011 Bonds which are not included as an Appendix to this Official Statement may be obtained from the Underwriters. After issuance and delivery of the Series 2011 Bonds, copies of the Indenture, the Loan Agreements and other documents relating to the Series 2011 Bonds may be obtained from the Florida Ports Council, as Administrator of the Program, 502 East Jefferson Street, Tallahassee, Florida 32301.

## **PLAN OF FINANCE**

### **General**

The Series 2011 Bonds are being issued to provide funds, [together with other available moneys of the Commission,] to (i) refund all of the Outstanding Series 1996 Bonds, as described below (the “Refunded Bonds”), and (ii) pay related costs and expenses in connection with the issuance of the Series 2011 Bonds[, including municipal bond insurance premium].

### **The Refunded Bonds**

A portion of the proceeds of the Series 2011 Bonds will be applied by the Commission to refund the Refunded Bonds. The Refunded Bonds will be called for redemption on \_\_\_\_\_, 2011 at a redemption price of one hundred percent (100%) of the principal amount of the Refunded Bonds plus accrued interest to the date of redemption. A portion of the proceeds of the Series 2011 Bonds, together with other available moneys of the Commission, will be deposited into an Escrow Fund pursuant to an Escrow Deposit Agreement dated as of the date of issuance of the Bonds between the Commission and the Trustee, to provide for the payment of such redemption price and accrued interest.

The monies deposited to the Escrow Fund, other than a cash deposit, will be applied to the purchase of noncallable direct obligations of the United States of America so as to produce sufficient funds, together with the cash deposit held therein, to pay the principal of, premium, and interest on the Refunded Bonds, as the same become due and payable, on the date set for redemption. See “VERIFICATION OF MATHEMATICAL COMPUTATIONS” herein.

Upon the deposit of such monies in the Escrow Fund and investment thereof, receipt of schedules and the report of [\_\_\_\_\_], the Verification Agent with respect to such deposit, in the opinion of Bond Counsel rendered in reliance upon such report and schedules and in reliance upon the certificates and representations of the Commission, the Refunded Bonds will no longer be deemed to be outstanding for purposes of the Indenture. The monies and securities on deposit in the Escrow Fund will not be available for payment of the Series 2011 Bonds.

## THE BONDS

### General

The Series 2011 Bonds will be issuable as fully registered bonds without coupons in denominations of \$5,000 and integral multiple thereof. The Series 2011 Bonds will be dated as of their date of issuance, will bear interest at the rates and mature at the times and in the amounts set forth on the inside cover page hereof and will be subject to [optional and mandatory redemption prior to maturity as described below under “Redemption Provisions” below]. Interest on the Bonds will be payable semi-annually on each April 1 and October 1, commencing April 1, [2011] (each, an “Interest Payment Date”).

The Series 2011 Bonds will be issued in book-entry only form and, when issued, will be registered to Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). See “Book-Entry-Only System” below.

### Series 2011A Bonds Redemption Provisions

*Optional Redemption.* The Series 2011A Bonds maturing before October 1, [\_\_\_\_] are not subject to optional redemption by the Commission. The Series 2011A Bonds maturing on and after October 1, \_\_\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after October 1, [\_\_\_\_], if in part by maturities to be selected by the Commission, and by lot within a maturity if less than a full maturity at a Redemption Price of 100% of the principal amount of the Series 2011A Bonds redeemed together with accrued interest to the redemption date.

*Mandatory Redemption.* The Series 2011A Term Bonds maturing on October 1, \_\_\_\_ are subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011A Term Bonds on the following Dates:

Year (October 1)	Amortization Installments
---------------------	------------------------------

### Series 2011B Bonds Redemption Provisions

*Optional Redemption.* The Series 2011B Bonds maturing before October 1, [\_\_\_\_] are not subject to optional redemption by the Commission. The Series 2011B Bonds maturing on and after October 1, \_\_\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after October 1, [\_\_\_\_], if in part by maturities to be selected by the



Commission, and by lot within a maturity if less than a full maturity at a Redemption Price of 100% of the principal amount of the Series 2011B Bonds redeemed together with accrued interest to the redemption date.

***Mandatory Redemption.*** Series 2011B Bonds. The Series 2011B Term Bonds maturing on October 1, \_\_\_\_ are subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011B Term Bonds on the following Dates:

<u>Year</u> <u>(October 1)</u>	<u>Amortization</u> <u>Installments</u>
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The Redemption Price shall be 100% of the principal amount of the Series 2011 Term Bonds or portions thereof so redeemed, plus accrued interest to the redemption date, without redemption premium. The particular Series 2011 Term Bonds or portions thereof to be redeemed on each particular redemption date shall be selected by the Trustee by lot. The Trustee shall give notice of the call for such redemptions in the manner provided in the Indenture and set forth below, and if applicable, such notice shall state that any redemption is conditional on such funds being deposited with the Trustee on or prior to the redemption date and that a failure to make such deposit will not constitute an Event of Default.

***Notice of Redemption.*** Notice of redemption shall specify the Bond or Bonds (or portions thereof) to be redeemed and the date and place for redemption and shall be given by the Trustee on behalf of the Commission by first class mail, postage prepaid, at least 30 days prior to the redemption date to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books held by the Trustee as of the date of mailing such notice. Failure to mail such notice to the Holders of the Bonds to be redeemed, or any defect therein, shall not affect the proceedings for redemption of Bonds as to which no such failure or defect has occurred. Such notice shall state: (a) the CUSIP numbers of all Bonds being redeemed, (b) the original issue date of such Bonds, (c) the maturity date and rate of interest borne by each Bond being redeemed, (d) the redemption date, (e) the Redemption Price, (f) the date on which such notice is mailed, (g) if less than all Outstanding Bonds are to be redeemed, the certificate number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed, (h) that on such redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such date, interest thereon shall cease to accrue and be payable, (i) that the Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated corporate trust office of the

Trustee at an address specified, and (j) the name and telephone number of a person designated by the Trustee to be responsible for such redemption.

The Commission may provide that a notice of redemption may be contingent upon the occurrence of certain condition(s) and that if such condition(s) do not occur, the notice will be rescinded, provided notice of rescission shall be mailed in the manner described in the Indenture to all affected Bondholders within a reasonable time period after the Commission determines that such conditions will not be satisfied.

Upon the giving of notice as described above, and moneys available for such redemption being on deposit with the Trustee, interest on the Series 2011 Bonds or portions thereof called for redemption will no longer accrue after the date fixed for redemption.

AT ANY TIME DURING WHICH THE BOOK-ENTRY-ONLY SYSTEM IS IN EFFECT, THE ABOVE NOTICE OF REDEMPTION SHALL BE SENT BY THE TRUSTEE ONLY TO DTC.

### **Selection of Bonds to be Redeemed**

When Series 2011 Bonds are redeemed by lot, selection of Series 2011 Bonds for redemption shall be in such manner as the Trustee shall determine; provided, however, that the portion of any Series 2011 Bond to be redeemed shall be in the principal amount of \$5,000 or any whole multiple thereof, except as otherwise provided by Supplemental Indenture.

### **Book-Entry-Only System**

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2011 Bonds. The Series 2011 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2011 Bonds certificate will be issued for each maturity and each interest rate, if different within the same maturity of a series of the Series 2011 Bonds as set forth on the inside cover of this Official Statement, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned

subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Series 2011 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2011 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2011 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2011 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2011 Bonds, except in the event that use of the book-entry system for the Series 2011 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2011 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2011 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2011 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2011 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Beneficial Owners of Series 2011 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2011 Bonds, such as redemptions and proposed amendments to the Series 2011 Bond documents. For example, Beneficial Owners of Series 2011 Bonds may wish to ascertain that the nominee holding the Series 2011 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of a series of the Series 2011 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2011 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2011 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, if any, and interest payments on the Series 2011 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the Commission on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with Series 2011 Bonds held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, the Registrar, Paying Agent or the Commission, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, if any, and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Commission and/or the Paying Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Commission and the Underwriters believe to be reliable, but the Commission and the Underwriters take no responsibility for the accuracy thereof.

DTC may discontinue providing its services as securities depository with respect to the Series 2011 Bonds at any time by giving reasonable notice to the Commission, the Trustee, or Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2011 Bond certificates are required to be printed and delivered.

The Commission may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered to DTC.

**NEITHER THE COMMISSION NOR THE REGISTRAR, THE TRUSTEE OR PAYING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY DTC PARTICIPANT OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE SERIES 2011 BONDS IN RESPECT OF THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT, THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT IN RESPECT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2011 BONDS, ANY NOTICE**

**WHICH IS PERMITTED OR REQUIRED TO BE GIVEN TO HOLDERS OF SERIES 2011 BONDS UNDER THE INDENTURE, THE SELECTION BY DTC OR ANY DTC PARTICIPANT OR ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2011 BONDS, OR ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER. SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE SERIES 2011 BONDS, AS NOMINEE OF DTC, REFERENCES IN THIS OFFICIAL STATEMENT TO THE HOLDERS OF SERIES 2011 BONDS OR REGISTERED OWNERS OF THE SERIES 2011 BONDS SHALL MEAN CEDE & CO., AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE SERIES 2011 BONDS.**

The Commission and the Trustee shall have no responsibility or obligation with respect to: (i) the accuracy of the records of DTC or any Participant with respect to any beneficial ownership interest of the Series 2011 Bonds; (ii) the delivery to any Participant, Beneficial Owner of the Series 2011 Bonds or other person, other than DTC, of any notice with respect to the Series 2011 Bonds; (iii) the payment to any Participant, Beneficial Owner of the Series 2011 Bonds or other person, other than DTC, of any amount with respect to the principal of or interest on, the Series 2011 Bonds; or (iv) any consent given by DTC as registered owner.

## **SECURITY FOR THE SERIES 2011 BONDS**

### **General**

The Indenture creates a continuing, irrevocable lien and claim upon, pledge of and grant of the Trust Estate, to the extent provided therein, to secure the full payment of the principal of and interest on the Bonds as the same shall become due. The Series 2011 Bonds are, to the extent provided in the Indenture, equally and ratably secured by the Indenture without preference, priority or distinction, so that the Bonds at any time Outstanding thereunder shall have the same right, lien and preference under and by virtue of the Indenture and shall all be secured thereby with like effect.

The “Trust Estate” is defined in the Indenture as:

(1) all right title and interest of the Commission under the Loan Agreements (excluding fees and expenses payable to, or on behalf of, the Commission and rights of the Commission to indemnity and notices thereunder and excluding any payments made by the Borrowers to comply with the rebate provisions of Section 148(f) of the Code) entered into by the Borrowers and any documents securing payment thereunder, including all extensions and renewals of any of the terms of the Loan Agreements and any documents securing payment thereunder and, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any income, issues and profits and other sums of money payable to or receivable by the Commission, to bring actions or proceedings under the Loan Agreements, any documents securing payment thereunder or for the enforcement thereof, and to do any and all things which the Commission is or may become entitled to do under or due to its ownership of the interests granted in the Loan Agreements; provided, however, that the Bonds shall be secured only by the right, title and interest of the Commission in the Loan Agreements relating thereto; and

(2) all moneys and securities from time to time held by the Trustee under the terms of the Indenture (except for moneys and securities held in the Rebate Fund and the Administrative Expense Fund), including any investment earnings thereon, all in accordance with the provisions of the Indenture; and

(3) all Revenues (other than Additional Payments), any proceeds of Bond Insurance, any and all other property, rights and interests of every kind and nature from time to time by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, pledged, hypothecated or otherwise subjected hereto, as and for additional security under the Indenture, by the Commission or any other person on its behalf or with its written consent.

THE SERIES 2011 BONDS ARE SOLELY AND EXCLUSIVELY A SPECIAL AND LIMITED OBLIGATION OF THE COMMISSION PAYABLE SOLELY FROM THE TRUST ESTATE AND DO NOT CREATE NOR CONSTITUTE, NOW OR IN THE FUTURE, AN OBLIGATION OR DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS) OTHER THAN THE COMMISSION TO THE EXTENT PROVIDED IN THE INDENTURE; NOR SHALL THE SERIES 2011 BONDS CONSTITUTE THE GIVING, PLEDGING OR LOAN OF THE FAITH AND CREDIT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE, BUT SHALL BE PAYABLE SOLELY FROM THE TRUST ESTATE. THE ISSUANCE OF THE SERIES 2011 BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS). NONE OF THE OBLIGATIONS OF THE BORROWERS UNDER THEIR RESPECTIVE LOAN AGREEMENTS ARE SECURED BY A PLEDGE OF THEIR TAXING POWERS, IF ANY, AND NONE ARE PAYABLE FROM AD VALOREM TAXES. THE LOAN AGREEMENTS DO NOT REPRESENT JOINT LIABILITIES OF THE BORROWERS EXECUTING LOAN AGREEMENTS WITH THE COMMISSION, AND SHALL BE PAYABLE SOLELY AS PROVIDED IN SUCH LOAN AGREEMENTS.

#### **Basic Payments from State Transportation Trust Fund**

Pursuant to the respective Loan Agreements, each Borrower is required to pay to the Trustee, for the account of the Commission, among other payments, semiannual payments of principal and interest (“Basic Payments”) on each April 1 and October 1, or if such day is not a Business Day, the next preceding Business Day, (each, a “Loan Repayment Date”). Basic Payments received from all Borrowers shall be applied by the Trustee, together with investment earnings to the extent provided in the Indenture, to pay principal of and interest on the Bonds as the same become due and payable. Basic Payments are required to be paid by the Borrowers solely from moneys due the Borrowers from revenues derived from Motor Vehicle License

Taxes (as hereinafter defined) deposited annually to the State trust fund created pursuant to Section 206.46, Florida Statutes (the “State Transportation Trust Fund”) under the provisions of Section 320.20(3), Florida Statutes. See “Motor Vehicle License Taxes” below.

Under the respective Loan Agreements, each Borrower assigned to the Trustee, on behalf of the Commission, all its rights, title and interest in such moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, to repay the loan. Pursuant to that certain Master Agreement between the State’s Department of Transportation (the “Department” or the “Department of Transportation”) and the Commission, dated November 7, 1996 (the “Master Agreement”) such moneys shall be transferred by the Department annually into an escrow account held by the State’s Department of Insurance, Division of Treasury (the “State Treasury”), on behalf of the Trustee, and be available to be drawn upon by the Trustee in order to pay the debt service on the Bonds as the same becomes due, See “The Master Agreement” below.

### **Motor Vehicle License Taxes**

There is levied in Florida pursuant to Chapter 320, Florida Statutes, an annual license tax for the operation of motor vehicles which must be paid to and collected by the State Department of Highway Safety and Motor Vehicles upon the registration or re-registration of automobiles, motorcycles, motor trucks and all other vehicles operated over the public highways and streets of Florida and propelled by power other than muscular power.

***Distribution.*** Under the provisions of Section 320.20, Florida Statutes, the revenue derived by the State from the registration of such motor vehicles, including any delinquent fees and excluding those revenues collected and distributed under the provisions of Section 320.081, Florida Statutes, relating to mobile homes and park trailers and to travel trailers and fifth-wheel trailers exceeding 35 feet in body length (collectively, the “Motor Vehicle License Taxes”), must be distributed monthly, as collected, as follows:

(1) The first proceeds, to the extent necessary to comply with the provisions of Section 18, Article XII of the State Constitution of 1885, as adopted by Section 9(d), Article XII of the State Constitution of 1968, as amended in 1972 (the “School Capital Outlay Amendment”), and Section 1010.57, Florida Statutes, must be deposited in the School District and Community College District Capital Outlay and Debt Service Fund (the “School Capital Outlay Fund”).

(2) Twenty-Five million dollars (\$25,000,000) per year of such revenues must be deposited in the State Transportation Trust Fund, with priority use assigned to completion of the interstate highway system. However, any excess funds may be utilized for general transportation purposes, consistent with the Department’s legislatively approved objectives.

(3) Notwithstanding any other provision of law except (1) and (2) above, on July 1, 1996, and annually thereafter, fifteen million dollars (\$15,000,000) shall be deposited in the State Transportation Trust Fund solely for purposes of funding the Florida Seaport Transportation and Economic Development Program as provided for in Chapter 311, Florida Statutes. Such revenues are to be distributed on a 50-50 matching basis to any port listed in

Section 311.09(1), Florida Statutes, to be used for funding projects as described in Section 311.07(3)(b), Florida Statutes. Such revenues are not pledged as a trust for the payment of the Bonds; rather, such revenues are pledged as a trust for the payment of principal and interest on the Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds"), which were originally issued in an aggregate principal amount of \$222,320,000, of which \$161,380,000 aggregate principal .

(4) Notwithstanding any other provision of law except (1), (2), and (3) above, on July 1, 1999 and annually thereafter, ten million dollars (\$10,000,000) shall be deposited in the State Transportation Trust Fund solely for the purposes of funding the Florida Seaport Transportation and Economic Development Program as provided in Chapter 311, Florida Statutes, and for funding seaport intermodal access projects of statewide significance as provided in Section 341.053, Florida Statutes. Such revenues shall be distributed to any port listed in Section 311.09(1), Florida Statutes, to be used for funding projects as follows:

(a) For any seaport intermodal access projects that are identified in the 1997-1998 Tentative Work Program of the Department of Transportation, up to the amounts needed to offset the funding requirements of Section 320.20, Florida Statutes;

(b) For seaport intermodal access projects as described in Section 341.053(5), Florida Statutes, that are identified in the 5-year Florida Seaport Mission Plan as provided in Section 311.09(3), Florida Statutes. Funding for such projects shall be on a matching basis as mutually determined by the Florida Seaport Transportation and Economic Development Council and the Department, provided a minimum of 25 percent of total project funds shall come from any Port funds, local funds, private funds, or specifically earmarked federal funds;

(c) On a 50-50 matching basis for projects as described in Section 311.07(3)(b), Florida Statutes; or

(d) For seaport intermodal access projects that involve the dredging or deepening of channels, turning basins, or harbors; or the rehabilitation of wharves, docks, or similar structures. Funding for such projects shall require a 25 percent match of the Funds received pursuant to Section 320.20(4), Florida Statutes. Matching funds shall come from any Port funds, federal funds, local funds, or private funds.

(5) As permitted by Section 320.20(4), Florida Statutes, such revenues may be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds and other forms of indebtedness issued by an individual Port or appropriate local government having jurisdiction thereof, or collectively by interlocal agreement among any of the ports, such as through the Commission. The revenues available under Subsection (4) of Section 320.20, Florida Statutes may not be pledged to the payment of any bonds other than the Series 1996 Bonds and the Series 1999 Bonds, currently Outstanding; provided, however, such revenues may be pledged to secure payment of refunding bonds to refinance the Series 1996 Bonds and the Series 1999 Bonds. Section 320.20(4), Florida Statutes, also provides that the issuance of refunding bonds secured by such revenues, such as the Series 2011 Bonds, may not be issued



with a final maturity later than the final maturity of the Series 1996 Bonds to be refunded or which provides for a higher debt service in any year than is currently payable on such bonds.

(6) Subject to certain exceptions provided in Section 320.20(5) (c), Florida Statutes, the remainder of such revenues must be deposited in the State Transportation Trust Fund.

***School Capital Outlay Amendment.*** As set forth in clause (1) above, the first proceeds of the revenues derived from the Motor Vehicle License Taxes must be deposited monthly in the School Capital Outlay Fund to the extent necessary to comply with the provisions of the School Capital Outlay Amendment. Such revenue must be distributed annually among the school districts and community college districts in Florida in the ratio of the number of instruction units in each school district or community college district in each year computed as follows: the amount of the first revenues derived from the Motor Vehicle License Taxes to be so set aside in each year and distributed shall be an amount equal in the aggregate to the product of six hundred dollars (\$600) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1967-68, plus an amount equal in the aggregate to the product of eight hundred dollars (\$800) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1972-73 and for each school fiscal year thereafter which is in excess of the total number of such instruction units in all the school districts of Florida for the school fiscal year 1967-68, such excess units being designated “growth units.” The amount of the first revenues derived from the Motor Vehicle License Taxes to be so set aside in each year and distributed shall additionally be an amount equal in the aggregate to the product of four hundred dollars (\$400) multiplied by the total number of instruction units in all community college districts of Florida. The number of instruction units in each school district or community college district in each year for the purposes of the School Capital Outlay Amendment shall be the greater of (1) the number of instruction units in each school district for the school fiscal year 1967-68 or community college district for the school fiscal year 1968-69 computed in the manner theretofore provided by general law, or (2) the number of instruction units in such school district, including growth units, or community college district for the school fiscal year computed in the manner theretofore or thereafter provided by general law and approved by the State Board of Education (the “State Board”), or (3) the number of instruction units in each school district, including growth units, or community college district on behalf of which the State Board has issued bonds or motor vehicle tax anticipation certificates under the School Capital Outlay Amendment which will produce sufficient revenues under the School Capital Outlay Amendment to equal one and twelve-hundredths times (1.12x) the aggregate amount of principal of and interest on all bonds or motor vehicle tax anticipation certificates issued under the School Capital Outlay Amendment which will mature and become due in such year, computed in the manner theretofore or thereafter provided by general law and approved by the State Board.

Pursuant to the School Capital Outlay Amendment, the State Board shall limit the amount of bonds or motor vehicle tax anticipation certificates which can be issued on behalf of any school district or community college district to ninety percent (90%) of the amount which it determines can be serviced by the revenue accruing to the school district or community college district under the provisions of the School Capital Outlay Amendment, and such determination shall be conclusive. All such bonds or motor vehicle tax anticipation certificates shall be issued in the name of the State Board but shall be issued for and on behalf of the school board of the

school district or board of trustees of the community college district requesting the issuance thereof, and no election or approval of qualified electors shall be required for the issuance thereof.

There are currently outstanding \$742,000,000 in such bonds issued by the State Board. The State Board expects to issue additional bonds in the future pursuant to the School Capital Outlay Amendment.

***Historical and Projected Collections.*** Set forth below is the historical (fiscal years 2001-2010) and projected (fiscal years 2011-2015) collections of revenues derived from Motor Vehicle License Taxes as well as the distribution thereof pursuant to the School Capital Outlay Amendment, and pursuant to Section 320.20(3), Florida Statutes. The State of Florida's Fiscal Year begins on July 1<sup>st</sup> and ends on June 30<sup>th</sup> of the next calendar year. The projected collections of Motor Vehicle License Taxes are revised semi-annually by the State's Consensus Estimating Conference. The projections are based on the best information available when the estimates are made. Investors should be aware that there have been material differences between past projections and actual collections of Motor Vehicle License Taxes, and no assurance can be given that there will not continue to be material differences relating to such amounts.

**Historical And Projected Motor Vehicle License Tax Revenue  
and Distribution Pursuant to School Capital Outlay Amendment  
and Section 320.20(3) Bond Program**

<b>—————Historical—————</b>			
<b><u>Fiscal Year</u></b>	<b><u>Total Motor Vehicle License Tax Revenue<sup>(1)</sup></u></b>	<b><u>Distribution Amount to Education<sup>(1)</sup></u></b>	<b><u>Distribution Amount to Section 320.20(3) Bond Program</u></b>
2001	\$521,755,779	\$104,275,738	\$15,000,000
2002	513,803,545	108,626,638	15,000,000
2003	538,088,898	110,504,442	15,000,000
2004	563,739,007	114,286,138	15,000,000
2005	601,153,197	115,498,726	15,000,000
2006	636,081,900	118,862,918	15,000,000
2007	611,698,661	117,892,798 <sup>(2)</sup>	15,000,000
2008	639,720,870	118,810,342 <sup>(2)</sup>	15,000,000
2009	634,728,147	119,244,262	15,000,000
2010	730,443,605 <sup>(3)</sup>	119,600,000	15,000,000

**Projected**

<b><u>Fiscal Year</u></b>	<b><u>Total Motor Vehicle License Tax Revenue<sup>(4)</sup></u></b>	<b><u>Distribution Amount to Education<sup>(4)</sup></u></b>	<b><u>Distribution to Section 320.20(3) Bond Program</u></b>
2011	\$695,900,000	\$121,200,000	\$ 15,000,000
2012	721,500,000	121,200,000	15,000,000
2013	757,400,000	121,200,000	15,000,000
2014	792,300,000	121,200,000	15,000,000
2015	818,000,000	121,200,000	15,000,000

(1) Source: Department of Highway Safety and Motor Vehicles Revenue Reports 2001-2010.

(2) An over distribution occurred in 2007 of \$4 million, which was corrected in 2008.

(3) Rate increase effective September 1, 2009.

(4) Source: Revenue Estimating Conference Forecast December 2010.

### **The Master Agreement**

Under the provisions of the Master Agreement, the parties agreed that the \$15,000,000 annual appropriation from the State Transportation Trust Fund described by Section 320.20(3), Florida Statutes, represents “State appropriated funds” and shall be programmed by the Department annually as a budgeted item pursuant to Section 339.135, Florida Statutes, so long as Bonds are outstanding under the Indenture. The Department acknowledged in the Master Agreement that the Commission would make loans to the Ports, including the Loans to the Borrowers, and that as security for the Loans, each of the Borrowers would, pursuant to the respective Loan Agreements, assign all of its right, title and interest to the moneys allocated to said Borrower from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, to the Trustee, on behalf of the Commission, to pay the portion of the debt service on the Bonds corresponding to the debt service related to its respective Loan.

In order to provide security to the Owners of the Bonds, the Department agreed in the Master Agreement and established a “Florida Ports escrow account” (the “Florida Ports Escrow Account”) on behalf of the Trustee with the Department of Insurance, Division of Treasury, State of Florida as provided in an escrow agreement attached as Exhibit A to the Master Agreement (the “Florida Ports Escrow Account Agreement”).

The Master Agreement further provides that the payments required to be made thereunder may be amended or modified, from time to time, to reflect (a) the issuance of any additional obligations of the Commission payable by transfers from funds deposited in the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, (b) the purchase, redemption or refunding of outstanding Bonds and (c) any reassignment of all or any portion of any Loan pursuant to the respective Loan Agreements. The Master Agreement is deemed to have been entered into for the benefit of the holders of the Bonds and shall be enforceable by the Trustee, on behalf of the holders of the Bonds, and the Department agrees therein to do nothing to impair the rights or security of the holders of the Bonds. For further information relating to the Master Agreement, see “APPENDIX C - FORM OF MASTER AGREEMENT” attached hereto.

The Commission requires that the Ports pursuant to the respective Loan Agreements retain documentation sufficient to support: (a) Project data included in each Port's annual report and financial statements issued by an independent Certified Public Accountant (C.P.A.), and (b) a final Project audit as required by the Department provided that each Port shall retain Project audit documentation and invoicing information sufficient to prepare a final Project audit for inclusion in each Borrower's annual financial report and the Borrower's annual report and as required by the Department for its audit review.

In order to review Projects and meet Project certification requirements to the State of Florida, the Department employed CH2M Hill, a Seaport Construction Inspector/Fiscal Monitor (the "Project Monitor") for project monitoring and certification. The Department is responsible for the performance of services rendered by the Project Monitor. The cost for such services have been paid by the Commission from a one time payment which was set aside from the initial transfer of \$10,000,000 in 1999 as more fully described in "APPENDIX C - THE MASTER AGREEMENT" attached hereto. The Commission deposited such funds into a "Project Monitor escrow account" (the "Project Monitor Escrow Account") as provided in an escrow agreement attached as Exhibit B to the Master Agreement (the "Project Monitor Escrow Account Agreement") within ten (10) days of the Department's deposit of the initial \$10,000,000.

A final Project audit was performed by CH2M Hill, and a Final Summary Report dated June 13, 2006 was prepared for the Department (the "Final Project Report"). According to the Final Project Report all of the proceeds of the Loans were used by the Borrowers for eligible Project costs.

For a complete copy of the Master Agreement, including the Florida Ports Escrow Account Agreement and the Project Monitor Escrow Account Agreement, see "APPENDIX C - FORM OF THE MASTER AGREEMENT" attached hereto.

### **Additional Indebtedness**

The Commission, pursuant to the Indenture, has agreed that it will not issue obligations including Additional Bonds under the Indenture which are payable, directly or indirectly, from the State Transportation Trust Fund as provided in Section 320.20(3), Florida Statutes, unless an Authorized Representative of the Commission certifies to the Trustee that (a) no Event of Default has occurred and is ongoing and (b) the maximum annual amount of moneys available in the State Transportation Trust Fund to pay debt service on the Outstanding Bonds and any other obligations of the Commission and Ports which are payable principally from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, including the obligations or Additional Bonds proposed to be issued, will be sufficient for such purpose.

### **Refunding Obligations**

The Commission reserves the right under the Indenture to issue obligations for the purpose of refunding all or a portion of the Bonds; provided such refunding obligations result in no increase in debt service in each year in which the Bonds to be refunded shall be Outstanding.

## Ceiling on State Revenue Collections

An amendment to the State Constitution was approved by the voters of the State at the November 1994 general election. This amendment limits the amount of taxes, fees, licenses and charges for services imposed by the State Legislature and collected during any fiscal year to the amount of revenues allowed for the prior fiscal year, plus an adjustment for growth. Growth is defined as the amount equal to the average annual rate of growth in Florida personal income over the most recent twenty quarters times the State revenues allowed for the prior fiscal year. The revenues allowed for any fiscal year may be increased by a two-thirds vote of each house of the Legislature. The limit became effective starting with fiscal year 1995-1996. Excess revenues generated will initially be deposited in the budget stabilization fund until it is fully funded; any additional excess revenues will then be refunded to taxpayers.

The Motor Vehicle License Taxes are included in the “State revenues” limited by the above constitutional amendment.

## DEBT SERVICE REQUIREMENTS

The following table sets forth the annual debt service requirements for the Series 2011 Bonds.

<u>Period Ending</u> <u>September 30</u>	<u>Principal</u>	<u>Interest</u> <sup>(1)</sup>	<u>Total</u> <u>Debt Service</u>
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## ESTIMATED SOURCES AND USES OF FUNDS

It is expected that the proceeds of the Series 2011 Bonds, together with other available money under the Indenture, will be applied as follows:

Sources of Funds:	Series <u>2011A Bonds</u>	Series <u>2011B Bonds</u>	<u>Total</u>
Par Amount of Series 2011 Bonds	\$ _____	\$ _____	\$ _____
Less Net Original Issue Discount	_____	_____	_____
Other Moneys	_____	_____	_____
 Total Sources	 \$ _____	 \$ _____	 \$ _____
 Uses of Funds			
Deposit to Escrow Fund	\$ _____	\$ _____	\$ _____
Deposit to Cost of Issuance Fund [including insurance premium]	_____	_____	_____
Underwriters' Discount	_____	_____	_____
 Total Uses	 \$ _____	 \$ _____	 \$ _____

## [MUNICIPAL BOND INSURANCE]

[The following information has been furnished by \_\_\_\_\_ (the "Bond Insurer") for use in this Official Statement. Reference is made to APPENDIX G attached hereto for a specimen of the Bond Insurer's municipal bond insurance policy.]

## [TO COME]

## THE COMMISSION

### General

The Commission was created pursuant to the Interlocal Act through the Interlocal Agreement. The initial members of the Commission were the Canaveral Port Authority (Port Canaveral), Jacksonville Port Authority (Port of Jacksonville) and Panama City Port Authority (Port of Panama City), and the current members additionally include Broward County (Port Everglades), Miami-Dade County (Port of Miami), Hillsborough County Port District (Port of Tampa), Manatee County Port Authority (Port Manatee), Port of Palm Beach District (Port of Palm Beach), and St. Lucie County (Port of Ft. Pierce). Such membership does not include the Ocean Highway and Port Authority, Nassau County (Port of Fernandina), the Port St. Joe Port Authority (Port of Port St. Joe) or the City of Key West (Port of Key West), City of Pensacola (Port of Pensacola) or City of St. Petersburg (Port of St. Petersburg). Under the Interlocal Agreement, additional members may be admitted upon the affirmative vote of two-thirds of the representatives of the Commission members serving on the Commission. The Commission is a

separate legal entity and public body corporate and politic and a unit of local government of the State.

Under the Interlocal Agreement, the purpose of the Commission is to enable Ports to (a) finance or refinance projects permitted by the Act on a cooperative and cost-effective basis, (b) benefit from the economies of scale associated with large scale financings which may be unrealized if separate financings were undertaken and (c) maximize the benefits derived from the availability of moneys provided by the State for funding projects. The Commission is authorized to exercise all of the privileges, benefits, powers and terms of the Act in connection with the authorization, issuance and sale of bonds. The Commission shall exist for so long as any bonds of the Commission or obligations of any participating Port under the Program remain outstanding.

For a complete copy of the Interlocal Agreement, see “APPENDIX D - FORM OF THE INTERLOCAL AGREEMENT” attached hereto.

### **Representatives**

Pursuant to the Interlocal Agreement, each member of the Commission shall appoint one or more representatives to serve on the Commission; provided, however, that in no event shall any member have more than one (1) vote on the Commission and all representatives of a member must vote in a like manner or the vote of such member shall not be counted. Each year, the Commission elects a Chairman, Vice-Chairman and Secretary-Treasurer. The present officers and representatives of the Commission, and their occupations or affiliations, are as follows:

<u>Name</u>	<u>Occupation</u>	<u>Member</u>
Michael Poole	Chief Financial Officer	Jacksonville Port Authority
J. Stanley Payne	Chief Executive Officer	Canaveral Port Authority
Phillip C. Allen	Port Director	Port Everglades (Broward County)
Faye Outlaw	County Administrator	Fort Pierce (St. Lucie County)
David L. McDonald	Executive Director	Manatee County Port Authority
Khalid A. Salahuddin	Assistant Port Director	Miami (Miami-Dade County)
Manuel Almira	Executive Director	Port of Palm Beach District
Wayne Stubbs	Executive Director	Panama City Port Authority
Clyde Mathis	Port Director	Pensacola Port Authority
Ram Kancharla	Senior Director of Planning and Development	Hillsborough County Port District

[\_\_\_\_\_,] \_\_\_\_\_, Florida is counsel to the Commission. The address of the Commission is Florida Ports Financing Commission, 502 East Jefferson Street, Tallahassee, Florida 32301.

## **Prior Financing**

In addition to the Series 1996 Bonds, on October 14, 1999, the Commission issued pursuant to a separate indenture, \$153,115,000 in aggregate principal amount of its Revenue Bonds (State Transportation Trust Fund), Series 1999 (the "Series 1999 Bonds") for the purpose of enabling the Commission to make loans to certain participating ports in Florida or the political subdivisions of the State of Florida (the "State") which own and operate such ports (each, a "1999 Borrower" and collectively, the "1999 Borrowers") to finance, refinance or reimburse the cost of approved capital projects and to pay certain costs of issuing the Series 1999 Bonds. The Series 1999 Bonds are limited and special obligations of the Commission payable solely from payments of principal and interest ("1999 Basic Payments") by the 1999 Borrowers under loan agreements between the Commission and the 1999 Borrowers (the "1999 Loan Agreements"). 1999 Basic Payments are required to be paid by the 1999 Borrowers solely from moneys due the 1999 Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes. The Commission intends to issue refunding bonds, pursuant to a separate indenture to refund all or a portion of the Series 1999 Bonds. Neither the Series 1999 Bonds nor the proposed refunding Bonds are or will be secured by the Trust Estate which is pledged to the repayment of the Bonds described herein.

## **The Program**

The Program involves the lending of proceeds of bonds to be issued by the Commission to participating Ports in order to finance, refinance or reimburse the cost of acquiring and constructing capital projects in accordance with the Act. In order to finance the Program, the Commission has authorized the issuance of its Revenue Bonds (State Transportation Trust Fund) to be payable from moneys in the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, of which the Series 1996 Bonds were the first series.

The Indenture provides for the appointment of a program administrator (the "Administrator") by the Commission to provide certain services to the Commission with respect to the Program and to act as the Commission's agent as set forth in a Program Administration Agreement dated as of December 1, 1996 entered into between the Commission and such Administrator (the "Program Administration Agreement"). The Commission has appointed the Florida Ports Council as the Administrator. See "The Program Administration Agreement" below.

Proceeds of the Series 1996 Bonds were used to finance, refinance or reimburse the cost of Projects meeting the requirements of the Act, the Indenture and the Original Loan Agreements. All of the funds were committed for such Projects as of the date of delivery of the Series 1996 Bonds; subject, however, to the right of the Administrator, with the prior approval of the Florida Seaport Transportation and Economic Development Council ("FSTED Council"), to reassign all or a portion of a Loan in accordance with the provisions of the Indenture and the respective Original Loan Agreement. The Original Loan Agreements were executed and delivered by each of the Borrowers at or before issuance and delivery of the Series 1996 Bonds in an aggregate principal amount equal to the aggregate principal amount of the Series 1996 Bonds. Each Borrower committed to provide a matching share for costs of its Projects funded with a Loan. See "THE LOAN AGREEMENT - - Matching Share" herein. The responsibility



for the use and operation of the Projects rests entirely with the respective Borrowers and not with the Commission or the Administrator or any officer or director of the Commission or the Administrator in such capacity.

### **The Program Administration Agreement**

Under the provisions of the Program Administration Agreement, the Administrator agrees to (1) provide general administrative services to the Commission, (2) perform all responsibilities required of it by the Indenture and the Loan Agreements, as well as perform, on behalf of the Commission, all responsibilities of the Commission under the Indenture and the Loan Agreements, except to the extent the Commission determines to perform such responsibilities itself, and (3) be responsible for working with Ports desiring to participate in the Program to develop documentation required to enter into the Loan Agreement and to make draws under such Loan Agreements, assimilating all information required to be delivered to the Commission, the Trustee or the Department in connection with the purposes of the Commission, working with and providing direction to investment bankers and the financial community to provide the lowest cost of funds practicable to Ports participating in the Program and performing any and all other services necessary to carry out the objectives of the Program. See “THE INDENTURE — The Administrator” herein.

### **Loans from Proceeds of the Series 1996 Bonds**

Hereinafter set forth is a brief description of the port facilities of each Borrower, its Projects and the amount of the Loan made to such Borrower.

***Broward County (Port Everglades).*** Located in Fort Lauderdale, Hollywood, and Dania Beach, and governed by the Broward County Board of County Commissioners, Broward County (Port Everglades) is one of the nation’s top container and cruise ports. It handles breakbulk and containerized cargo, as well as petroleum products, other liquid and bulk cargos, vehicles and equipment. The State’s largest operating foreign trade zone is at Broward County (Port Everglades). Its Projects included cargo improvements at the Southport container yard and development of two cruise terminals, with parking. The final Loan amount to Broward County (Port Everglades) was \$39,787,135, which includes interest.

***Canaveral Port Authority (Port Canaveral).*** Located on the mid-Florida Atlantic coast, Canaveral Port Authority (Port Canaveral), governed by the Canaveral Port Authority (Port Canaveral), services both cargo and cruise markets and operates a foreign trade zone. Primary cargos are liquid (petroleum) and dry (cement and scrap steel) bulk products, and breakbulk, including lumber, salt, newsprint and citrus. Canaveral Port Authority (Port Canaveral) is one of the three busiest cruise ports in the world. Its Projects included widening and deepening of its channel, improvements to existing cruise terminals, and the construction of a new cruise terminal building, and various other port related projects. The final Loan amount to the Canaveral Port Authority (Port Canaveral) was \$25,566,676, which includes interest.

***Hillsborough County Port District (Port of Tampa).*** The Hillsborough County Port District (Port of Tampa), governed by the Hillsborough County Port District (Port of Tampa), handles bulk products such as phosphate rock, fertilizer products, petroleum, and coal as well as

general cargo. Inbound and outbound traffic closely reflect its ties with the nearby phosphate industry. The Hillsborough County Port District (Port of Tampa) is also one of the State's major cruise ports. Its Projects included construction of both expansion, infrastructure development, and navigational and dredge disposal improvements to the multi-use Garrison Seaport Center. The final Loan amount to the Hillsborough County Port District (Port of Tampa) was \$34,963,769, which includes interest.

***Jacksonville Port Authority (Port of Jacksonville).*** Located on Florida's north Atlantic coast, the Jacksonville Port Authority (Port of Jacksonville), governed by the Jacksonville Port Authority (Port of Jacksonville), serves as a southeastern focal point for the intermodal movement of commodities on the world market. Leading cargos include containerized and roll-on/roll-off general cargo, automobiles, breakbulk cargos and dry and liquid bulk products, including petroleum and phosphate. Its Projects included reconfiguring two of its cargo terminals, channel dredging, paved storage areas and expansion of its automobile processing center. The final Loan amount to the Jacksonville Port Authority (Port of Jacksonville) was \$50,479,200, which includes interest.

***Manatee County Port Authority (Port Manatee).*** Located near the entrance to Tampa Bay, Manatee County Port Authority (Port Manatee) handles containerized, breakbulk and liquid and dry bulk cargoes, including juices, petroleum products, cement, and phosphate. Manatee County Port Authority (Port Manatee) also offers seasonal cruises to Mexico and the Western Caribbean. The members of its governing body, the Manatee County Port Authority (Port Manatee), also serve as the Board of County Commissioners of Manatee County. Its Projects included berth dredging and development, infrastructure improvements, construction of an intermodal distribution center and storage warehouses. The final Loan amount to the Manatee County Port Authority (Port Manatee) was \$17,825,453, which includes interest.

***Miami-Dade County (Port of Miami).*** Miami-Dade County (Port of Miami) is the world's busiest cruise port, and one of the country's fastest growing container ports, serving markets in the Far East and Europe as well as Central and South America. In addition, the Miami-Dade County (Port of Miami), which is under the jurisdiction of the Board of County Commissioners of Miami-Dade County (Port of Miami), handles breakbulk and general cargo, automobiles and heavy equipment. Its Projects included the construction of a new container berth and improvements to its cruise terminals, and the construction of a multistory parking garage. The final Loan amount to Miami-Dade County (Port of Miami) was \$57,541,982, which includes interest.

***Ocean Highway and Port Authority, Nassau County (Port of Fernandina).*** The Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Florida's northernmost seaport, governed by the Ocean Highway and Port Authority, Nassau County, (Port of Fernandina) serves the Southeastern United States, including Florida's major metropolitan areas. It handles both breakbulk, predominantly forest product exports, and containerized cargo. The latter is moved via on-port rail connections. Its Projects included design of a bulk pier and unloading conveyors. The final Loan amount to the Ocean Highway and Port Authority, Nassau County (Port of Fernandina) was \$94,997, which includes interest.

***Port of Palm Beach District (Port of Palm Beach).*** The Port of Palm Beach District (Port of Palm Beach), located on Florida's southeast coast, is governed by an elected Board of Port Commissioners. The Port of Palm Beach District (Port of Palm Beach) serves as an important distribution center to the Caribbean and Central America. The Port of Palm Beach District (Port of Palm Beach) handles a diversified cargo base including container, breakbulk, liquid and dry bulk cargoes (including petroleum, molasses, sugar and cement), with cruises rounding out operations. Its Projects included the construction of the elevation of U.S. 1, the north-south road that previously bifurcated the Port, infrastructure improvements, slip 3 and cruise terminal improvements. The final Loan amount to the Port of Palm Beach District (Port of Palm Beach) was \$22,526,018, which includes interest.

***Panama City Port Authority (Port of Panama City).*** Located on the Gulf Coast in Florida's panhandle, the Panama City Port Authority (Port of Panama City) is an industrial port, serving the needs of regional manufacturers and other businesses. It handles breakbulk cargo plus some dry bulk products, with markets in the Mediterranean, Central and South America, Europe and the Far East. Its Projects included construction of an expansion of its south dock, acquisition of property and construction of improvements to warehouses. The final Loan amount to the Panama City Port Authority (Port of Panama City) was \$4,738,259, which includes interest.

## **FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM**

The Florida Seaport Transportation and Economic Development Program has been successful in achieving its State public policy objective of building seaport facilities in order to enhance economic growth and job creation. According to the Department and the Florida Ports Council in 2009, the maritime cargo activities of the Ports were responsible for generating 550,000 direct and indirect jobs and \$66 billion in total economic value, contributing \$1.7 billion in state and local tax revenues, of the \$56.9 billion in water borne international trade, \$27.6 billion were imports and \$29.2 billion were exports. Imports represented 48.6 percent of such trade value, down from 49.7 percent in 2008, while exports represented 51.4 percent, up from 50.3 percent in 2008.

## **BONDHOLDERS' RISKS**

[Except to the extent payable pursuant to the Bond Insurance Policy,] [T]he ability of the Commission to pay debt service on the Series 2011 Bonds depends upon the receipt by the Commission of sufficient amounts from the State Transportation Trust Fund. The primary risk which could prevent the Commission from receiving such amounts is the collection by the State of insufficient revenues from Motor Vehicle License Taxes to satisfy hereinbefore described prior obligations under Section 320.20, Florida Statutes, and the payments due the Borrowers thereunder. The ability of the State to generate sufficient revenues from Motor Vehicle License Taxes is dependent upon a number of conditions, each of which is unpredictable.

In Section 320.20(4), Florida Statutes, the State covenants with the holders of the Bonds that it will not repeal or impair or amend such subsection in any manner which will materially and adversely affect such holders so long as the Bonds remain outstanding. Such covenant may

not necessarily preclude the State Legislature from amending Section 320.20, Florida Statutes, in the future to create or enlarge prior distributions of the Motor Vehicle License Taxes. See “SECURITY FOR THE SERIES 2011 BONDS - Motor Vehicle Taxes - Historical and Projected Collections” herein.

[The long-term ratings on the Series 2011 Bonds are dependent in part on the financial strength of the Bond Insurer and its claim paying ability. The Bond Insurer’s financial strength and claims paying ability are predicated upon a number of factors which could change over time. No assurance is given that the long-term ratings of the Bond Insurer and of the ratings on the Series 2011 Bonds insured by the Bond Insurer will not be subject to downgrade and such event could adversely affect the market price of the Series 2011 Bonds or the marketability (liquidity) for the Series 2011 Bonds. See “RATINGS” herein.]

[The obligations of the Bond Insurer are contractual obligations and in an event of default by the Bond Insurer, the remedies available may be limited by applicable bankruptcy law or state law related to insolvency of insurance companies.

Neither the Commission nor the Underwriters have made independent investigation into the claims paying ability of the Bond Insurer and no assurance or representation regarding the financial strength or projected financial strength of the Bond Insurer is given. Thus, when making an investment decision, potential investors should carefully consider the ability of the Commission to pay principal and interest on the Series 2011 Bonds and the claims paying ability of the Bond Insurer, particularly over the life of the investment.]

## **THE LOAN AGREEMENT**

### **General**

The Commission has made Loans to each of the Borrowers in order to either finance the Cost of Projects by such Borrowers, refinance existing indebtedness, or provide reimbursements for the Cost of Projects. See “THE COMMISSION--The Program” and “THE COMMISSION--Loans from Proceeds of the Series 1999 Bonds” herein. The following is a description of certain provisions of the Original Loan Agreement executed by each of the Borrowers. This description is qualified in its entirety by reference to the form of the Loan Agreement, a copy of which is included in APPENDIX B attached hereto.

EACH BORROWER’S LIABILITY IS THE SEVERAL LIABILITY OF THAT BORROWER. SUCH LIABILITY SHALL BE EXPRESSLY LIMITED TO THE RESPECTIVE LOAN REPAYMENTS AND NO BORROWER HAS JOINT LIABILITY WITH ANY OTHER BORROWER OR THE COMMISSION FOR ANY OF THEIR RESPECTIVE LIABILITIES. NO BORROWER MAY BE DECLARED IN DEFAULT AS A RESULT OF ANY OTHER BORROWER’S FAILURE TO MEET THE TERMS OF ITS OBLIGATIONS UNDER ITS LOAN AGREEMENT.

### **Projects**

The Projects of each Borrower may be such capital improvements and facilities and such other governmental undertakings approved by the governing board of the Borrower and which

have been approved by the FSTED Council as capital improvements which may be financed from the proceeds of the Bonds. A Borrower may, from time to time, modify or substitute Projects if it provides the Commission, the Administrator and the Trustee (a) a description of the modified or substituted Project, (b) a certificate of an Authorized Representative of the Borrower to the effect that the Project modification or substitution (i) will not adversely affect the Borrower's ability to satisfy the matching share requirement pursuant to the Loan Agreement, (ii) has been approved by the FSTED Council, and (iii) may be financed pursuant to the Master Agreement, (c) an opinion of Bond Counsel to the effect that such Project modification or substitution (i) will not adversely affect the exclusion of interest on the Bonds from gross income for purposes of Federal income taxation and (ii) is permitted by the Act and the Original Loan Agreement, and (d) such other documentation as may be required by FSTED Council or the Commission.

### **Loan Repayments**

Each Borrower is required to make Loan Repayments consisting of Basic Payments and Additional Payments as described below.

***Basic Payments.*** Each Borrower will repay the Loan in semiannual payments of principal and interest on each Loan Repayment Date as set forth in Exhibit D to the Loan Agreement. Such Basic Payments shall be paid solely from moneys in the State Transportation Trust Fund directly to the Trustee pursuant to Section 320.20(3), Florida Statutes, and in accordance with the terms of the Master Agreement.

***Additional Payments.*** In addition to Basic Payments, each Borrower agrees to pay on demand of the Commission or the Trustee Additional Payments constituting (a) its Proportionate Share of certain ongoing Program fees, costs and expenses, (b) all reasonable fees and expenses of the Commission, the Administrator or the Trustee relating to the Loan Agreement, (c) its Proportionate Share of rebate obligations relating to the Bonds pursuant to Section 148(f) of the Code, and (d) any unallowable Costs (plus interest) required to be repaid by the Borrower under the Loan Agreement. Additional Payments do not include amounts which will be used to pay debt service on the Bonds when due.

***Credits.*** On or prior to each Interest Payment Date, each Borrower shall be entitled to a credit against its obligation to pay Basic Payments and Additional Payments equal to its Proportionate Share of any earnings which were received during the prior Interest Period on the Revenue Fund and the Sinking Fund, in accordance with the Indenture. The Commission may in its discretion transfer investment earnings or moneys in the Revenue Fund and Sinking Fund to the Administrative Expense Fund or the Rebate Fund for which the Borrower shall receive credit for its Proportionate Share of such earnings on Additional Payments due under their respective Loan Agreement.

### **Prepayment and Defeasance**

A Loan may be prepaid in whole or in part by the Borrower on the dates, in the amounts and upon the conditions on which the Bonds are subject to optional redemption pursuant to the Indenture. However, each Loan may be defeased in the manner set forth in the Loan Agreement

and the Indenture if the Borrower has made “provision for payment” therefor. Deposit of sufficient cash and/or Governmental Obligations in irrevocable trust with a banking institution or trust company for the sole benefit of the Commission with respect to which such cash and/or Governmental Obligations will be sufficient to make timely payment of the principal, interest and redemption premiums, if any, on the Outstanding Bonds shall be considered “provision for payment.”

### **Security for Payments**

Anything in a Loan Agreement to the contrary notwithstanding, it is understood and agreed that the ad valorem taxing power, if any, and the full faith and credit of the Borrower has not been pledged to secure the obligations of the Borrower thereunder. Neither the Commission, the Bondholders, [the Bond Insurer,] the Administrator nor the Trustee shall have any right to compel the exercise of any ad valorem taxing power of the Borrower to pay the obligations owing thereunder,

***Security for Basic Payments.*** All Basic Payments due under each Loan Agreement shall be paid solely from moneys due to the Borrower from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes. Each Borrower assigns all rights, title and interest to such moneys to the Trustee, on behalf of the Commission, to repay its Loan. The Borrower acknowledges that such moneys shall be transferred by the Department directly to the Trustee in order to pay the debt service on the Bonds as the same becomes due. The Borrower agrees not to incur or issue any obligations payable from moneys in the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, without the express consent of the Commission. No other funds or revenues are pledged by the Borrower for the payment of the Basic Payments.

***Security for Additional Payments.*** All Additional Payments due under each Loan Agreement shall be payable from legally available non-ad valorem revenues and moneys of the Borrower, but only to the extent such revenues and moneys are derived from the operation of its port facilities and the delivery of port services (the “Available Revenues”). Until the Additional Payments are paid or deemed paid pursuant to the provisions of the Loan Agreement, the Borrower covenants to appropriate in its annual budget, by amendment if necessary, from Available Revenues in each Fiscal Year of the Borrower in which the Additional Payments become due and payable, amounts sufficient, together with other available moneys, to pay such Additional Payments as the same become due. Such covenant and agreement on the part of the Borrower to budget and appropriate such amounts of its Available Revenues shall be cumulative to the extent not paid, and shall continue until its Available Revenues in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Borrower, the Borrower does not covenant to maintain any services or programs now provided or maintained by the Borrower which generate Available Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of Available Revenues, nor does it preclude the Borrower from pledging in the future its Available Revenues, nor does it require the Borrower to levy and collect any particular Available Revenues, nor does it give the Commission, the Administrator, [the Bond Insurer,] the Trustee or

the Bondholders a prior claim on the Available Revenues as opposed to claims of general creditors of the Borrower. Such covenant to appropriate Available Revenues is subject in all respects to the payment of obligations issued by the Borrower to finance or refinance port improvements or obligations secured by a pledge of such Available Revenues (including the payment of debt service on bonds and other debt instruments). In addition, such covenant shall be subordinate in all respects to the payment obligations, if any, of the Borrower relating to any debt instrument, including any such instrument secured by a covenant by the Borrower to budget and appropriate Available Revenues. However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated in the Loan Agreement shall have the effect of making available for the payment of such Additional Payments in the manner described therein Available Revenues and placing on the Borrower a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations with respect to Additional Payments under the Loan Agreement; subject, however, in all respects to any restrictions of Florida law relating to the budgeting and appropriation of such Available Revenues; and subject, further, to the payment of services and programs which are for essential public purpose affecting the health, welfare and safety of the inhabitants located within the jurisdiction of the Borrower or which are legally mandated by applicable law.

The aforementioned covenant to budget and appropriate Available Revenues of the Borrower does not secure the Basic Payments or payment of any principal or interest on the Loan or the Bonds.

### **Compliance with Master Agreement**

Each Borrower agrees to comply with all provisions of the Master Agreement relating to itself and its Projects. Each Borrower agrees to cooperate with the Commission, the Administrator and their agents in all matters relating to enforcement of the provisions of their respective Loan Agreement and the Master Agreement.

### **Terms of Loan Agreements**

The term of each Loan Agreement commenced on the date of execution of such Loan Agreement and will terminate after payment in full of all amounts due under such Loan Agreement, and all amounts not theretofore paid shall be due and payable as provided in such Loan Agreement; provided, however, that certain covenants and obligations set forth in the Loan Agreement (e.g. indemnification provisions and obligations to pay rebatable arbitrage) shall survive the termination of the Loan Agreement and the payment in full of principal and interest under the Loan Agreement.

## Events of Default

The following are “Events of Default” under the Loan Agreements:

(a) Failure by the Borrower to timely pay any Loan Repayment when due, so long as Bonds are outstanding, other than failure to make Basic Payments which shall be no fault of the Borrower;

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement, other than as referred to in (a) above, to be observed or performed under the Loan Agreement, for a period of 30 days, unless the Commission, [the Bond Insurer] and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Commission, [the Bond Insurer] or the Trustee, but cannot be cured within the applicable 30 day period, the Commission, [the Bond Insurer] and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the failure is corrected;

(c) Any warranty, representation or other statement by the Borrower or by an officer or agent of the Borrower contained in the Loan Agreement or in any instrument furnished in compliance with or in reference to the Loan Agreement is false or misleading in any material adverse respect when made;

(d) A petition is filed against the Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 60 days of such filing;

(e) The Borrower files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law;

(f) The Borrower admits insolvency or bankruptcy or its inability to pay its debts as they become due, or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation, a receiver, liquidator or trustee) of the Borrower or any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than 60 days; or

(g) Any material provision of the Loan Agreement shall at any time for any reason cease to be valid and binding on the Borrower, or shall be declared to be null and void, or the validity or enforceability of the Loan Agreement shall be contested by the Borrower or any governmental agency or authority, or if the Borrower shall deny any further liability or obligation under the Loan Agreement.



## Remedies

Whenever any Event of Default shall have happened and be continuing, the Commission, [the Bond Insurer] or the Trustee, in addition to any other remedies in the Loan Agreement or by law provided, have the right, at its or their option without any further demand or notice, but subject to the right of the Bond Insurer, if any, to direct the enforcement of remedies pursuant to the Indenture, to take such steps and exercise such remedies as provided in the Indenture and take whatever other action, at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due under the Loan Agreement or to enforce any other of its or their rights under the Loan Agreement.

## Amendment of Loan Agreements

***Amendments Not Requiring Bondholder Consent.*** The Commission and the Trustee may, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of any Loan Agreement as may be required (a) by the provisions of such Loan Agreement or to conform to the provisions of the Indenture, (b) to cure any ambiguity or inconsistency or formal defect or omission, (c) to add additional rights acquired in accordance with the provisions of such Loan Agreement, or (d) in connection with any other change therein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners of the Bonds.

***Amendments Requiring Consent.*** Except for amendments, changes or modifications provided for in the preceding paragraph, neither the Commission nor the Trustee may consent to any amendment, change or modification of any Loan Agreement without the mailing of notice and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and procured as provided in the Indenture. However, nothing contained in the Indenture will permit, or be construed as permitting, a reduction in the aggregate principal amount of Bonds the Owners of which are required to consent to any amendment, change or modification of a Loan Agreement, a reduction in, or a postponement of the payments under a Loan Agreement or any changes that affect the exclusion of interest on the Bonds from the gross income of the Owners thereof for purposes of Federal income taxation, without the consent of the Owners of all the Bonds then Outstanding.

Nothing contained in the preceding paragraph shall be construed to prevent the Trustee, with the consent of the Commission [and the Bond Insurer,] from settling a default under any Loan Agreement on such terms as the Trustee may determine to be in the best interests of the Owners of the Bonds,

[NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION TO THE CONTRARY, IF THE BOND INSURER HAS HONORED ITS OBLIGATIONS UNDER THE BOND INSURANCE POLICY, THE BOND INSURER SHALL BE CONSIDERED THE SOLE OWNER OF THE BONDS FOR PURPOSES OF CONSENTING TO AMENDMENTS TO THE LOAN AGREEMENTS; PROVIDED SUCH RIGHT DOES NOT APPLY TO AMENDMENTS REQUIRING THE CONSENT OF ALL OWNERS.]

## THE INDENTURE

The following is a description of certain provisions of the Indenture. This description is qualified in its entirety by reference to the form of the Indenture, a copy of which is included in APPENDIX A attached hereto.

### **Funds and Accounts**

The Indenture establishes (i) the Revenue Fund, (ii) the Administrative Expense Fund and therein the Administrator's Account and the Recurring Expense Account, (iii) the Sinking Fund and therein the Interest Account, the Principal Account and the Redemption Account, (iv) the Cost of Issuance Fund and (v) the Rebate Fund. The Trustee shall maintain separate Accounts for each Borrower within each of the Revenue Fund. Moneys in the Funds and Accounts (except for moneys in the Rebate Fund and the Administrative Expense Fund), until applied in accordance with the provisions of the Indenture, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

### **Flow of Funds**

The Trustee shall deposit, immediately upon receipt, all Loan Repayments received from a Borrower into such Borrower's Account in the Revenue Fund. Basic Payments received by the Trustee from the State Transportation Trust Fund shall be deposited to the Borrower's Accounts of the Revenue Fund in accordance with the requirements of Exhibit D to the Loan Agreements and the Master Agreement, as the same may be amended from time to time. The Trustee agrees to draw moneys from the Florida Ports Escrow Account established pursuant to the Master Agreement in the amounts provided therein. Such moneys are the Basic Payments to be made by the Borrowers and shall be transferred to the Revenue Fund as soon as they become available pursuant to the terms of the Master Agreement. Additional Payments in a Borrower's Account of the Revenue Fund representing such Borrower's Proportionate Share of obligations owing to the Rebate Fund shall be deposited as soon as practicable into such Fund. All other Additional Payments in each Borrower's Account of the Revenue Fund shall be deposited as soon as practicable into the Administrative Expense Fund. The moneys in the Accounts of the Revenue Fund of the Borrowers representing Basic Payments shall be maintained in such Accounts and deposited in the Interest Account and Principal Account as follows:

***Interest Account.*** On each Interest Payment Date, the Trustee shall transfer to the Interest Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all moneys on deposit in the Interest Account, shall be sufficient to pay the interest on all Outstanding Bonds due on such Interest Payment Date. Moneys in the Interest Account shall be used for the payment of interest on the Bonds when the same become due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Interest Account at such times and in such amounts (a) to pay interest on the Bonds which has become due and for which insufficient moneys have been deposited, and (b) to pay interest on Bonds which shall be purchased or redeemed in accordance with the terms of the Indenture to the extent insufficient moneys are on deposit therein.

***Principal Account.*** On each Principal Payment Date, the Trustee shall transfer to the Principal Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all amounts on deposit in the Principal Account, shall be sufficient to pay the principal or Amortization Installment due on such Principal Payment Date. Moneys in the Principal Account shall be used for the payment of principal of or Amortization Installment on the Bonds when the same become due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Principal Account at such times and in such amounts (a) to pay the principal of the Bonds which has become due and for which insufficient moneys have been deposited, and (b) to pay principal on Bonds which shall be purchased or redeemed in accordance with the terms of the Indenture, Amounts accumulated in the Principal Account with respect to any Amortization Installment (together with amounts accumulated in the Interest Account with respect to interest, if any, on the Term Bonds for which such Amortization Installment was established) shall be applied by the Trustee, at the direction of the Commission, on or prior to the 35th day preceding the due date of such Amortization Installment (i) to the purchase of Term Bonds of the maturity for which such Amortization Installment was established at a price not exceeding par plus accrued interest, or (ii) to the redemption at the applicable Redemption Prices of such Term Bonds, if then redeemable by their, terms at a price not exceeding par plus accrued interest. The applicable Redemption Price (or principal amount of maturing Term Bonds) of any Term Bonds so purchased or redeemed shall be deemed to constitute part of the Principal Account or Redemption Account until such Amortization Installment date, for the purposes of calculating the amount of such Account. As soon as practicable after the 35th day preceding the due date of any Amortization Installment, the Trustee shall proceed to call for redemption on such due date, by causing notice to be given as provided in the Indenture, Term Bonds of the maturity for which such Amortization Installment was established (except in the case of Term Bonds maturing on an Amortization Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Amortization Installment. The Trustee shall withdraw out of the Principal Account and the Interest Account on or before the day preceding such redemption date (or maturity date), the amount required for the redemption (or for the payment of such Term Bonds then maturing), and such amount shall be applied by the Trustee to such redemption (or payment). All expenses in connection with the purchase or redemption of Term Bonds shall be paid by the Trustee from the Administrative Expense Fund.

### **The Administrator**

The Florida Ports Council is the Administrator for the Program. If such Administrator shall be removed, the Commission shall by resolution appoint as Administrator any person to act in such capacity as it deems appropriate.

The Administrator has agreed in the Program Administration Agreement to all the duties and obligations of the Administrator in the Indenture and the Program Administration Agreement, such agreement to be enforceable by the Trustee. The Program Administration Agreement provides that any of the duties, rights, obligations and responsibilities of the Commission provided under the Indenture and in the Loan Agreements are assigned by the Commission to the Administrator, except to the extent that the Commission determines to perform such duties itself.

The Commission appoints the Administrator to provide various services with respect to the Loans and the Program and the Administrator agrees to provide such services pursuant to the terms of the Indenture and of the Program Administration Agreement.

Under the provisions of the Program Administration Agreement, the Florida Seaports Council, a Florida not-for-profit corporation d/b/a the Florida Ports Council (the “Florida Ports Council”), is serving as the Administrator under the Indenture. In addition to serving as Administrator under the Program Administration Agreement and the Indenture, the Florida Ports Council provides administrative support services to the FSTED Council.

### **Investment of Moneys**

All moneys in any of the Funds and Accounts shall be invested by the Trustee in Investment Securities. All Investment Securities shall be acquired (subject to the limitations set forth in the Indenture) at the direction of the Commission.

Investment Securities acquired as an investment of moneys in any Fund or Account shall be credited to such Fund or Account. All interest, profits and other income earned From investment of all moneys in any Fund or Account shall be retained in such Fund or Account; provided, however, investment earnings on moneys in the Revenue Fund and Sinking Fund may be transferred, at the direction of the Commission, to the Administrative Expense Fund or Rebate Fund.

In determining the amount in any Fund or Account, all Investment Securities credited to such Fund or Account shall be valued at cost.

### **Additional Bonds**

The Commission, pursuant to the Indenture, has agreed that it will not issue obligations including Additional Bonds under the Indenture which are payable, directly or indirectly, from the State Transportation Trust Fund as provided in Section 320.20(3), Florida Statutes, unless an Authorized Representative of the Commission certifies to the Trustee that (a) no Event of Default has occurred and is ongoing and (b) the maximum annual amount of moneys available in the State Transportation Trust Fund to pay debt service on the Outstanding Bonds and any other obligations of the Commission and Ports which are payable principally from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes, including the obligations or Additional Bonds proposed to be issued, will be sufficient for such purpose.

### **Defeasance and Discharge of Lien of Indenture**

If the Commission pays or causes to be paid to the Owner of any Bond the principal of and interest due and to become due thereon, or any portion of such Bond in the principal amount of \$5,000 or any integral multiple thereof, such Bond or portion thereof shall cease to be entitled to any lien, benefit or security under the Indenture. If the Commission pays or causes to be paid to the Owners of all Bonds secured by the Indenture the principal of and interest due and payable, and thereafter to become due and payable as set forth therein and shall pay or cause to be paid all other sums of money payable under the Indenture by the Commission, then the right, title and interest of the Trustee and the Bondholders in the Trust Estate shall cease, terminate and

become void. In such event, the Trustee shall assign, transfer and turn over to the Commission the Trust Estate.

Any Bond or portion thereof shall be deemed to be paid within the meaning of the preceding paragraph when (1) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such date is by reason of maturity or upon redemption as provided in the Indenture), either (a) has been made or has been caused to be made in accordance with the terms of the Indenture, or (b) has been provided for by irrevocably depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment (i) moneys sufficient to make such payment, and/or (ii) Governmental Obligations maturing as to principal and interest in such amounts and at such time as will insure the availability of sufficient moneys to make such payment, and (2) all necessary and proper fees, compensation and expenses of the Trustee and the Commission pertaining to such Bonds with respect to which such deposit is made have been paid or payment thereof has been provided for to the satisfaction of the Trustee. The sufficiency of moneys and Governmental Obligations deposited with the Trustee will be verified by a nationally recognized Accountant. At such time as a Bond is deemed to be paid, as aforesaid, it will no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of payment from such moneys or Governmental Obligations.

### **Defaults and Remedies**

If any of the following events occurs with respect to the Bonds it shall constitute an “Event of Default” under the Indenture:

(1) Default in the payment of the principal of or interest on any Bond after the principal or interest has become due, whether at maturity or upon call for redemption;

(2) Default in the performance or observance of any covenant, agreement or condition on the part of the Commission contained in the Indenture or in the Bonds (other than defaults mentioned in subparagraphs (1) or (3)) and failure to remedy the same after notice of such default has been given in accordance with the provisions of the Indenture; or

(3) If the Commission shall file a petition seeking a composition of indebtedness under the federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State, or the commission by the Commission of any act of bankruptcy, or adjudication of the Commission as a bankrupt, or assignment by the Commission for the benefit of its creditors or the approval by a court of competent jurisdiction of a petition applicable to the Commission in any proceeding for its reorganization instituted under federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State.

In determining whether a payment default has occurred as described in (1) above or whether a payment on the Bonds has been made under the Indenture, no effect shall be given to payments made under the Bond Insurance Policy.

Upon the occurrence of any such Event of Default under the Indenture, the Trustee will have the following rights and remedies:

(a) The Trustee may, and in the case of an Event of Default under subparagraph (3) above, shall, pursue any available remedy at law or in equity or by statute, including the federal bankruptcy laws or other applicable law or statute of the United States of America or of the State, to enforce the payment of the principal of and interest on the Bonds then Outstanding, including enforcement of any rights of the Commission or the Trustee under the Loan Agreements.

(b) The Trustee may by action or suit in equity require the Commission to account as if it were the trustee of an express trust for the Owners of the Bonds and may then take such action with respect to the related Loan Agreements as the Trustee deems necessary or appropriate and in the best interest of the Bondholders, subject to the terms of the Loan Agreements.

(c) Upon the filing of a suit or other commencement of judicial proceeding to enforce any rights of the Trustee and of the Bondholders under the Indenture, the Trustee will be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the Revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

(d) The Trustee shall give written notice of any Event of Default to the Commission and the Bond Insurer, if any, as promptly as practicable after the occurrence of an Event of Default becomes known to the Trustee.

If an Event of Default shall have occurred, and if requested so to do by [the Bond Insurer or by] the Owners of a majority in aggregate principal amount of Outstanding Bonds affected thereby and indemnified as provided in the Indenture, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders. No acceleration of the Bonds may occur under the Indenture.

No right or remedy conferred upon or reserved to the Trustee by the Indenture (or to the Bondholders [or the Bond Insurer]) is intended to be exclusive of any other right or remedy, but each and every right or remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders under the Indenture or existing at law or in equity or by statute. The assertion or employment of any right or remedy shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

No delay or omission in exercising any right or remedy accruing upon any default or Event of Default shall impair any such right or remedy or shall be construed to be a waiver of such default or Event of Default or acquiescence therein; and every such right or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any default or Event of Default, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon. [No waiver of any default or Event of Default under the Indenture by the Trustee shall be effective without the approval of the Bond Insurer.]

## **Application of Moneys Upon Event of Default**

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture upon the occurrence of an Event of Default, including by virtue of actions taken under provisions of any Loan Agreement, shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees (including reasonable Trustee's fees), expenses, liabilities and advances payable to, incurred or made by the Trustee (including reasonable fees and disbursements of its counsel), be applied, along with any other moneys available for such purposes, as follows:

(a) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST--To the payment to the persons entitled to unpaid installments of interest due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND--To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at stated maturity or pursuant to a call for redemption (other than such Bonds called for redemption for the payment of which moneys are held pursuant to the other provisions of the Indenture), in the order of their due dates and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

THIRD--To payment to the persons entitled thereto of all administrative expenses payable pursuant to the Indenture; and

FOURTH--To be held as provided in the Indenture for the payment to the persons entitled thereto as the same shall become due of the amounts payable pursuant to the Indenture (including principal of such Bonds due upon call for redemption) and, if the amount available shall not be sufficient to pay in full amounts due on any particular date, payment shall be made ratably according to the priorities set forth in subparagraphs FIRST, SECOND and THIRD above,

(b) If the principal of all the Bonds shall have become due, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid upon the Bonds and administrative expenses payable pursuant to the Indenture, with Bond principal and interest to be paid first, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, and with the administrative expenses to be paid second to the persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the above provisions, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard

to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal and past-due interest to be paid on such date shall cease to accrue. Defaulted interest on a Bond shall be payable to the person in whose name such Bond is registered at the close of business on a Special Record Date for the payment of defaulted interest established by notice mailed by the Trustee to the registered Owners of Bonds not more than 15 days preceding such Special Record Date. Such notice shall be mailed to the person in whose name the Bonds are registered at the close of business on the fifth day preceding the date of mailing. The Trustee shall not be required to make payment of principal of any Bond to the Owner of such Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of and interest on all Bonds have been paid under the above provisions and all expenses and charges of the Trustee [and the Bond Insurer] have been paid, any balance remaining in the Funds and Accounts shall be transferred to the Commission.

### **Waivers of Event of Default**

The Trustee may, at its discretion, waive any Event of Default (other than an Event of Default described under subparagraph (3) of the caption "THE INDENTURE- Defaults and Remedies" herein) and its consequences, and will do so upon the written request of the Bond Insurer, if any, or the registered owners of (1) more than two-thirds in aggregate principal amount of all Outstanding Bonds affected thereby [(with the consent of the Bond Insurer unless the Bond Insurer is in default under the Bond Insurance Policy)] in the case of default in the payment of principal or interest, or (2) more than a majority in aggregate principal amount of all Outstanding Bonds affected thereby [(with the consent of the Bond Insurer unless the Bond Insurer is in default under the Bond Insurance Policy)] in the case of any other default; provided, however, that there shall not be waived (a) any default in the payment of the principal of any such Outstanding Bond at the date of maturity specified therein, or (b) any default in the payment when due of the interest on any such Outstanding Bond, unless prior to such waiver all arrears of interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then, and in every such case, the Commission, the Trustee, [the Bond Insurer] and the Bondholders shall be restored to their former positions and rights under the Indenture but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. No such waiver shall affect the rights of third parties to payment of amounts provided for in the Indenture.

### **Rights and Remedies of Bondholders**

No Owner of any Bond or the Bond Insurer, if any, will have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy under the



Indenture unless (1) a default has occurred, (2) the default has become an Event of Default and the Owners of not less than a majority in aggregate principal amount of Outstanding Bonds affected thereby[, with the consent of the Bond Insurer, or the Bond Insurer] shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers granted in the Indenture or to institute such action, suit or proceeding in its own name, (3) [the Bond Insurer or] the Owners of such Bonds have offered to the Trustee indemnity as provided in the Indenture, and (4) the Trustee for 60 days after receipt of such request and indemnification fails or refuses to exercise the rights and remedies granted in the Indenture, or to institute such action, suit or proceeding in its own name; and such request and offer of indemnity are, in every case at the option of the Trustee, conditions precedent to the execution of the powers and trusts of the Indenture, and to any action or cause of action for the enforcement of the Indenture, or for the appointment of a receiver or for any other remedy thereunder; it being understood and intended that no one or more Owners of the Bonds [or the Bond Insurer] shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of the Indenture by its, his or their action or to enforce any right under the Indenture except in the manner provided in the Indenture, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Indenture and for the equal and ratable benefit of the Owners of all Outstanding Bonds affected thereby. However, nothing contained in the Indenture will affect or impair the right of any Owner of Bonds to enforce the payment of the principal of or interest on any Bond at and after the maturity or redemption date thereof or the obligation of the Commission to pay the principal of and interest on each of the Bonds to the respective Owners thereof at the time and place and from the source and in the manner in the Indenture and in the Bonds expressed,

### **Bond Insurer Deemed Bondowner; Rights of Bond Insurer**

[Notwithstanding any provisions of the Indenture to the contrary, the Bond Insurer shall at all times, unless it is in default under the Bond Insurance Policy, be deemed the exclusive Owner of all Bonds for all purposes except for the purpose of payment of the principal of and premium, if any, and interest on the Bonds prior to the payment by the Bond Insurer of the principal of and interest on the Bonds. THE BOND INSURER SHALL HAVE THE EXCLUSIVE RIGHT TO DIRECT ANY ACTION OR REMEDY TO BE UNDERTAKEN BY THE TRUSTEE, BY THE OWNERS OR BY ANY OTHER PARTY PURSUANT TO THE INDENTURE AND THE LOAN AGREEMENTS, AND NO EVENT OF DEFAULT SHALL BE WAIVED, WITHOUT THE BOND INSURER'S CONSENT. Provided, however, that a Bond Insurer will have no rights as a Bondholder under the Indenture if it is in default under its Bond Insurance Policy or its ratings for insured obligations have dropped below \_\_\_\_\_ by Moody's or \_\_\_\_\_ by S&P.]

### **Supplemental Indenture**

***Not Requiring Bondholder Consent.*** The Commission and the Trustee may, without the consent of or notice to any of the Bondholders[, but only with notice to the Bond Insurer,] enter into any indenture or indentures supplemental to the Indenture for any one or more of the following purposes:

(1) To cure or correct any ambiguity or omission or formal defect in the Indenture;

(2) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or the Trustee, or to make any change which, in the judgment of the Trustee, is not to the material prejudice of the Bondholders;

(3) To subject to the Indenture additional revenues, properties or collateral;

(4) To make such changes as shall be necessary to issue refunding obligations pursuant to the Indenture; or

(5) To modify, amend or supplement the Indenture or any indenture supplemental thereto in such manner as to permit its qualification under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to the Indenture or any indenture supplemental thereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

Amendments to the Indenture resulting from reassignment of Loans or modification of Projects as provided in the Indenture shall not require the consent of [either the Bond Insurer or] the Owners of the Bonds.

***Requiring Consent.*** Exclusive of Supplemental Indentures described above under “Supplemental Indentures Not Requiring Bondholder Consent,” the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding which are affected, will have the right, from time to time, to consent to and approve the execution by the Commission and the Trustee of any Supplemental Indenture or Indentures deemed necessary and desirable by the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular manner, any of the terms or provisions contained in the Indenture or in any Supplemental Indenture; provided, however, that no Supplemental Indenture will permit, or be construed as permitting (1) without the consent of the Owners of all then Outstanding Bonds affected thereby, (a) an extension of the maturity date of the principal of, or the due date of interest on, any Bond, or (b) a reduction in the principal amount of any Bond or the rate of interest thereon, or (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds; or (d) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, or (e) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding, or (2) any modification of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee, without the written consent of the Trustee. [Any Supplemental Indenture entered into pursuant to the provisions of this paragraph shall require the consent of the Bond Insurer if such Bond Insurer has satisfied its obligations under the Bond Insurance Policy.]

[NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION TO THE CONTRARY, IF THE BOND INSURER HAS HONORED ITS OBLIGATIONS UNDER THE BOND INSURANCE POLICY, THE COMMISSION AND THE TRUSTEE MAY ENTER INTO ONE OR MORE SUPPLEMENTAL INDENTURES WHICH AMENDS ALL OR ANY PART OF THE INDENTURE WITH THE WRITTEN CONSENT OF THE BOND INSURER. THE CONSENT OF THE OWNERS OF THE BONDS SHALL NOT BE NECESSARY. THE FOREGOING DOES NOT APPLY TO AMENDMENTS TO THE TAX COVENANTS CONTAINED IN THE INDENTURE NOR MAY SUCH AMENDMENTS PERMIT MODIFICATIONS DESCRIBED IN (1) OR (2) ABOVE.]

### **CONTINUING DISCLOSURE**

The Commission and the Department are each agreeing, under separate certificates to be executed for the benefit of the Bondholders at the time of issuance of the Series 2011 Bonds, to provide certain financial information and operating data in each year (each an “Annual Report”), and to provide notices of the occurrence of certain enumerated events, if material. Such agreements shall only apply so long as the Series 2011 Bonds remain outstanding under the Indenture. The agreements shall also cease upon the termination of the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 (the “Rule”) by legislative, judicial or administrative action. The Commission and the Department will each provide, or cause a dissemination agent to provide, its Annual Report to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System (“EMMA”) described in the Continuing Disclosure Certificates attached hereto as APPENDIX E. The notices of material events will be provided by the Commission or the Department, or a dissemination agent, as applicable, to EMMA. The Commission has appointed the Florida Ports Council as its initial dissemination agent. The specific nature of the information to be contained in each Annual Report and the notices of material events are described in “APPENDIX E-- FORM OF THE CONTINUING DISCLOSURE CERTIFICATES” attached hereto. These agreements have been made in order to assist the Underwriters in complying with the Rule.

With respect to the Series 2011 Bonds, no party other than the Commission and the Department is obligated to provide, nor is expected to provide, any continuing disclosure information with respect to the Rule.

The Commission and the Department are in compliance and have been in compliance with its disclosure undertakings within the last five years.

### **FINANCIAL STATEMENTS**

The audited financial statements of the Commission for the fiscal year ended September 30, [\_\_\_\_], appended hereto as APPENDIX H-1, have been audited by [\_\_\_\_\_] C.P.A., P.A.] Such audited financial statements of the Commission, including the auditor’s report thereon, have been included in this Official Statement as public documents and the consent of the auditors was not requested. The auditors have not performed any services relating thereto, and are therefore not associated with the issuance of the Bonds.

The audited financial statements of the State of Florida for the fiscal year ended June 30, [\_\_\_\_], appended hereto as APPENDIX H-2, have been audited by the Auditor General of the State of Florida. Such audited financial statements of the State, including the auditor's report thereon, have been included in this Official Statement as public documents and the consent of the auditors was not requested. The auditors have not performed any services relating thereto, and are therefore not associated with the issuance of the Bonds.

The Series 2011 Bonds are obligations of the Commission payable solely from moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, and payable to the Commission as described herein, and no other revenues or assets of the Commission or the State reflected in such financial statements may be used to pay the principal of or interest on the Series 2011 Bonds.

## **ENFORCEABILITY OF REMEDIES**

The remedies available to the Trustee or the Commission or the Owners of the Series 2011 Bonds upon an Event of Default under the Indenture or the Loan Agreements [or upon nonpayment by the Bond Insurer under its Bond Insurance Policy] are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including specifically Title ii of the United States Code (the Federal Bankruptcy Code), the remedies provided in the Indenture and the Loan Agreements may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2011 Bonds and the delivery of the Loan Agreements will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the rights of creditors generally.

## **TAX MATTERS**

### **General**

The Internal Revenue Code of 1986, as amended (the "Code"), contains a number of requirements and restrictions which apply to the Series 2011 Bonds, including investment restrictions, a requirement of periodic payments of arbitrage profits to the Treasury of the United States of America, requirements regarding the timely and proper use of bond proceeds and the facilities financed therewith, and certain other matters. The Commission has covenanted to comply with all requirements of the Code that must be satisfied in order for the interest on the Series 2011 Bonds to be excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements could cause interest on the Series 2011 Bonds to be included in gross income retroactive to the date of issuance of the Series 2011 Bonds.

Subject to the condition that the Commission will comply with the pertinent requirements of the Code, in the opinion of Bond Counsel, under present law, (1) interest on the Series 2011 Bonds is not included in the gross income of the holders thereof for federal income tax purposes, except during any period while a Series 2011B Bond is held by a "substantial user" of the facilities refinanced by the Series 2011B Bonds or a "related person" within the meaning of Section 147(a) of the Code, (2) interest on the Series 2011A Bonds will not be an item of tax

preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; provided, however, with respect to certain corporations, interest on the Series 2011A Bonds is taken into account in determining adjusted current earnings for purposes of the alternative minimum tax and (3) interest on the Series 2011B Bonds is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations.

As to questions of fact material to the opinion of Bond Counsel, Bond Counsel will rely upon representations and covenants made on behalf of the Commission in the Indenture, other finance documents, certificates of appropriate officers of the Commission and certificates of public officials (including certifications as to the use of Series 2011 Bond proceeds and of the property refinanced thereby), without undertaking to verify the same by independent investigation.

The Code contains numerous provisions which could affect the economic value of the Series 2011 Bonds to certain Series 2011 Bondholders. Prospective Series 2011 Bondholders, however, should consult their own tax advisors with respect to the impact of such provisions on their own tax situations.

The Series 2011 Bonds will not be “qualified tax-exempt obligations” within the meaning of Section 265(b) of the Code. Interest or indebtedness incurred or continued to purchase or carry the Series 2011 Bonds, or in the case of banks and certain other financial institutions, interest expense allocated to interest on the Series 2011 Bonds, will not be deductible for federal income tax purposes.

### **Internal Revenue Code of 1986**

The Code contains a number of provisions that apply to the Series 2011 Bonds, including, among other things, restrictions relating to the use or investment of the proceeds of the Series 2011 Bonds and the payment of certain arbitrage earnings in excess of the “yield” on the Series 2011 Bonds to the Treasury of the United States of America. Noncompliance with such provisions may result in interest on the Series 2011 Bonds being included in gross income for federal income tax purposes retroactive to their date of issuance.

### **Collateral Tax Consequences**

Except as described above, Bond Counsel will express no opinion regarding the federal income tax consequences resulting from the ownership of, receipt or accrual of interest on, or disposition of, the Series 2011 Bonds. Prospective purchasers of Series 2011 Bonds should be aware that the ownership of Series 2011 Bonds may result in other collateral federal tax consequences. For example, ownership of the Series 2011 Bonds may result in collateral tax consequences to various types of corporations relating to (1) denial of interest deduction to purchase or carry such Series 2011 Bonds, (2) the branch profits tax, and (3) the inclusion of interest on the Series 2011 Bonds in passive income for certain Subchapter S corporations. In addition, the interest on the Series 2011 Bonds may be included in gross income by recipients of certain Social Security and Railroad Retirement benefits.

**PURCHASE, OWNERSHIP, SALE OR DISPOSITION OF THE SERIES 2011 BONDS AND THE RECEIPT OR ACCRUAL OF THE INTEREST THEREON MAY HAVE**

ADVERSE FEDERAL TAX CONSEQUENCES FOR CERTAIN INDIVIDUAL AND CORPORATE BONDHOLDERS, INCLUDING, BUT NOT LIMITED TO, THE CONSEQUENCES REFERRED TO ABOVE. PROSPECTIVE BONDHOLDERS SHOULD CONSULT WITH THEIR TAX ADVISORS FOR INFORMATION IN THAT REGARD.

### **Other Tax Matters**

Interest on the Series 2011 Bonds may be subject to state or local income taxation under applicable state or local laws in some jurisdictions. Purchasers of the Series 2011 Bonds should consult their own tax advisors as to the income tax status of interest on the Series 2011 Bonds in their particular state or local jurisdiction.

During recent years, legislative proposals have been introduced in Congress, and in some cases enacted, that altered certain federal tax consequences resulting from the ownership of obligations that are similar to the Series 2011 Bonds. In some cases, these proposals have contained provisions that altered these consequences on a retroactive basis. Such alterations of federal tax consequences may have affected the market value of obligations similar to the Series 2011 Bonds. From time to time, legislative proposals are pending which could have an effect on both the federal tax consequences resulting from ownership of the Series 2011 Bonds and their market value. No assurance can be given that additional legislative proposals will not be introduced or enacted that would or might apply to, or have an adverse effect upon, the Series 2011 Bonds.

### **Tax Treatment of Original Issue Discount**

Bond Counsel is further of the opinion that the difference between the principal amount of the Series 2011A Bonds maturing on October 1, 20\_\_, 20\_\_ and 20\_\_ and the Series 2011B Bonds maturing on October 1, 20\_\_, 20\_\_ and 20\_\_ (collectively, the “Series 2011 Discount Bonds”) and the initial offering price to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of such Series 2011 Discount Bonds of the same maturity was sold constitutes original issue discount which is excludable from gross income for federal income tax purposes to the same extent as interest on the Series 2011 Bonds. Further, such original issue discount accrues actuarially on a constant interest rate basis over the term of each Series 2011 Discount Bond and the basis of each Series 2011 Discount Bond acquired at such initial offering price by an initial purchaser thereof will be increased by the amount of such accrued original issue discount. The accrual of original issue discount may be taken into account as an increase in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Series 2011 Discount Bonds, even though there will not be a corresponding cash payment. Owners of the Series 2011 Discount Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Series 2011 Discount Bonds.

### **Tax Treatment of Bond Premium**

The difference between the principal amount of the Series 2011A Bonds maturing on October 1, 20\_\_ through and including October 1, 20\_\_ and the Series 2011B Bonds maturing on

October 1, 20\_\_ through and including October 1, 20\_\_ (collectively, the “Non-Callable Premium Bonds”) and the Series 2011A Bonds maturing on October 1, 20\_\_ and the Series 2011B Bonds maturing on October 1, 20\_\_ (collectively, the “Callable Premium Bonds” and together with the Non-Callable Premium Bonds the “Premium Bonds”) and the initial offering price to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of such Premium Bonds of the same maturity was sold constitutes to an initial purchaser amortizable bond premium which is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Non-Callable Premium Bond and to the first call date in the case of the Callable Premium Bonds. For the purposes of determining gain and loss on the sale or other disposition of a Premium Bond, an initial purchaser who acquires such obligation in the initial offering to the public at the initial offering price is required to decrease such purchaser's adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for the purposes of determining various other tax consequences of owning such Premium Bonds. Owners of Premium Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Premium Bonds.

#### **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

The accuracy of the mathematical computation of the adequacy of the maturing principal amounts of and interest on the securities and cash, if any, to be held by an escrow holder to pay, when due, the principal of, applicable premium, and interest on the Refunded Bonds to the date of their maturities or earlier redemption has been verified by \_\_\_\_\_, whose verification report with respect thereto will be available at delivery of the Series 2011 Bonds.

#### **UNDERWRITING**

The Underwriters named on the cover hereof have agreed to purchase the Series 2011 Bonds at an aggregate purchase price of \$\_\_\_\_\_ (par amount of \$\_\_\_\_\_ less an Underwriters' discount of \$\_\_\_\_\_ and [less][plus] net original issue [discount][premium] of \$\_\_\_\_\_ ). The Underwriters will not be obligated to purchase any Series 2011 Bonds unless all of such Series 2011 Bonds are available for purchase. The obligations of the Underwriters to accept delivery of the Series 2011 Bonds are subject to numerous conditions which are set forth in the Purchase Contract.

The Underwriters may offer and sell the Series 2011 Bonds to other dealers and other purchasers at prices lower than the public offering prices stated on the inside cover hereof. The initial public offering prices may be changed from time to time by the Underwriters.

## **FINANCIAL ADVISOR TO THE COMMISSION**

First Southwest Company, Aventura, Florida is serving as Financial Advisor to the Commission, and assisted in matters relating to the planning, structuring and issuance of the Bonds and provided other advice.

## **LEGAL MATTERS**

Legal matters incident to the authorization and issuance of the Series 2011 Bonds are subject to the final approving opinion of Nabors, Giblin & Nickerson, P.A., Tampa, Florida, Bond Counsel, substantially in the form attached hereto as APPENDIX F. Certain legal matters will be passed upon for the Commission by its counsel, [\_\_\_\_\_, \_\_\_\_\_, Florida]. Certain legal matters will also be passed upon for the Underwriters by their counsel, Squire, Sanders & Dempsey (US) LLP. Copies of the executed opinion of Bond Counsel will be available at the time of the delivery of the Series 2011 Bonds.

## **FEES OF ADVISORS, COUNSEL AND/OR CONSULTANTS**

Payment of the fees of Bond Counsel, Counsel to the Commission, the Underwriters (and their counsel) and the Financial Advisor are contingent upon the issuance of the Series 2011 Bonds.

## **RATINGS**

The Series 2011 Bonds will be rated “\_\_\_” by Moody’s Investors Service (“Moody’s”), “\_\_\_” by Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc. (“S&P”), and “\_\_\_” by Fitch Ratings (“Fitch”)[, based upon the Bond Insurance Policy insuring the timely payment of principal of and interest on the Series 2011 Bonds being issued by the Bond Insurer on the date of delivery of the Series 2011 Bonds. The Series 2011 Bonds have been assigned underlying, unenhanced ratings of “\_\_\_” by Moody’s, “\_\_\_” by S&P and “\_\_\_-” by Fitch]. Such ratings reflect only the views of such organizations at the time such ratings were issued and an explanation of the significance of such ratings may be obtained from the rating agencies. There is no assurance that such ratings will continue For any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, or any of them, if, in their judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings can be expected to have an adverse effect on the market price of the Series 2011 Bonds. The Underwriters have taken no obligation to oppose any proposed downward revision, or withdrawal, of such ratings or to notify any Bondholder or other persons of any such proposed downward revision or withdrawal.

## **LITIGATION**

There is not now pending or, to the knowledge of the Commission, threatened, any litigation restraining or enjoining the issuance or delivery of the Series 2011 Bonds or questioning or affecting the validity of the Series 2011 Bonds or the proceedings or authority under which they are to be issued. There is no litigation pending or, to the Commission’s knowledge, threatened, which in any manner questions the right of the Commission to enter into the Indenture, the Master Agreement, the Loan Agreements, the Program Administration



Agreement and its Continuing Disclosure Certificate or to secure the Series 2011 Bonds in the manner provided in the Indenture and the Act.

Simultaneously with the issuance of the Series 2011 Bonds and as a condition to the acceptance of the Series 2011 Bonds by the Underwriters, each Borrower shall deliver to the Commission an opinion of its counsel to the effect that to the best of their knowledge, there is no litigation or legal or governmental action, proceeding, inquiry or investigation pending or threatened by judicial or governmental authorities to which the Borrower is a party or any property of the Borrower is subject which, if determined adversely to the Borrower, would individually or in the aggregate (1) materially and adversely affect the validity or the enforceability of the Loan Agreement or the Loan, (2) otherwise materially and adversely affect the ability of the Borrower to comply with its obligations under the Loan Agreement, or (3) materially and adversely affect the Projects.

### **DISCLOSURE UNDER FLORIDA BLUE SKY LAWS**

Florida law requires that the Commission make a full and fair disclosure of any bonds or other debt obligations that it has issued or guaranteed and that are or have been in default as to principal or interest at any time after December 31, 1975 (including bonds or other debt obligations for which it has served as a conduit issuer such as the Series 2011 Bonds). The Commission is not and has not since December 31, 1975 been in default as to principal of and interest on its bonds or other debt obligations, including bonds or other debt obligations for which it has served as conduit issuer.

### **AUTHORIZATION OF AND CERTIFICATION CONCERNING OFFICIAL STATEMENT**

Concurrently with the delivery of the Series 2011 Bonds, the Chairman or Vice-Chairman of the Commission will furnish his or her certificate to the effect that, to the best of his or her knowledge, this Official Statement did not, as of its date, and does not as of the date of delivery of the Series 2011 Bonds, contain any untrue statement of a material fact or omit to state a material fact that should be included herein, or necessary to make the statements herein, in light of the circumstances under which they were made, not misleading (except that no certification will be given with respect to the information under the caption[s] “THE SERIES 2011 BONDS--Book-Entry-Only System” [and “MUNICIPAL BOND INSURANCE”] herein).

### **MISCELLANEOUS**

So far as any statements made in this Official Statement or in the Appendices attached hereto involve matters of opinion, projections or of estimates, whether or not expressly stated, they are set forth as such and not as representations of facts. No representation is made that any of the statements will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the holders of the Series 2011 Bonds.

The Commission has reviewed the information herein and approved this Official Statement.

**FLORIDA PORTS FINANCING  
COMMISSION**

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

APPENDIX A  
FORM OF THE INDENTURE

APPENDIX B  
FORM OF THE LOAN AGREEMENT

APPENDIX C  
FORM OF THE MASTER AGREEMENT

APPENDIX D  
FORM OF THE INTERLOCAL AGREEMENT

APPENDIX E

FORM OF THE CONTINUING DISCLOSURE CERTIFICATES

APPENDIX F  
FORM OF OPINION OF BOND COUNSEL



APPENDIX G  
SPECIMEN COPY OF BOND INSURANCE

APPENDIX H-1

FLORIDA PORTS FINANCING COMMISSION AUDITED FINANCIAL STATEMENTS

APPENDIX H-2

STATE OF FLORIDA AUDITED FINANCIAL STATEMENTS

**EXHIBIT F**

**FORM OF CONTINUING DISCLOSURE CERTIFICATE**

## **CONTINUING DISCLOSURE CERTIFICATE OF COMMISSION**

THIS CONTINUING DISCLOSURE CERTIFICATE, dated as of January \_\_, 2011 (the “Certificate”), is signed and delivered by the Florida Ports Financing Commission (the “Commission”) in connection with the issuance by the Commission of its \$\_\_\_\_\_ principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011 (NON-AMT) and \$\_\_\_\_\_ principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011B (AMT) (collectively, the “Series 2011 Bonds”) for the benefit of the Holders and Beneficial Owners (as defined herein) from time to time of the Series 2011 Bonds.

### **RECITAL**

The Commission has determined to issue the Series 2011 Bonds and the Series 2011 Bonds are being issued pursuant to that certain First Amended and Restated Indenture of Trust, dated as of January 1, 2011, as supplemented between the Commission and \_\_\_\_\_, as trustee (the “Trustee”). The Series 2011 Bonds are payable solely from moneys due the Borrowers (as defined in the Official Statement relating to the Series 2011 Bonds) pursuant to Section 320.20(3), Florida Statutes, which moneys have been assigned by such Borrowers to the Trustee, on behalf of the Commission, and shall be transferred by the Department directly to the Trustee pursuant to that certain Master Agreement dated as of November 7, 1996 (the “Master Agreement”) between the Commission and the State of Florida Department of Transportation (the “Department”). Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated and Siebert Brandford, Shank & Co., L.L.C. (collectively, the “Participating Underwriters”) have agreed to provide funds to the Commission by purchasing the Series 2011 Bonds. As a condition to the purchase of the Series 2011 Bonds from the Commission and the sale of Series 2011 Bonds to Holders and Beneficial Owners, the Participating Underwriters are required to reasonably determine that the Commission and any Obligated Person has undertaken, in a written document for the benefit of Holders and Beneficial Owners of the Series 2011 Bonds, to provide certain information in accordance with the Rule (as defined herein).

NOW, THEREFORE, in accordance with the Indenture, the Commission covenants and agrees as set forth in this Continuing Disclosure Certificate.

**Section 1. Purpose of Continuing Disclosure Certificate.** This Certificate is being entered into, signed and delivered for the benefit of the Holders and Beneficial Owners of the Series 2011 Bonds and in order to assist the Participating Underwriters of the Series 2011 Bonds in complying with Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission (SEC) pursuant to the Securities Exchange Act of 1934, as may be amended from time to time (the Rule).

**Section 2. Definitions.** In addition to the definitions set forth above, the following capitalized terms shall have the following meanings in this Certificate, unless the context clearly otherwise requires. Reference to “Sections” shall mean sections of this Certificate.

“Annual Filing” means any Annual Information Filing provided by the Commission pursuant to, and as described in, Sections 3 and 4.

“Audited Financial Statements” means the audited basic financial statements of the Commission, prepared in conformity with generally accepted accounting principles.

“Beneficial Owner” means any person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2011 Bonds (including persons holding Series 2011 Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2011 Bonds for federal income tax purposes.

“EMMA” means the Electronic Municipal Market Access system of the MSRB; information regarding submissions to EMMA is available at <http://emma.msrb.org>.

“Filing Date” means the last day of the seventh month following the end of each Fiscal Year (or the next succeeding business day if that day is not a business day), beginning April 30, 2011.

“Fiscal Year” means the 12-month period beginning on October 1 of each year or such other 12-month period as the Commission shall adopt as its fiscal year.

“Holder” means, with respect to the Series 2011 Bonds, the person in whose name a Series 2011 Bond is registered in accordance with the Indenture.

“MSRB” means the Municipal Securities Rulemaking Board.

“Obligated Person” means (as defined in the Rule), the Department and the Commission are the only Obligated Persons for the Series 2011 Bonds.

“Official Statement” means the Official Statement for the Series 2011 Bonds dated \_\_\_\_\_, 2011.

“Participating Underwriters” means any of the original underwriters of the Series 2011 Bonds required to comply with the Rule in connection with offering of the Series 2011 Bonds, as identified in the Recitals herein.

“Specified Events” means any of the events with respect to the Series 2011 Bonds as set forth in Section 5(a).

“State” means the State of Florida.

### **Section 3. Provision of Annual Information.**

(a) The Commission shall provide (or cause to be provided) not later than the Filing Date to the MSRB through EMMA an Annual Filing, which is consistent with the requirements of Section 4. The Annual Filing shall be submitted in an electronic format and contain such identifying information as is prescribed by the MSRB through EMMA, and may be submitted as a single document or as separate documents comprising a package, and may cross-reference

other information as provided in Section 4; provided that the Audited Financial Statements of the Commission may be submitted separately from the balance of the Annual Filing and later than the Filing Date if they are not available by that date. If the Commission's Fiscal Year changes, it shall give notice of such change in the same manner as for a Specified Event under Section 5.

(b) If the Commission is unable to provide to the MSRB an Annual Filing by the Filing Date, the Commission shall, in a timely manner, send a notice to the MSRB in an electronic format as prescribed by the MSRB.

**Section 4. Content of Annual Filing.** The Commission's Annual Filing shall contain or include by reference the following:

(a) Financial information and operating data included in the Official Statement, as follows:

- (1) Updates of information in Official Statement relating to collections of Motor Vehicle License Taxes (as defined in the Official Statement) and distribution thereof to education; amount of outstanding bonds or other obligations on behalf of any school district or college pursuant to the School Capital Outlay Amendment (as defined in the Official Statement).
- (2) Description of any indebtedness of the Commission other than the Series 2011 Bonds payable in whole or in part from the State Transportation Trust Fund (as defined in the Official Statement) as provided in Section 320.20(3), Florida Statutes.
- (3) Any material litigation which would have been disclosed in the Official Statement.
- (4) Any other material financial information or operating data of the Commission.

(b) The Audited Financial Statements of the Commission utilizing [generally accepted] accounting principles applicable to governmental units as described in the Official Statement, except as may be modified from time to time and described in such financial statements.

The foregoing shall not obligate the Commission to prepare or update projections of any financial information or operating data.

Any or all of the items listed above may be included by specific reference to other documents, including annual informational statements of the Commission or official statements of debt issues of the Commission or related public entities, which have been submitted to the MSRB, EMMA or the Securities and Exchange Commission. The Commission shall clearly identify each such other document so included by reference.

## **Section 5. Reporting Specified Events.**

(a) The Commission shall provide to the MSRB, in an electronic format through EMMA and containing such identifying information as is prescribed by the MSRB and in a timely manner but not later than ten business days after the occurrence of the event, notice of any of the following events with respect to the Series 2011 Bonds, as specified by the Rule:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;<sup>(a)</sup>
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;<sup>(a)</sup>
- (5) Substitution of credit or liquidity providers, or their failure to perform;<sup>(a)</sup>
- (6) Issuance of Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders, if material;
- (8) Bond calls, if material, and tender offers;<sup>(b)</sup>
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.<sup>(c)</sup>
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the obligated person; *Note: For the purposes of the event identified in this subparagraph, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an Obligated Person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental*



*authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.*

- (13) The consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of a successor or additional Trustee or the change of name of a Trustee, if material.

*Note:*

- (a) *The Commission has not obtained or provided, and does not expect to obtain or provide, any debt service reserves, credit enhancements or credit or liquidity providers for the Series 2011 Bonds.*
- (b) *Any scheduled redemption of Series 2011 Bonds pursuant to mandatory sinking fund redemption requirements does not constitute a specified event within the meaning of the Rule.*
- (c) *Repayment of the Series 2011 Bonds is not secured by a lien on any property capable of release or sale or for which other property may be substituted*

**Section 6. Amendments.** The Commission reserves the right to amend this Agreement, and noncompliance with any provision of this Agreement may be waived, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency or formal defect or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the Commission, or type of business conducted by the Commission. Any such amendment or waiver shall not be effective unless the Commission shall have received a written opinion of qualified independent special counsel selected by the Commission that the Agreement (as amended or taking into account such waiver) would have materially complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any applicable amendments to or official interpretations of the Rule, as well as any change in circumstances. An Annual Filing containing any revised operating data or financial information shall explain, in narrative form, the reasons for any such amendment or waiver and the impact of the change on the type of operating data or financial information being provided. If the amendment relates to the accounting principles to be followed in preparing Audited Financial Statements, the Commission shall provide notice of such change in the same manner as for a Specified Event under Section 5.

**Section 7. Additional Information.** Nothing in this Certificate shall be deemed to prevent the Commission from disseminating any other information, using the means of dissemination set forth in this Certificate or providing any other means of communication, or including any other information in any Annual Filing or providing notice of the occurrence of an event, in addition to that which is required by this Certificate. If the Commission chooses to include any information in any document or notice of occurrence of an event in addition to that which is specifically required by this Certificate, the Commission shall have no obligation under

this Certificate to update such information or include it in any future Annual Filing or notice of occurrence of a Specified Event.

**Section 8. Remedy for Breach.** This Certificate shall be solely for the benefit of the Holders and Beneficial Owners from time to time of the Series 2011 Bonds. The exclusive remedy for any breach of this Certificate by the Commission shall be limited, to the extent permitted by law, to a right of Holders and Beneficial Owners to institute and maintain, or to cause to be instituted and maintained, such proceedings as may be authorized at law or in equity to obtain the specific performance by the Commission of its obligations under this Certificate. Any Beneficial Owner seeking to require the Commission to comply with this Certificate shall first provide at least 30 days' prior written notice to the Commission of the Commission's failure, giving reasonable detail of such failure, following which notice the Commission shall have 30 days to comply. A default under this Certificate shall not be deemed an event of default under the Indenture, and the sole remedy under this Certificate in the event of any failure of the Commission to comply with this Certificate shall be an action to compel performance.

**Section 9. Appropriation.** The performance by the Commission of its obligations under this Certificate shall be subject to the availability of funds and their annual appropriation to meet costs that the Commission would be required to incur to perform those obligations.

**Section 10. Termination.** The obligations of the Commission under the Certificate shall remain in effect only for such period that the Series 2011 Bonds are outstanding in accordance with their terms and the Commission remains an Obligated Person with respect to the Series 2011 Bonds within the meaning of the Rule. The obligation of the Commission to provide the information and notices of the events described above shall terminate, if and when the Commission no longer remains such an Obligated Person. If any person, other than the Commission, becomes an Obligated Person relating to the Series 2011 Bonds, the Commission shall use its best efforts to require such Obligated Person to comply with all provisions of the Rule applicable to such Obligated Person.

**Section 11. Dissemination Agent.** The Commission may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under this Certificate, and may discharge any such agent, with or without appointing a successor dissemination agent.

**Section 12. Beneficiaries.** This Certificate shall inure solely to the benefit of the Commission, any dissemination agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the Series 2011 Bonds, and shall create no rights in any other person or entity.

**Section 13. Recordkeeping.** The Commission shall maintain records of all Annual Filings and notice of Specified Events including the content of such disclosure, the names of the entities with whom such disclosures were filed and the date of filing such disclosure.

**Section 14. Governing Law.** This Certificate shall be governed by the laws of the State.

IN WITNESS WHEREOF, the Commission has caused this Continuing Disclosure Certificate to be duly signed and delivered to the Participating Underwriters, as part of the Series 2011 Bond proceedings and in connection with the original delivery of the Series 2011 Bonds to the Participating Underwriter, on its behalf by its official signing below, all as of the date set forth above, and the Holders and Beneficial Owners from time to time of the Series 2011 Bonds shall be deemed to have accepted this Certificate made in accordance with the Rule.

FLORIDA FINANCING COMMISSION

Dated: January \_\_, 2011

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

**TAB 8**

**CONSIDER ADOPTION OF RESOLUTION  
FOR FPFC REFUNDING REVENUE  
BONDS (STATE TRANSPORTATION  
TRUST FUND - INTERMODAL  
PROGRAM), 2011A (NON-AMT) AND FOR  
FPFC REFUNDING REVENUE BONDS  
(STATE TRANSPORTATION TRUST  
FUND - INTERMODAL PROGRAM),  
2011B (AMT)**

## **RESOLUTION NO.**

A RESOLUTION OF THE FLORIDA PORTS FINANCING COMMISSION AUTHORIZING THE ISSUANCE BY THE FLORIDA PORTS FINANCING COMMISSION OF ITS FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS (STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM), SERIES 2011A (NON-AMT) AND ITS FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS (STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM), SERIES 2011B (AMT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$130,000,000 IN ORDER TO REFINANCE THE COMMISSION'S REVENUE BONDS (STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM), SERIES 1999; AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDED AND RESTATED INDENTURE OF TRUST; AUTHORIZING THE EXECUTION AND DELIVERY OF THE FIRST SUPPLEMENTAL INDENTURE OF TRUST; APPROVING NEW EXHIBITS A AND D TO THE LOAN AGREEMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTRACT OF PURCHASE WITH RESPECT TO THE NEGOTIATED SALE OF SAID BONDS; DELEGATING CERTAIN AUTHORITY TO THE CHAIRMAN OR VICE-CHAIRMAN TO AWARD SAID BONDS PURSUANT TO THE CONTRACT OF PURCHASE IN THE EVENT CERTAIN PARAMETERS SET FORTH HEREIN ARE MET; APPOINTING A TRUSTEE; APPROVING THE USE OF A PRELIMINARY OFFICIAL STATEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINAL OFFICIAL STATEMENT WITH RESPECT TO THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE CERTIFICATE; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT; MAKING CERTAIN FINDINGS AND PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS; AUTHORIZING THE OFFICERS OF THE COMMISSION TO PERFORM

CERTAIN OTHER ACTIONS; AND PROVIDING FOR AN  
EFFECTIVE DATE FOR THIS RESOLUTION.

**WHEREAS**, the Commission is duly created and existing pursuant to the Constitution and laws of the State of Florida, including, particularly, Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes (the "Interlocal Act"), and a first amended and restated interlocal agreement, dated as of September 15, 1997 (the "Interlocal Agreement"), among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County; and

**WHEREAS**, the Commission, pursuant to the authority of the Interlocal Act, the Interlocal Agreement and other applicable provisions of law, is authorized, among other things, to issue revenue bonds on behalf of and for the benefit of the ports located in the State of Florida (the "Ports") in order to finance, refinance or reimburse the cost of qualified projects of such Ports, such bonds to be secured by instruments evidencing and securing loans to the Ports and to be payable solely out of payments made by the Ports pursuant to Loan Agreements entered into between the Ports and the Commission or from other moneys designated as available therefor; and

**WHEREAS**, the Commission has determined that the public interest will be best served by the Commission's issuance of revenue bonds in order to provide funds to loan to the participating Ports to finance, refinance or reimburse the cost of qualifying projects pursuant to loan agreements between the respective Ports and the Commission; and

**WHEREAS**, the Commission has heretofore issued its \$153,155,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999 (the "Series 1999 Bonds"), pursuant to an Indenture of Trust, dated as of September 1, 1999 (the "Original Indenture"), between the Commission and SunTrust Bank, as Trustee, to provide funds to finance, refinance or reimburse the cost of qualified projects of the participating Ports; and

**WHEREAS**, in order to secure the payment of the principal of, premium, if any, and interest on the Series 1999 Bonds and any additional parity bonds issued under the Original Indenture, Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City) and City of Pensacola (Port of Pensacola) (collectively, the "Borrowers") have each entered into a loan agreement with the Commission (collectively, the "Loan Agreements") and have agreed in the Loan Agreements to assign,

transfer and pledge moneys received by such Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, in order to provide for the payment of principal of, premium, if any, and interest on the Series 1999 Bonds and any additional parity bonds issued under the Original Indenture; and

**WHEREAS**, payments made by the Borrowers under the Loan Agreements relating to repayment of the Series 1999 Bonds shall be made solely from moneys transferred from the State Transportation Trust Fund to the Trustee pursuant to Section 320.20(4), Florida Statutes, and the Second Master Agreement As Amended ( the "Master Agreement"), between the Commission and the State of Florida Department of Transportation; and

**WHEREAS**, the Commission determines that is in its best interests to refinance the Series 1999 Bonds in order to achieve debt service savings; and

**WHEREAS**, the Commission has deemed it in its best interest to amend the Original Indenture in various respects and restate such Original Indenture in the form of the First Amended and Restated Indenture of Trust, dated as of the date of issuance of the Series 2011 Bonds (as amended and supplemented, the "Indenture"); and

**WHEREAS**, the Commission shall issue its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT) (the "Series 2011A Bonds") and its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT) (the "Series 2011B Bonds" and together with the Series 2011A Bonds, the "Series 2011 Bonds") in an aggregate principal amount of not exceeding \$130,000,000 pursuant to the terms of the Indenture and the First Supplemental Indenture of Trust, dated as of the date of issuance of the Series 2011 Bonds (the "First Supplemental Indenture"), for the principal purposes of refinancing the Series 1999 Bonds and paying the costs of issuance of the Series 2011 Bonds; and

**WHEREAS**, proceeds of the Series 2011 Bonds, together with other available moneys of the Commission, shall be deposited into an escrow deposit trust fund (the "Escrow Fund") in accordance with the terms of an Escrow Deposit Agreement, between the Commission and the Trustee, as escrow agent; and

**WHEREAS**, moneys in the Escrow Fund shall be invested in Government Obligations such that the principal and interest on such Government Obligations shall be sufficient to pay the principal of and interest on the Series 1999 Bonds as same becomes due or are redeemed; and

**WHEREAS**, the Series 2011 Bonds shall constitute Bonds pursuant to the terms of the Indenture and the Loan Agreements; and

**WHEREAS**, the Commission anticipates receiving a favorable offer to purchase the Series 2011 Bonds from Citigroup Global Markets, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated and Siebert Brandford Shank & Co., LLC (collectively, the "Underwriters"), pursuant to the terms and conditions set forth in the Contract of Purchase between the Commission and the Underwriters (the "Contract of Purchase"); and

**WHEREAS**, because of the length of time to notice meetings of the Commission, the Commission hereby determines to delegate the award of the Series 2011 Bonds to the Chairman within the parameters described herein; and

**WHEREAS**, the Commission desires to authorize the issuance of the Series 2011 Bonds and to provide further approval of certain documents and actions in connection with such issuance;

**NOW, THEREFORE, BE IT RESOLVED BY THE FLORIDA PORTS FINANCING COMMISSION:**

**SECTION 1. AUTHORITY FOR RESOLUTION.** This Resolution is adopted pursuant to the provisions of the Interlocal Act and other applicable provisions of law.

**SECTION 2. DEFINITIONS.** Terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

**SECTION 3. AUTHORIZATION AND DESCRIPTION OF SERIES 2011 BONDS.** (A) In accordance with the terms of the Indenture, the Commission hereby authorizes the issuance of a Series of Bonds to be known as "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT)" for the principal purpose of refinancing the Refunded Bonds. The Series 2011A Bonds shall be issued under and secured by the Indenture and the First Supplemental Indenture. Pursuant to the Loan Agreements, the Loans made to the Borrowers and Exhibit D to the Loan Agreements shall reflect the refinancing of the Refunded Bonds. The Series 2011A Bonds shall be dated as of their date of delivery, or such other date or dates as determined by the Chairman, shall be issued in the form of fully registered Bonds, without coupons, in the denomination of \$5,000 or integral multiples thereof, shall be numbered consecutively, shall be substantially in the form of Exhibit C of the Indenture, shall bear interest from their date of delivery (or such other date or dates as determined by the Chairman), payable semi-annually, on the Interest Payment Dates, commencing on April 1, 2011 (or such other date or Dates as determined by the Chairman). The Series 2011A Bonds shall have such other terms as determined by the Chairman, subject to the provisions of Section 4 hereof.



(B) In accordance with the terms of the Indenture, the Commission hereby authorizes the issuance of a Series of Bonds to be known as "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT)" for the principal purpose of refinancing the Refunded Bonds. The Series 2011B Bonds shall be issued under and secured by the Indenture and the First Supplemental Indenture. Pursuant to the Loan Agreements, the Loans made to the Borrowers and Exhibit D to the Loan Agreements shall reflect the refinancing of the Refunded Bonds. The Series 2011B Bonds shall be dated as of their date of delivery, or such other date as determined by the Chairman, shall be issued in the form of fully registered Bonds, without coupons, in the denomination of \$5,000 or integral multiples thereof, shall be numbered consecutively, shall be substantially in the form of Exhibit C of the Indenture, shall bear interest from their date of delivery (or such other date or dates as determined by the Chairman), payable semi-annually, on the Interest Payment Dates, commencing on April 1, 2011 (or such other date or Dates as determined by the Chairman). The Series 2011B Bonds shall have such other terms as determined by the Chairman, subject to the provisions of Section 4 hereof.

(C) The aggregate principal amount of the Series 2011A Bonds and the Series 2011B Bonds shall be determined by the Chairman upon advice from the Commission's Financial Advisor and Bond Counsel; provided the aggregate principal amount of the Series 2011 Bonds shall not exceed \$130,000,000.

**SECTION 4. TERMS OF THE SERIES 2011 BONDS.** The Chairman shall award the Series 2011 Bonds to the Underwriters in accordance with the terms of the Contract of Purchase attached hereto as Exhibit A; provided, however, the Contract of Purchase shall not be executed by the Chairman unless all of the following conditions have been satisfied:

(A) Receipt by the Chairman of a written offer to purchase the Series 2011 Bonds by the Underwriters substantially in the form of the Contract of Purchase, said offer to provide for, among other things, (i) not exceeding \$130,000,000 aggregate principal amount of Series 2011 Bonds, (ii) an underwriting discount (including management fee and all expenses) not in excess of 0.80% of the par amount of the Series 2011 Bonds, (iii) a true interest cost of the Series 2011 Bonds of not more than 5.00% per annum, (iv) the maturities of the Series 2011 Bonds, with the final maturity being not later than October 1, 2029, (v) the debt service of the Series 2011 Bonds in each year shall be no greater than the debt service of the Refunded Bonds for such year, and (vi) the net present value savings resulting from the issuance of the Series 2011 Bonds shall be no less than 3.0% of the par amount of the Refunded Bonds.

(B) With respect to any redemption terms for the Series 2011 Bonds, the first call date may be no later than October 1, 2021 and no call premium may exceed 2.0% of the par amount of that portion of the Series 2011 Bonds to be redeemed. Term Bonds

may be established with such Amortization Installments as the Chairman deems appropriate.

(C) Receipt by the Chairman of a disclosure statement, including a truth-in-bonding statement, of the Underwriters dated the date of the Contract of Purchase and complying with Section 218.385, Florida Statutes.

(D) Receipt by the Chairman of a good faith check from the Underwriters in an amount not less than 1.0% of the par amount of the Series 2011 Bonds provided on the cover page of the Preliminary Official Statement.

Upon satisfaction of all the requirements set forth in this Section 4, the Chairman is authorized to execute and deliver the Contract of Purchase containing terms complying with the provisions of this Section 4. The Chairman shall rely upon the advice of the Commission's Financial Advisor in determining the satisfaction of the conditions provided in this Section 4.

**SECTION 5. REDEMPTION PROVISIONS.** The Series 2011 Bonds may be redeemed prior to their respective maturities from any moneys legally available therefor, upon notice as provided in the Indenture, upon the terms and provisions set forth in the Contract of Purchase which shall be approved by the Chairman in accordance with the terms of Section 4 hereof.

**SECTION 6. NEGOTIATED SALE.** Due to the potential instability in the market for tax-exempt revenue obligations and the importance of timing in connection therewith, the complex nature of financings for the benefit of multiple borrowers, and taking into consideration the experience of the Underwriters in the marketing of revenue obligations of a similar type, it is hereby determined that it is in the best interest of the public and the Commission to sell the Series 2011 Bonds at a negotiated sale. The negotiated sale of the Series 2011 Bonds is hereby authorized and approved. The Chairman is hereby authorized to sell the Series 2011 Bonds to the Underwriters at a negotiated sale based upon the provisions set forth in Section 4 hereof.

**SECTION 7. CONTRACT OF PURCHASE.** The Series 2011 Bonds shall be sold at a negotiated sale upon the terms and conditions set forth in the Contract of Purchase. Subject to the provisions of Section 4 hereof, the Chairman is hereby authorized to execute the Contract of Purchase between the Commission and the Underwriters. The Contract of Purchase shall be in substantially the form attached hereto as Exhibit A, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the Contract of Purchase by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions.

**SECTION 8. AUTHORIZATION OF INDENTURE.** The Chairman and Secretary-Treasurer are hereby authorized and directed to execute and deliver the Indenture. The Indenture shall be in substantially in the form attached hereto as Exhibit B, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the Indenture by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions. All of the provisions of the Indenture, when executed and delivered by the Commission, as authorized herein, and when duly authorized, executed and delivered by the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 9. AUTHORIZATION OF FIRST SUPPLEMENTAL INDENTURE.** The Chairman and Secretary-Treasurer are hereby authorized and directed to execute and deliver the First Supplemental Indenture. The First Supplemental Indenture shall be in substantially in the form attached hereto as Exhibit C, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the First Supplemental Indenture by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions. All of the provisions of the First Supplemental Indenture, when executed and delivered by the Commission, as authorized herein, and when duly authorized, executed and delivered by the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 10. AUTHORIZATION OF ESCROW DEPOSIT AGREEMENT.** The Chairman and Secretary-Treasurer are hereby authorized and directed to execute and deliver the Escrow Deposit Agreement, dated as of the date of issuance of the Series 2011 Bonds, between the Commission and the Trustee. The Escrow Deposit Agreement shall be in substantially in the form attached hereto as Exhibit D, with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. Execution of the Escrow Deposit Agreement by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions. All of the provisions of the Escrow Deposit Agreement, when executed and delivered by the Commission, as authorized herein, and when duly authorized, executed and delivered by the Trustee, as escrow agent, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein. The Trustee is hereby authorized to act as escrow agent pursuant to the terms of the Escrow Deposit Agreement.

**SECTION 11. APPROVAL OF DEBT SERVICE SCHEDULE.** The Commission hereby authorizes the Chairman, and in his absence or unavailability, the Program Administrator, to modify Exhibits A and D to the Loan Agreements and Exhibit C to the Master Agreement to reflect the debt service on the Series 2011 Bonds and the refunding of the Refunded Bonds. The loan obligations of the Borrowers under the Loan

Agreements shall reflect the debt service requirements of the Series 2011 Bonds. The Chairman is further authorized to execute any amendments to the Escrow Agreement attached as Exhibit A to the Master Agreement that he deems appropriate to implement the transactions authorized herein and to ensure that excess moneys in the escrow account established by the Escrow Agreement will be available to fund capital improvements for participating Ports.

**SECTION 12. PRELIMINARY OFFICIAL STATEMENT.** The terms and provisions of the Preliminary Official Statement, the form of which is attached hereto as Exhibit E (the "Preliminary Official Statement"), be and the same are hereby approved with respect to the information contained therein. The Chairman is hereby authorized to deliver the Preliminary Official Statement to the Underwriters for their use in offering the Series 2011 Bonds for sale with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman. The Chairman is authorized to "deem final" the Preliminary Official Statement as of its date within the meaning of SEC Rule 15c2-12 (the "Rule") and the applicable rules developed by the Municipal Securities Rulemaking Board. The Chairman is authorized to execute a certificate deeming such Preliminary Official Statement "final."

**SECTION 13. OFFICIAL STATEMENT.** The form, terms and provisions of the Official Statement, which shall be dated the date of the Contract of Purchase and which shall be substantially in the form of the Preliminary Official Statement, be and the same hereby are approved with respect to the information therein contained. The Chairman is hereby authorized and directed to execute and deliver said Official Statement in the name and on behalf of the Commission, and thereupon to cause such Official Statement to be delivered to the Underwriters with such changes, amendments, modifications, omissions and additions as may be approved by the Chairman and as shall be necessary to reflect the final terms and provisions of the Series 2011 Bonds. Said Official Statement, including any such changes, amendments, modifications, omissions and additions as approved by the Chairman, and the information contained therein are hereby authorized to be used in connection with the sale of the Series 2011 Bonds to the public. Execution of the Official Statement by the Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions.

**SECTION 14. CONTINUING DISCLOSURE.** The Commission hereby covenants and agrees that, in order to provide for compliance by the Commission with the secondary market disclosure requirements of the Rule, it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate to be executed by the Commission and dated the date of delivery of the Series 2011 Bonds, as it may be amended from time to time in accordance with the terms thereof (the "Disclosure Certificate"). The Disclosure Certificate shall be substantially in the form attached hereto as Exhibit F with such changes, amendments, modifications, omissions and additions as

shall be approved by the Chairman who is hereby authorized to execute and deliver such Certificate. Notwithstanding any other provision of the Resolution or Indenture, failure of the Commission to comply with such Disclosure Certificate shall not be considered an event of default under the Indenture.

**SECTION 15. APPOINTMENT OF TRUSTEE.** U.S. Bank is hereby removed as Trustee pursuant to the terms of the Original Indenture, including in particular Section 10.07 thereof, subject to the appointment of a replacement Trustee as provided in this Section 15. \_\_\_\_\_, whose designated trust office is \_\_\_\_\_, Florida, is hereby designated Trustee pursuant to the terms of the Indenture. The Chairman and the Secretary-Treasurer are hereby authorized to enter into any agreement which may be necessary to effect the transactions contemplated by this Section 15.

**SECTION 16. PREREQUISITES PERFORMED.** All acts, conditions and things relating to the passage of this Resolution required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required.

**SECTION 17. MISCELLANEOUS.** The Chairman, Vice-Chairman and the Secretary-Treasurer or any other appropriate officers of the Commission are hereby authorized and directed to execute any and all certifications or other instruments or documents required by this Resolution, the Indenture, the First Supplemental Indenture, the Loan Agreements, the Contract of Purchase, the Official Statement, the Escrow Deposit Agreement or any other document required as a prerequisite or precondition to the issuance of the Bonds and any such representation made therein shall be deemed to be made on behalf of the Commission. All action taken to date by the officers of the Commission, the Administrator, the Financial Advisor of the Commission, Bond Counsel or Commission Counsel in furtherance of the issuance of the Bonds, including execution of any insurance commitment relating to the Bonds, is hereby approved, confirmed and ratified. The Chairman is hereby authorized to approve a change in the dates of any document or instrument authorized hereby.

**SECTION 18. GENERAL AUTHORITY.** The members of the governing body of the Commission and its officers, counsel, agents and officials are hereby authorized to do all acts and things required of them consistent with the requirements of this Resolution and any documents relating to the Program for the full punctual and complete performance of all the terms, covenants and agreements contained in the Series 2011 Bonds, this Resolution and such documents. The Vice-Chairman is authorized to do all things required or permitted by this Resolution of the Chairman or Secretary-Treasurer in their absence or unavailability.

**SECTION 19. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions contained herein shall be held

contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof and shall in no way affect the validity of any of the other provisions of this Resolution.

**SECTION 20. REPEALING CLAUSE.** All resolutions or parts thereof of the Commission in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**SECTION 21. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED this 13th day of January, 2011.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

**EXHIBIT A**

**FORM OF CONTRACT OF PURCHASE**

\$ \_\_\_\_\_  
**FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS**  
**(STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM)**  
**SERIES 2011A (NON-AMT)**

and

\$ \_\_\_\_\_  
**FLORIDA PORTS FINANCING COMMISSION REFUNDING REVENUE BONDS**  
**(STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM)**  
**SERIES 2011B (AMT)**

January \_\_, 2011

**CONTRACT OF PURCHASE**

Chairman and Other Representatives  
Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301

Ladies and Gentlemen:

Citigroup Global Markets Inc. (the "Representative"), on behalf of itself, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated and Siebert Brandford Shank & Co., L.L.C. (collectively, the "Underwriters"), hereby offers to enter into this Contract of Purchase with the Florida Ports Financing Commission (the "Commission") for the purchase by the Underwriters and sale by the Commission of all, but not less than all, of the \$\_\_\_\_\_ aggregate principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT) (the "Series 2011A Bonds") and \$\_\_\_\_\_ aggregate principal amount of Florida Ports Financing Commission Refunding Revenue Bonds, (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT) (the "Series 2011B Bonds" and, together with the Series 2011A Bonds, the "Bonds"). The Bonds shall be dated their date of delivery. This offer is made subject to acceptance by the Commission prior to 5:00 p.m., New York City time, on the date hereof, and upon such acceptance this Contract of Purchase shall be in full force and effect in accordance with its terms and shall be binding upon the Commission and the Underwriters. All capitalized terms not otherwise defined herein shall have the meaning set forth in the hereinafter described Indenture.

**1. Purchase and Sale.** Upon the terms and conditions and upon the basis of the representations warranties and agreements set forth herein, the Underwriters hereby agree to purchase all, but not less than all, of the Bonds from the Commission for offering to the public, and the Commission hereby agrees to sell such Bonds to the Underwriters for such purposes, for the aggregate purchase price of \$\_\_\_\_\_ (\$\_\_\_\_\_ principal amount of Bonds, less



Underwriters' discount of \$\_\_\_\_\_, and [less]/[plus] \$\_\_\_\_\_ [net] original issue [discount]/[premium]). The Bonds shall be as described in, and shall be issued under the authority of and in full compliance with, the Constitution and laws of the State of Florida, including particularly Section 320.20(4), Florida Statutes, and Chapter 163, Part I, Florida Statutes (collectively, the "Interlocal Act"), and other applicable provisions of law, including, without limitation, Part I of Chapter 159, Florida Statutes, Chapter 311, Florida Statutes, and Chapter 315, Florida Statutes (together with the Interlocal Act, the "Act"). The Bonds shall mature at the times and in the amounts and bear interest at the rates set forth in Exhibit A hereto and shall be redeemable prior to their stated maturities at the times, in the amounts, and at the prices set forth in Exhibit B hereto. The Bonds will be issued pursuant to an Indenture of Trust between the Commission and SunTrust Bank, Central Florida, National Association, as trustee, dated as of September 1, 1999, as amended and restated by the First Amended and Restated Indenture of Trust dated as of the date of issuance of the Bonds, as supplemented by the First Supplemental Indenture of Trust, dated as of the date of issuance of the Bonds, (collectively, the "Indenture") each between the Commission and \_\_\_\_\_, as Trustee (the "Trustee"). All capitalized words and phrases used herein, unless defined herein, shall have the meaning set forth in the Official Statement (hereafter defined).

The Commission was created pursuant to the Interlocal Act through an Interlocal Agreement, dated as of July 17, 1996, as amended and restated by a First Amended and Restated Interlocal Agreement dated as of September 15, 1997 (together, the "Interlocal Agreement"), by and among Broward County (Port Everglades), Canaveral Port Authority, Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Miami-Dade County (Port of Miami), Panama City Port Authority, Port of Palm Beach District and St. Lucie County. The Commission has established a financing program (the "Program") pursuant to which the Commission previously issued its \$153,115,000 aggregate principal amount of Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999 of which \$\_\_\_\_\_ aggregate principal amount remains outstanding (the "Refunded Bonds") and loaned the proceeds thereof to certain ports, port authorities and port districts in Florida described in Section 311.09(1), Florida Statutes (each, a "Port" and collectively, the "Ports") in order to finance, refinance or reimburse the cost of acquiring and constructing capital projects within said Ports.

The purpose of the Refunded Bonds was to provide funds to finance, refinance and reimburse the costs of approved capital projects (as defined in the Indenture, each a "Project" and collectively, the "Projects") for certain participating Ports and to pay certain costs of issuing the Bonds. The Commission accomplished such financing, refinancing and reimbursement for such Projects through loans (each, a "Loan" and collectively, the "Loans") to such Ports or the political subdivisions of the State of Florida which own and operate such Ports (each, a "Borrower" and collectively, the "Borrowers") pursuant to separate Loan Agreements entered into between each Borrower and the Commission (each, a "Loan Agreement" and collectively, the "Loan Agreements"). Pursuant to the Program Administration Agreement, dated as of September 1, 1999, (the "Program Administration Agreement"), between the Commission and the Florida Ports Council (the "Administrator"), the Administrator provides certain services to the Commission with respect to the Program and acts as the Commission's agent as set forth in the Program Administration Agreement.

The Bonds are being issued to refund on a current basis all of the outstanding Refunded Bonds and to pay certain costs of issuance on the Bonds pursuant to a resolution of the Commission adopted on January 13, 2011 (the "Resolution").

The Bonds are special and limited obligations of the Commission payable solely from payments of principal and interest ("Basic Payments") by the Borrowers under the Loan Agreements and investment earnings to the extent provided in the Indenture. Basic Payments are required to be paid by the Borrowers solely from moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes. In addition to Basic Payments, each Borrower agrees to pay on demand of the Commission or the Trustee "Additional Payments", constituting (a) its proportionate share of certain ongoing Program fees, costs and expenses, (b) all reasonable fees and expenses of the Commission, the Administrator and the Trustee relating to the Loan Agreement, (c) certain rebate obligations relating to the Bonds pursuant to Section 148(f) of the Internal Revenue Code, as amended and (d) any unallowable costs (plus interest) required to be repaid by the Borrower under the Loan Agreement. Basic Payments and Additional Payments are hereinafter referred to as "Loan Repayments". Pursuant to a Second Master Agreement as Amended dated as of September 29, 1999, between the State Department of Transportation (the "Department") and the Commission (collectively, the "Master Agreement"), the Department agrees to transfer into an escrow account held by the State of Florida's Department of Insurance, Division of Treasury on behalf of the Trustee, on an annual basis from moneys derived from the State Transportation Trust Fund the interest and the principal coming due on the Bonds.

In accordance with Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, the Commission and the Department will agree to provide or cause to be provided to the Municipal Securities Rulemaking Board ("MSRB"), (i) certain annual financial information and operating data of the Commission and the Department, respectively, and (ii) certain notices of material events. The Commission and the Department shall each execute and deliver at Closing a separate Continuing Disclosure Certificate evidencing their respective obligations.

**2. Good Faith Deposit.** The Representative shall, before 1:00 p.m., New York City time, on the date hereof, deliver to the Chairman of the Commission, or other person designated by the Commission, a company check or checks payable to the order of the Commission in the amount of \$\_\_\_\_\_ as security for the performance by the Underwriters of our obligations to accept and pay for the Bonds at the Closing (defined below) in accordance with the provisions of this Contract of Purchase. Such check shall be returned uncashed to the Representative at the Closing, except under the circumstances set forth in the last sentence of this paragraph. If the Commission does not accept this offer, or upon your failure (other than for a reason permitted under this Contract of Purchase) to deliver the Bonds at the Closing, or if you shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Contract of Purchase (unless waived by the Underwriters), or if such obligations shall be terminated for any reason permitted by this Contract of Purchase or otherwise at the Closing, you shall return the check to the Representative. If the Underwriters fail (other than for a reason permitted under this Contract of Purchase) to accept and pay for the Bonds at the Closing, such check may be cashed and the proceeds thereof shall be retained by the Commission as and for full liquidated damages for such failure, and not as a penalty, and for any and all defaults hereunder on the part of the Underwriters, and thereupon, all claims and rights hereunder against the Underwriters shall be

fully released and discharged, it being understood by the Commission and the Underwriters that actual damages in such circumstances may be difficult or impossible to compute.

The Representative has been duly authorized to execute this Contract of Purchase and has been duly authorized to act hereunder on behalf of the Underwriters.

**3. Offering.** It shall be a condition of the Commission's obligation to sell and deliver the Bonds to the Underwriters, and the obligation of the Underwriters to purchase and accept delivery of the Bonds, that the entire aggregate principal amount of the Bonds shall be sold and delivered by the Commission and accepted and paid for by the Underwriters at the Closing (as hereinafter defined).

The Underwriters agree to make a bona fide public offering of all of the Bonds at the initial offering prices reflecting the prices set forth in Exhibit A attached hereto. The Underwriters, however, reserve the right to make concessions to dealers and to change such initial offering prices as the Underwriters shall deem necessary in connection with the marketing of the Bonds and to offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts, including investment trusts managed by the Underwriters) and others at prices lower than the initial offering prices set forth in Exhibit A hereto. The Underwriters also reserve the right to: (a) over-allot or effect transactions that stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market, and (b) discontinue such stabilization, if commenced, at any time.

**4. Preliminary Official Statement and Official Statement.** The Commission hereby confirms that it has heretofore made available to the Underwriters a Preliminary Official Statement of the Commission relating to the Bonds, dated January \_\_, 2011, (which, together with the cover page and appendices contained therein, is herein called the "Preliminary Official Statement"), and authorizes the distribution thereof to prospective purchasers and investors. The Commission has provided the Underwriters the opportunity to review such Preliminary Official Statement prior to the distribution thereof. The Preliminary Official Statement is deemed final for purposes of the Rule. At the time of or before acceptance of this Contract of Purchase, or at such later time as shall be agreeable to the Underwriters, the Commission shall deliver to the Underwriters three (3) copies of the Official Statement, dated the date hereof (which together with the cover page and appendices contained therein, is herein called the "Official Statement"), executed on behalf of the Commission by its Chairman.

Within seven (7) business days of the acceptance hereof by the Commission (and insufficient time to comply with the applicable rules of the MSRB and to accompany any confirmation that requests payment from any customer), the Commission shall cause to be delivered such reasonable number of conformed copies of the Official Statement executed by the Commission, as the Underwriters shall reasonably request, which shall be sufficient in number with paragraph (b)(3) of the Rule and with Rule G-32, Rule G-12 and all other applicable rules of the MSRB. The Commission, by its acceptance hereof, ratifies and approves the Preliminary Official Statement and approves and authorizes the Underwriters to use the Official Statement in connection with the public offering and sale of the Bonds.

The Underwriters agree to file the Official Statement with the MSRB (accompanied by a completed Form G-36) not later than two (2) business days after the Closing. The filing of the Official Statement with the MSRB shall be in accordance with the rules of the MSRB.

In accordance with Section 218.385, Florida Statutes, the Underwriters hereby disclose the information required by such Section, including a truth-in-bonding statement, all as provided in Exhibit B attached hereto.

**5. Use of Documents.** You hereby authorize the use by the Underwriters of (a) the Indenture, (b) the Master Agreement, (c) the Preliminary Official Statement, (d) the Official Statement (including any supplements or amendments thereto), and (e) any other documents related to the transactions contemplated in the Official Statement in connection with the public offering, sale and distribution of the Bonds.

**6. Representations, Warranties and Agreements.** The Commission hereby represents, warrants and agrees as follows:

a. The Commission is and will be at the Date of Closing duly organized and validly existing as a public body corporate and politic of the State of Florida, with the powers and authority set forth in the Interlocal Agreement and in the Act.

b. The Commission has full legal right, power and authority to: (i) execute and deliver this Contract of Purchase, (ii) execute and deliver the Master Agreement, (iii) execute and deliver the Loan Agreements, (iv) execute and deliver the Indenture, (v) execute and deliver the Program Administration Agreement, (vi) execute and deliver a Continuing Disclosure Certificate, (vii) execute and deliver the Escrow Deposit Agreement dated as of the Date of Closing (the "Escrow Deposit Agreement") between the Commission and the Trustee, (viii) sell, issue and deliver the Bonds to the Underwriters as provided herein, and (ix) carry out and consummate the transactions contemplated by this Contract of Purchase, the Master Agreement, the Program Administration Agreement, the Indenture, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Official Statement. The Commission has complied, and at the Closing will be in compliance in all respects with, the terms of the Act and with the obligations on its part contained in the Indenture, the Bonds, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and this Contract of Purchase.

c. The Commission has, by all necessary official action, duly authorized, approved and ratified the Official Statement in a form substantially the same as the Preliminary Official Statement, has duly authorized and approved the execution and delivery of, if applicable, and the performance by the Commission of its obligations under, the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate and this Contract of Purchase, and the consummation by it of all other transactions contemplated by the foregoing in connection with time issuance of the Bonds, the refunding of the Refunded Bonds and the sale to the Underwriters of the Bonds. The Indenture, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and this Contract of Purchase constitute legal, valid and binding agreements of the Commission, enforceable against the Commission in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws

affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Bonds, when issued, authenticated and delivered, will constitute legal, valid and binding obligations of the Commission, enforceable against the Commission in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

d. The Commission is not in material breach of or material default under any applicable constitutional provision, law or administrative regulation of the State of Florida (the "State") or the United States of America or any applicable judgment or decree, or any loan agreement, indenture, bond, note, agreement or other material instrument to which the Commission is a party or to which the Commission or any of its property or assets is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute a material default or event of default under any of the foregoing; provided, however, that no breach of or default under any of the foregoing shall be deemed to be "material" unless such breach or breaches, individually or in the aggregate, have a material adverse effect on the Commission's ability to make timely payment of principal and interest on the Bonds or on the Commission's ability to fulfill its other obligations under this Contract of Purchase, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Indenture, the Escrow Deposit Agreement and the Continuing Disclosure Certificate. The execution and delivery of the Bonds, this Contract of Purchase, the Loan Agreements, the Indenture, the Master Agreement, the Program Administration Agreement and the Continuing Disclosure Certificate, and compliance with the obligations on the Commission's part contained in all of the foregoing, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, indenture, bond, note, ordinance, material agreement or any other material instrument to which the Commission is a party onto which the Commission or any of its property or assets is otherwise subject. Such execution, delivery, adoption or compliance will not result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Commission or under the terms of any such law, regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, ordinance, agreement or other instrument, except as specifically provided by the Bonds, the Indenture, the Master Agreement, Program Administration Agreement, the Loan Agreements, the Escrow Deposit Agreement and the Continuing Disclosure Certificate.

e. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matters described herein or which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Commission of the Commission's obligations under this Contract of Purchase, the Indenture, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Escrow Deposit Agreement and the Continuing Disclosure Certificate have been duly obtained, except for such approvals, consents and orders as maybe required under the Blue Sky or securities laws of any state or of the United States of America in connection with the offering and sale of the Bonds.

f. As of the date of the Official Statement and at the Date of Closing, the statements and information contained in the Official Statement (other than the information under the captions “THE BONDS - Book-Entry-Only System,” “MUNICIPAL BOND INSURANCE,” and information in Appendices F and G, as to which no representation is made) will be true, correct and complete in all material respects, and the Official Statement (other than as aforesaid) will not omit any statement or information which should be included therein for the purposes for which the Official Statement is to be used or which is necessary to make the statements or information contained therein, in light of the circumstances under which they were made, not misleading.

g. Between the date of this Contract of Purchase and the Date of Closing, except for the Commission’s Refunding Revenue Bonds (State Transportation Trust Fund), Series 2011A (Non-Amt) and, Series 2011B (AMT), the Commission will not execute any bonds, notes or obligations for borrowed money, other than the Bonds, without giving prior written notice thereof to the Underwriters.

h. The Bonds, when issued, executed, authenticated and delivered, will be validly issued and outstanding obligations of the Commission, entitled to the benefits of the Indenture, including a pledge of, lien on, and source of payment from the Trust Estate (as defined in the Indenture). The Indenture will provide, for the benefit of the holders from time to time of the Bonds, a pledge of and lien on the Trust Estate.

i. As of the date hereof, and except as disclosed in the Official Statement, to the best knowledge of the Chairman there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body pending or, threatened against or affecting the Commission, affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds, or the execution and delivery by the Commission of this Contract of Purchase, the Continuing Disclosure Certificate, the Escrow Deposit Agreement or the Indenture or contesting or affecting as to the Commission the validity or enforceability of the Act in any respect relating to authorization for the issuance of the Bonds, execution and delivery of the Indenture, this Contract of Purchase, the Escrow Deposit Agreement, the Continuing Disclosure Certificate or contesting the exclusion from gross income of interest on the Bonds for purposes of federal income taxation, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the authority of the Commission for the issuance of the Bonds.

j. The Commission will furnish such information, execute such instruments, and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order to (i) qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States of America as the Underwriters may designate, and (ii) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Commission shall not be required to execute a general or special consent to service of process, pay any fee, or qualify to do business in connection with any such qualification or determination in any jurisdiction.

k. If, after the date of this Contract of Purchase and until the earlier of (i) 90 days from the end of the “underwriting period” (as defined in the Rule) or (ii) the time when the Official Statement is available to any person from a nationally recognized repository, but in no case less than 25 days following the end of the underwriting period (the “Disclosure Period”), any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Commission shall notify the Underwriters thereof, and, if in the reasonable opinion of the Underwriters such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Commission will at its own expense forthwith prepare and furnish to the Underwriters a sufficient number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and Squire, Sanders & Dempsey (US) LLP, Miami, Florida, Counsel to the Underwriters) which will supplement or amend the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading.

l. Prior to the execution of this Contract of Purchase, the Commission delivered to the Underwriters copies of the Preliminary Official Statement which the Commission deemed to be “final” as it relates to the Bonds for purposes of the Rule as of the date thereof, except for Permitted Omissions (as defined in the Rule).

m. If the Official Statement is supplemented or amended pursuant to Section 6(n) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to Section 6(n) hereof) at all times during the Disclosure Period, the Official Statement as so supplemented or amended (other than the information under the captions “THE BONDS - Book-Entry-Only System,” “MUNICIPAL BOND INSURANCE,” and information in Appendices F and G, as to which no representation is made) will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

n. During the Disclosure Period, the Commission will (i) not adopt any amendment of or supplement to the Official Statement to which, after having been furnished with a copy, the Representative on behalf of the Underwriters shall reasonably object in writing, unless the Commission has obtained the opinion of Nabors, Giblin & Nickerson, P.A., Bond Counsel, stating that such amendment or supplement is necessary in order to make the Official Statement not misleading in light of the circumstances existing at the time that it is delivered to a purchaser, and (ii) if any event relating to or affecting the Commission or the Bonds shall occur which would or might cause the information contained in the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Commission shall notify the Underwriters thereof, and if as a result of which it is necessary, in the opinion of Squire, Sanders & Dempsey (US) LLP, Counsel to the Underwriters, to amend or supplement the Official Statement in order to make the Official Statement not misleading in light of the circumstances existing at the time it is delivered to a purchaser, the Commission shall forthwith prepare and furnish to the Underwriters (at the expense of the Commission) a reasonable number of copies of

an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Representative and the Commission) which will amend or supplement the Official Statement so that such Official Statement, as amended or supplemented, will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time the Official Statement is delivered to a purchaser, not misleading. For the purposes of this paragraph, the Representative will furnish such information with respect to itself as the Commission may from time to time reasonably request.

o. Other than as described in the Official Statement, since December 31, 1975, and at all times subsequent thereto up to and including the Date of Closing, the Commission has not been and will not be in default with respect to payment of the principal of, or interest on, any bonds or other debt obligations that it has issued or will issue or that it has guaranteed or will guarantee (including bonds or other debt obligations for which it has served as a conduit issuer, such as the Bonds).

p. The Commission has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

q. The Commission will not take any action nor omit to take any action which would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Refunded Bonds or the Bonds under the Code.

r. The Commission is presently in compliance with its prior continuing disclosure undertakings entered into pursuant to the Rule over the past five years.

s. The financial statements of the Commission contained in the Official Statement fairly present, in all material respects, the financial position and results of operation of the Commission as of the dates and for the periods therein set forth, and such financial statements have been prepared in accordance with generally accepted accounting principles, and since the date of such financial statements there has been no material adverse change, other than as disclosed in the Official Statement, in the financial position of the Commission from those disclosed in such financial statements.

**7. Closing.** At 12:00 p.m. (noon), New York City time, on [February] \_\_, 2011 or at such other time or on such other date upon which we mutually agree, the Commission will deliver or cause to be delivered to The Depository Trust Company, New York, New York ("DTC"), the Bonds in book-entry-only form, and bearing proper CUSIP numbers, duly executed and authenticated in accordance with the Indenture, and the Commission will deliver the other documents hereafter mentioned at such time, and the Underwriters will, subject to the conditions contained herein, accept delivery of the Bonds and will pay the purchase price of the Bonds set forth in Section 1 hereof in Federal Funds to or on behalf of the Commission. Payment for the Bonds and delivery of the documents hereafter mentioned shall be made at the offices of Nabors, Giblin & Nickerson, P.A. Tampa, Florida, or at such other place as may be agreed upon by us. Such delivery and payment is herein called the "Closing", and the date of such delivery and payment is herein called the "Date of Closing." The Bonds shall be prepared, and the Bonds shall be delivered, as one fully registered bond for each maturity of the Bonds and registered in the



name of Cede & Co., as nominee of DTC, which will act as securities depository for the Bonds. The Bonds will be made available to the Representative for checking not less than twenty-four (24) hours prior to the Closing.

**8. Closing Conditions.** The Underwriters have entered into this Contract of Purchase in reliance upon the representations of the Commission contained herein, in reliance upon the representations contained in the documents and instruments to be delivered at the Closing, and in reliance upon the performance by the Commission of its obligations hereunder, both as of the date hereof and as of the Date of Closing. Accordingly, the Underwriters' obligation under this Contract of Purchase to purchase the Bonds is conditioned upon satisfaction of the following conditions set forth in Sections 8(a) through (e) below:

a. At or prior to the time of Closing, the Commission shall have performed all of its obligations to be performed hereunder, under this Contract of Purchase, the Loan Agreements, the Indenture, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and under the other documents and instruments to be delivered at the Closing and the representations of the Commission contained herein shall be true, complete and correct on the date hereof and on and as of the Date of Closing, as if made on the Date of Closing.

b. At the time of the Closing, the Indenture, the Loan Agreements, the Master Agreement, the Program Administration Agreement, the Escrow Deposit Agreement and the Continuing Disclosure Certificate shall be in full force and effect in accordance with their terms and shall not have been amended, modified or supplemented, except as agreed to by the Underwriters and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Underwriters.

c. At the time of the Closing, all official action of the Commission relating to this Contract of Purchase, the Bonds, the Loan Agreements, the Indenture, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Commission's approval of the Official Statement shall be in full force and effect in accordance with their respective terms and shall not have been amended, modified or supplemented in any material respect, except in each case as may have been agreed to by the Underwriters.

d. At or prior to the Closing, the Underwriters shall have received the following:

(i) The Resolution certified by the secretary of the Commission under seal as having been duly adopted by the Commission and as being in effect, with only such supplements, modifications or amendments as may have been agreed to by the Underwriters.

(ii) The Official Statement and each supplement or amendment, if any, thereto, executed on behalf of the Commission by the Chairman of the Commission.

(iii) An opinion, dated the Date of Closing and addressed to the Commission, the Trustee, the Borrowers [and the Bond Insurer], of Nabors, Giblin & Nickerson, P.A., Bond Counsel to the Commission, as it relates to the Bonds, in substantially the form of

the opinion included in the Official Statement as Appendix F (which form shall be acceptable to the Underwriters), together with a letter of such Counsel, dated the Date of Closing and addressed to the Underwriters, to the effect that the foregoing opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them. The opinion addressed to the Trustee [and the Bond Insurer] may be in the form of a reliance letter.

(iv) An opinion, dated the Date of Closing and addressed to the Underwriters, of Nabors, Giblin & Nickerson, P.A., Bond Counsel to the Commission, to the effect that (A) any summaries of opinions attributed to said Bond Counsel in the Official Statement constitute fair and accurate summaries of such opinions; (B) the statements contained in the Official Statement under the captions “INTRODUCTORY STATEMENT,” “PLAN OF FINANCE,” “THE BONDS” (except that no opinion need be expressed with respect to the information under the caption “Book-Entry-Only System” except to the extent that such information purports to summarize provisions of the Indenture), “SECURITY FOR THE SERIES 2011 BONDS” (except that no opinion need be expressed with respect to the information under the captions “Motor Vehicle License Taxes” and “Ceiling on State Revenue Collections”), “THE LOAN AGREEMENT,” “THE INDENTURE,” and “TAX MATTERS,” and APPENDICES A, B, C, D, and F, insofar as such statements under said captions purport to summarize certain provisions of the Bonds, the Loan Agreements, the Indenture, the Master Agreement, and the laws of the United States of America and the State of Florida, such statements fairly present the information purported to be summarized; provided, however, that such summaries do not purport to summarize all the provisions of, and are qualified in the entirety by, the complete documents or laws which are summarized; (C) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended; and (D) the Refunded Bonds are deemed paid in accordance with, and are no longer deemed to be outstanding under the provisions of the Indenture.

(v) An opinion, dated the Date of Closing and addressed to the Commission, Bond Counsel, the Trustee and the \_\_\_\_\_ Underwriters, of \_\_\_\_\_, \_\_\_\_\_, Florida, General Counsel to the Commission, to the effect that:

(1) the Commission is a legal entity duly organized and validly existing under the laws of the State of Florida, with the powers and authority set forth in the Interlocal Agreement and the Act;

(2) the Commission has the legal right, power and authority (i) to execute and deliver the Indenture, [the Master Agreement, the Program Administration Agreement,] the Continuing Disclosure Certificate, the Contract of Purchase, the Escrow Deposit Agreement [and the Loan Agreements,] and (ii) to sell, issue and deliver the Bonds;

(3) the Indenture, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Contract of Purchase, the Escrow Deposit Agreement and the Loan Agreements have each been duly approved and executed by the Commission;

(4) the Loan Agreements, the Contract of Purchase, the Master Agreement, the Program Administration Agreement, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Indenture are each in full force and effect and constitute the legal, valid and binding obligations of the Commission, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in equity or at law) and no other authorization is required;

(5) the Commission has duly authorized the execution and delivery of the Official Statement and ratified the use of the Preliminary Official Statement by the Underwriters;

(6) the information in the Official Statement under the captions "THE COMMISSION," "FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM," "LITIGATION" and "DISCLOSURE UNDER FLORIDA BLUE SKY LAWS" present fair and accurate summaries of the legal matters summarized therein;

(7) as of the Date of Closing, nothing has come to its attention causing it to believe that (A) the information contained in the Official Statement under the captions "THE COMMISSION," "FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM," "LITIGATION" and "DISCLOSURE UNDER FLORIDA BLUE SKY LAWS" as of its date contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which *they* were made, not misleading; and (B) the information contained in the Official Statement under the captions "THE COMMISSION," "FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM," "LITIGATION" and "DISCLOSURE UNDER FLORIDA BLUE SKY LAWS" (as supplemented or amended pursuant to Section 6(n) hereof, if applicable) as of the Date of Closing contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(8) the execution and delivery of the Bonds, this Contract of Purchase, the Indenture, the Escrow Deposit Agreement, the Continuing Disclosure Certificate and compliance with the provisions on the Commission's part contained in the foregoing and the Loan Agreements, the Master Agreement and the Program Administration Agreement, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Commission is a party or to which the Commission or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption, enactment, or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the

property or assets of the Commission or under the terms of any such law, regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, ordinance, agreement or other instrument, except as expressly provided by the Indenture;

(9) to the best of its knowledge, there is, except as disclosed in the Official Statement, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or threatened against or affecting the Commission, nor is there to the best of its knowledge after due inquiry, any basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the Commission's ability to make timely payments of principal and interest on the Bonds or upon the transactions contemplated by the Official Statement or upon the validity of the Bonds, the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement or the Contract of Purchase; and

(10) all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities then required for the Commission's adoption, execution and performance of its obligations under the Bonds, the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement and the Contract of Purchase have been obtained or effected and it has no reason to believe that the Commission will be unable to obtain or effect any such additional authorization, consent, approval or review that may be required for performance under any of the foregoing by the Commission.

(vi) A certificate, dated the Date of Closing, signed by the Chairman of the Commission or other appropriate official satisfactory to the Underwriters, to the effect that, to the best of his or her knowledge:

(1) the representations of the Commission herein are true and correct in all material respects as of the Date of Closing;

(2) the Commission has performed all obligations to be performed hereunder as of the Date of Closing;

(3) as of the Date of Closing, the Commission is not in default under any of the Indenture, the Master Agreement, the Program Administration Agreement, the Loan Agreements, the Continuing Disclosure Certificate, the Escrow Deposit Agreement or this Contract of Purchase;

(4) except as disclosed in the Official Statement, no litigation is pending or threatened (i) to restrain or enjoin the issuance or delivery of the Bonds; (ii) in any way contesting or affecting any authority for the issuance of the Bonds or the validity of the Bonds, the Master Agreement, the Program Administration Agreement, the Indenture, the Loan Agreements, the Continuing

Disclosure Certificate, the Escrow Deposit Agreement or this Contract of Purchase; (iii) in any way contesting the existence or powers of the Commission; (iv) to restrain or enjoin the collection of the Loan Repayments; (v) which may result in any material adverse change in the business, properties, assets or financial condition of the Commission; or (vi) asserting that the Preliminary Official Statement or the Official Statement contain any untrue statement of a material fact or omits any material fact necessary to make the statements therein, in light of the circumstances under which they were made not misleading (but, in lieu of such certificate, the Underwriters, in their discretion, may accept an opinion of counsel to the effect that the issues raised in any such pending or threatened litigation is without substance or that, the contentions of any plaintiffs therein are without merit); and

(5) the Official Statement (other than the information under the captions “THE BONDS - Book-Entry-Only System,” [“MUNICIPAL BOND INSURANCE,”] and the information in Appendices F and G) did not as of its date, and does not as of the Date of Closing, contain any untrue statement of a material fact or omit to state a material fact which should be included therein which is necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(vii) An opinion of Squire, Sanders & Dempsey (US) LLP, Miami, Florida, as Counsel to the Underwriters, addressed to the Underwriters, and dated the date of Closing, substantially to the effect that (A) with respect to the information in the Official Statement and based upon said firm’s participation in the preparation of the Official Statement as Counsel to the Underwriters and without having undertaken to determine independently the accuracy or completeness of the contents of the Official Statement, said firm has no reason to believe that the Official Statement (except for the information under the headings “THE BONDS - Book-Entry Only System” [and “MUNICIPAL BOND INSURANCE”] and in the Appendices A through D and F through H thereto and the financial and statistical data contained therein, as to which no view need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, (B) the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification as an indenture under the Trust Indenture Act of 1939, as amended and (C) the Continuing Disclosure Agreement complies as to form in all material respects with the applicable requirements of the Rule, and a reliance letter to the Commission with respect to the opinion provided in clause (A) above.

[

(viii) An opinion of counsel to the Bond Insurer (which counsel may be an employee of the Bond Insurer) in the form acceptable to the Underwriters;]

(ix) An opinion of counsel to the Trustee in substantially the form attached hereto as Exhibit D;

(x) An opinion of counsel to each of the Borrowers addressed to the rendered in connection with the issuance of the Refunded Bonds in substantially the form set forth in Exhibit C of the form of the Loan Agreements;

(xi) An original executed Indenture between the Commission and the Trustee;

(xii) Executed copies of Loan Agreements, certified by the Commission, between the Commission and (A) Broward County (Port Everglades), (B) Canaveral Port Authority, (C) Miami-Dade County (Port of Miami), (D) Hillsborough County Port District (Tampa Port Authority), (E) Jacksonville Port Authority, (F) Manatee County Port Authority, (G) Ocean Highway and Port Authority, (H) Port of Palm Beach District, (I) Panama City Port Authority, and (J) Port of Pensacola;

(xiii) A certified executed copy of the Master Agreement between the Department and the Commission;

(xiv) A certified executed copy of the Program Administration Agreement between the Commission and the Administrator;

(xv) [A municipal bond insurance policy effective as of the Date of Closing issued by the Bond Insurer insuring the payment of principal of and interest on the Bonds, when due;]

(xvi) A copy of the resolutions, certified by an appropriate governmental official from each of the Ports, adopted by each of the Ports approving their respective Loan Agreements, authorizing the borrowing of money from the Commission pursuant to the Loan Agreements, and authorizing the transactions contemplated by such Loan Agreements;

(xvii) A certificate of an appropriate official or officials of each of the Ports, as Borrowers, which shall be satisfactory to the Underwriters to the effect that (A) the statements and information in the Preliminary Official Statement and the Official Statement relating to the Borrower under the caption "THE COMMISSION - Loans from Proceeds of the Bonds" is accurate; (B) there is no litigation or legal or governmental action, proceeding, inquiry or investigation pending or, to the best of its knowledge, threatened, or to which the Borrower is a party, which has not been disclosed in writing to the Commission and the Bond Insurer which, if determined adversely to the Borrower, would individually or in the aggregate materially adversely affect the existence of the Borrower or the ability of the Borrower to comply with its obligations under the Loan Agreement; (C) all representations and warranties of the Borrower contained in the Loan Agreement are true and correct as of the Date of the Closing; (D) the Borrower has duly authorized, executed and delivered the Loan Agreement, the resolution of the Borrower authorizing the execution of the Loan Agreement and authorizing the borrowing of money is in full force and effect, and the Loan Agreement constitutes a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency and other similar laws affecting enforceability of creditors' rights generally and to the application of equitable principles if equitable principles are sought; and (F) as of the Date of Closing

the Borrower is in compliance with all covenants contained in the Loan Agreement and is not in default under any provision of the Loan Agreement;

(xviii) A certified copy of the Interlocal Agreement, as amended;

(xix) Executed Continuing Disclosure Certificates from the Commission and the Department;

(xx) An opinion of counsel to the Department addressed to the Commission and the Underwriters to the effect that:

(1) the Department has the legal right, power and authority to execute and deliver the Continuing Disclosure Certificate;

(2) the Master Agreement and the Continuing Disclosure Certificate are in full force and effect and constitute the legal, valid and binding obligations of the Department, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in equity or at law) and no other authorization is required;

(3) the execution and delivery of the Continuing Disclosure Certificate, and compliance with the provisions on the Department's part contained in the foregoing and in the Master Agreement, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Department is a party or to which the Department or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption, enactment, or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Department or under the terms of any such law, regulation or instrument;

(4) to the best of its knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, government agency, public board or body, pending or threatened against or affecting the Department, nor is there to the best of its knowledge after due inquiry, any basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling or finding would have a material adverse effect upon the validity of the Master Agreement or the Continuing Disclosure Certificate; and

(5) all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities then required for the Department's adoption, execution and performance of its obligations under the Master Agreement and the Continuing Disclosure Certificate have been obtained or

effected and it has no reason to believe that the Department will be unable to obtain or effect any such additional authorization, consent, approval or review that may be required for performance under either of the foregoing by the Department.

(xxi) An opinion of counsel to the Administrator addressed to the Commission and the Underwriters or, a certificate of the Administrator to the effect that:

(1) the Administrator had the legal right, power and authority to execute and deliver the Program Administration Agreement;

(2) the Program Administration Agreement is in full force and effect and constitutes the legal, valid and binding obligation of the Administrator, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in equity or at law) and no other authorization is required;

(3) the execution and delivery of the Program Administration Agreement and compliance with the provisions on the Administrator's part contained in the foregoing, will not conflict with or constitute a material breach of or material default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Administrator is a party or to which the Administrator or any of its property or assets is otherwise subject, nor will any such execution, delivery, adoption, enactment, or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Administrator or under the terms of any such law, regulation or instrument;

(4) to the best of its knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, government agency, public board or body, pending or threatened against or affecting the Administrator, nor is there to the best of its knowledge after due inquiry, any basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the validity of the Program Administration Agreement;

(5) all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities then required for the Administrator's adoption, execution and performance of its obligations under the Program Administration Agreement have been obtained or effected and it has no reason to believe that the Administrator will be unable to obtain or effect any such additional authorization, consent, approval or review that maybe required for performance under the foregoing by the Administrator.



(xxii) Such additional legal opinions, certificates, instruments and other documents as the Underwriters may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Date of Closing, of the Commission's representations contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the Commission on or prior to the Date of Closing of all the agreements then to be performed and conditions then to be satisfied by it pursuant to the Master Agreement, the Program Administration Agreement, the Indenture, the Bonds, the Loan Agreements, the Continuing Disclosure Certificates and this Contract of Purchase.

e. As of the Date of Closing, Moody's Investors Service, Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc., and Fitch Ratings, shall have assigned their underlying ratings of ["A1," "A+" and "AA-"], respectively, to the Commission [and their municipal ratings of "\_\_\_\_," "\_\_\_\_" and "\_\_\_\_", respectively, to the Bonds, and no material adverse change shall have occurred in the affairs of the Bond Insurer which would result in a reduction of the ratings to the Bonds.]

All the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Contract of Purchase shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriters.

If the Commission shall be unable to satisfy the conditions precedent to the obligation of the Underwriters to purchase the Bonds contained in this Contract of Purchase, or if the obligation of the Underwriters to purchase the Bonds shall be terminated for any reason permitted by this Contract of Purchase, this Contract of Purchase shall terminate, and neither the Underwriters nor the Commission shall be under any further obligation hereunder except that the Commission shall immediately return to the Representative the check delivered by the Representative pursuant to Section 2 hereof.

**9. Termination.** The Underwriters shall have the right to terminate their obligations under this Contract of Purchase by notifying the Commission of their election to do so if, after the execution hereof and prior to the Closing:

a. between the date hereof and the Closing, an amendment to the Constitution of the United States or any legislation shall be (A) enacted or adopted by the United States, (B) recommended to the Congress or otherwise endorsed for passage, by press release, other form of notice or otherwise, by the President of the United States, the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, the Treasury Department of the United States or the Internal Revenue Service or (C) favorably reported out of the appropriate Committee for passage to either House of the Congress by any full Committee of such House to which such legislation has been referred for consideration, or any decision of any court of the United States or any order, rule or regulation (final, temporary or proposed) on behalf of the Treasury Department of the United States, the Internal Revenue Service or any other authority or regulatory body of the United States shall be issued, or a release or announcement or communication shall be issued or sent by the Treasury Department or the Internal Revenue Service of the United States, or any comparable legislative, judicial or administrative development shall occur affecting the federal tax status of the Commission, its property or

income, obligations of the general character of the Bonds, as contemplated hereby, or the interest thereon, or any tax exemption, which, in the reasonable judgment of the Underwriters, materially adversely affects the market price of the Bonds or causes any information in the Official Statement to be misleading in any material respect, or

b. between the date hereof and the Closing, legislation shall be enacted or any action shall be taken by the Securities and Exchange Commission which, in the opinion of Counsel for the Underwriters, has the effect of requiring the contemplated issuance or distribution of the Bonds to be registered under the Securities Act of 1933, as amended or of requiring the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, or

c. an event described in paragraph (n) of Section 6 hereof shall have occurred which requires an amendment or supplement to the Official Statement and which, in the reasonable opinion of the Underwriters, materially adversely affects the marketability of the Bonds or the market price thereof, or

d. litigation not otherwise described in the Official Statement is instituted with respect to the Commission, or the Bonds which, in the reasonable opinion of the Underwriters, materially adversely affects the marketability of the Bonds or the market price thereof, or

e. in the reasonable opinion of the Underwriters, payment for and delivery of the Bonds is rendered impracticable or inadvisable because (A) trading in securities generally shall have been suspended on the New York Stock Exchange, Inc., or (B) a general banking moratorium shall have been established by Federal, New York or Florida authorities, or (C) there shall have occurred (1) an outbreak or escalation of hostilities involving the United States, a declaration by the United States of a national or international emergency or war (it being agreed by the parties hereto that no such situation currently exists); or (2) any other calamity or crisis in the United States or elsewhere; or

f. there shall have occurred any adverse change in the collection of Motor Vehicle License Taxes, the distribution thereof pursuant to the School Capital Outlay Amendment or in the State Transportation Trust Fund, which, in the reasonable judgment of the Representative, may reasonably be expected to have an adverse effect on the ability of the Borrowers to fulfill their obligations under their respective Loan Agreements, and which in the reasonable opinion of the Representative materially adversely affects the market price of the Bonds; or

g. between the date hereof and the Closing, the Commission has, without the prior written consent of the Underwriters, offered or issued any bonds, notes or other obligations for borrowed money, or incurred any material liabilities, direct or contingent, other than as described in the Official Statement, or

h. there shall have been any material adverse change in the affairs of the Commission that in the Underwriters' reasonable judgment will materially adversely affect the market for the Bonds or the ability of the Underwriters to enforce contracts for the sale of the Bonds, or

i. between the date hereof and the Closing, the President of the United States, the Office of Management and Budget, the Department of Treasury, the Internal Revenue Service or

any other governmental body, department, agency or commission of the United States or the State of Florida shall take or propose to take any action or implement or propose regulations, rules or legislation which, in the reasonable judgment of the Underwriters, materially adversely affects the market price of the Bonds or causes any information in the Official Statement, in light of the circumstances under which it appears, to be misleading in any material respect, or

j. between the date hereof and the Closing, any executive order shall be announced, or any legislation, ordinance, rule or regulation shall be proposed by or introduced in, or be enacted by any governmental body, department, agency or commission of the United States or the State of Florida or the State of New York, having jurisdiction over the subject matter, or a decision by any court of competent jurisdiction within the United States or within the State of Florida or the State of New York shall be rendered which, in the reasonable judgment of the Underwriters, materially adversely affects the market price of the Bonds or causes any information in the Official Statement to be misleading in any material respect, or

k. between the date hereof and the Closing, a downgrading, withdraw or suspension of any rating (without regard to credit enhancement) by Moody's Investor Services, Inc. ("Moody's"), Standard & Poor's Ratings Service ("S&P"), or Fitch Ratings ("Fitch") of any debt securities issued by the Commission; or

l. any state blue sky or securities commission shall have withheld registration, exemption or clearance of the offering which, in the reasonable judgment of the Representative, materially adversely affects the market for the Bonds; or

m. [negative information relating to the financial condition of the Bond Insurer, its parent or any subsidiary of it, is made available to the Underwriters, which, in the reasonable judgment of the Underwriters, could result in a downgrading of any of the ratings assigned to the Bonds, and which in the opinion of the Underwriters materially adversely affects the market price of the Bonds; or]

n. [the Bond Insurer shall inform the Underwriters or the Commission that it will not insure the Bonds.]

**10. Expenses.** The Underwriters shall be under no obligation to pay, and the Commission shall pay, any expense incident to the performance of the Commission's obligations hereunder, including, but not limited to, (a) the cost of preparation, printing and delivery of the Preliminary Official Statement and the Official Statement, and any supplement and amendments thereto; (b) the cost of preparation and delivery of the Bonds; (c) the fees and disbursements of Bond Counsel, Counsel to the Commission, and Counsel to the Trustee; (d) the fees and disbursements of First Southwest Company, Inc. their services as Financial Advisors to the Commission; (e) fees for bond ratings; (f) fees and charges of The Depository Trust Company; (g) expenses incurred on behalf of the Commission's employees which are incidental to implementing this Contract of Purchase, including, but not limited to, meals, transportation and lodging; and (h) the bond insurance premium or any other cost and expenses related to the bond insurance. The Underwriters are responsible for and shall pay (i) expenses of advertising in connection with the public offering of the Bonds; (ii) fees and expenses of their Counsel (including the cost of preparation and printing the blue sky and legal investment surveys, if any, prepared by such Counsel); (iii) all other expenses incurred by them in connection with their

public offering and distribution of the Bonds; and (iv) all expenses in relation to the assignment of CUSIP numbers to the Bonds.

**11. No Advisory or Fiduciary Role.** The Commission acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Contract of Purchase is an arm's-length commercial transaction between the Commission and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent or fiduciary of the Commission, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the Commission with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Commission on other matters) and the Underwriter has no obligation to the Commission with respect to the offering contemplated hereby except the obligations expressly set forth in this Contract of Purchase and (iv) the Commission has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

**12. Notices.** Any notice or other communications to be given to the Commission under this Contract of Purchase may be given by delivering the same in writing signed by the Representative at your address set forth above, and any such notice or other communication to be given to the Underwriters may be given by delivering the same in writing to \_\_\_\_\_, attention: \_\_\_\_\_.

**13. Parties in Interest.** This Contract of Purchase is made solely for the benefit of the Commission and the Underwriters and no other person, partnership, association or corporation shall acquire or have any right hereunder or by virtue hereof. All representations and agreements of the Commission in this Contract of Purchase shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriters and shall survive the delivery of and payment for the Bonds.

**14. Governing Law.** This Contract of Purchase, and the terms and conditions herein, shall constitute the full and complete agreement between the Commission and the Underwriters with respect to the purchase and sale of the Bonds. The Contract of Purchase shall be governed by and construed in accordance with the laws of the State of Florida.

[Remainder of page intentionally left blank]

**15. Miscellaneous.** The approval of the Underwriters when required hereunder and of the determination of their satisfaction with any document referred to herein shall be in writing signed by an officer of the Representative and delivered to you; otherwise, such approval shall be deemed given if the Underwriters accept delivery of and pay the purchase price for the Bonds at the Closing. This Contract of Purchase shall become legally effective upon its acceptance by you as evidenced by the signatures of the Chairman of the Commission and the Secretary-Treasurer of the Commission in the spaces provided therefor below.

**CITIGROUP GLOBAL MARKETS INC.  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH INCORPORATED  
MORGAN STANLEY & CO., INCORPORATED  
SIEBERT BRANDFORD SHANK & CO., L.L.C.**

BY: CITIGROUP GLOBAL MARKETS INC.

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

FLORIDA PORTS FINANCING COMMISSION

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

**EXHIBIT A**

**MATURITY SCHEDULE**

**EXHIBIT B**  
**REDEMPTION PROVISIONS**

**EXHIBIT C**  
**DISCLOSURE STATEMENT**

[February] \_\_, 2011

Chairman and Other Representatives  
Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301

Re: \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds  
(State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT)  
and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds,  
(State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT)

Ladies and Gentlemen:

In connection with the proposed issuance by the Florida Ports Financing Commission (the "Commission") of \$\_\_\_\_\_ aggregate principal amount of its Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT) and \$\_\_\_\_\_ aggregate principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT) (collectively, the "Bonds"), Citigroup Global Markets, Inc., Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Morgan Stanley & Co., Incorporated and Siebert Brandford Shank & Co., L.L.C. (collectively, the "Underwriters") are underwriting a public offering of the Bonds.

The purpose of this letter is to furnish, pursuant to the provisions of Section 218.385(2), (3) and (6), Florida Statutes, certain information in respect of the arrangements contemplated for the underwriting of the Bonds as follows:

a. The nature and estimated amount of expenses to be incurred by the Underwriters in connection with the purchase and reoffering of the Bonds are set forth in Schedule I attached hereto.

b. No person has entered into an understanding with the Underwriters, or to the knowledge of the Underwriters, with the Commission, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Commission and the Underwriters or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Bonds.

c. The underwriting spread, the difference between the price at which the Bonds will be initially offered to the public by the Underwriters and the price to be paid to the Commission



for the Bonds, exclusive of accrued interest, will be approximately \$\_\_\_\_\_ per \$1,000 of Bonds issued.

d. As part of the estimated underwriting spread set forth in paragraph (c) above, the Underwriters will charge a management fee of \$\_\_\_\_\_ (\$\_\_\_\_\_ per \$1,000).

e. No other fee, bonus or other compensation is estimated to be paid by the Underwriters in connection with the issuance of the Bonds to any person not regularly employed or retained by the Underwriters (including any “finder” as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Underwriters, as set forth in paragraph (a) above.

f. The names and addresses of the Underwriters are:

Citigroup Global Markets Inc.  
390 Greenwich Street, 2<sup>nd</sup> Floor  
New York, New York 10013

Morgan Stanley & Co., Incorporated  
1221 Avenue of the Americas, 30<sup>th</sup> Floor  
New York, New York 10020

Bank of America Merrill Lynch  
300 South Orange Avenue, Suite 800  
Orlando, Florida 32801

Siebert Brandford Shank & Co., L.L.C.  
1625 K Street. N.W., Suite 904  
Washington. D.C. 20006

g. The information required to be provided pursuant to Section 218.385 (2) and (3), Florida Statutes is attached hereto as Schedule It.

[Remainder of page intentionally left blank]

We understand that you do not require any further disclosure from the Underwriters pursuant to Section 218.385(4), Florida Statutes.

Very truly yours,

**CITIGROUP GLOBAL MARKETS INC.  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH INCORPORATED  
MORGAN STANLEY & CO., INCORPORATED  
SIEBERT BRANDFORD SHANK & CO., L.L.C.**

BY: CITIGROUP GLOBAL MARKETS INC.

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

## **SCHEDULE I**

### **UNDERWRITERS' ESTIMATED EXPENSES**

Underwriters' Counsel Fees and Expenses	\$
Verification Report	
Day Loan	
Dalcomp	
PSA	
Munifacts (Wires)	
CUSIPs	
DTC Clearance Charge	
Out-Of-Pocket	
Syndicate Operations Cost	<u>                    </u>
	\$ <u>                    </u>
Total	

**SCHEDULE II**  
**TRUTH- IN-BONDING STATEMENT**

[February] \_\_, 2011

Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301

Re: \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds  
(State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT)  
and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds,  
(State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT)

The Bonds will be issued by the Florida Ports Financing Commission for the purpose of providing funds to finance, refinance and reimburse the costs of acquisition, construction and installation of certain capital projects for the program Borrowers and paying certain costs of issuance with respect to the Bonds, as more fully described in the Contract of Purchase. This debt or obligation is expected to be repaid over a maximum period of \_\_\_\_\_ (\_\_) years. At a true interest cost of approximately \_\_\_\_\_%, total interest paid over the life of the debt or obligation will be \$\_\_\_\_\_ (exclusive of accrued interest).

The Bonds are expected to be paid solely from the payments of principal and interest by the Borrowers under the Loan Agreements between the Commission and the Borrowers and investment earnings to the extent provided in the Indenture. The Bonds are not secured by a pledge of the faith and credit of the Borrowers or of the State of Florida or of any political subdivision thereof, and do not create an indebtedness of the State or of any political subdivision thereof. Approving the Bonds will result in approximately \$\_\_\_\_\_, in aggregate, of such funds of the Borrowers not being available for other services or purposes of the Borrowers each year the Bonds are in effect, but in no event for longer than \_\_\_\_\_ (\_\_) years. It should be noted that the actual amount per Borrower will vary significantly in each year depending on the amount such Borrower has borrowed from the program.

[Remainder of page intentionally left blank]

The foregoing is provided for information purposes only and shall not affect or control the actual terms and conditions of the Bonds.

Very truly yours,

**CITIGROUP GLOBAL MARKETS  
INC.**, as representative of the Underwriters

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

## EXHIBIT D

[February] \_\_, 2011

Florida Ports Financing Commission

Morgan Stanley & Co. Incorporated

Citigroup Global Markets Inc.

Siebert Brandford Shank & Co., L.L.C.  
Washington, D.C.

Merrill Lynch, Pierce, Fenner & Smith,  
Incorporated

Re: \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds  
(State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT)  
and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds,  
(State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT)

Ladies and Gentlemen:

We are counsel for \_\_\_\_\_, a national banking association organized and existing under the laws of the United States of America (the "Bank"). We have been asked to render our opinion as to certain matters relating to the authorization, execution and delivery by the Bank of (i) the First Amended and Restated Indenture of Trust dated as of the date of issuance, as supplemented (the "Indenture"), between the Bank, as Trustee, and Florida Ports Financing Commission (the "Commission") pursuant to which the captioned revenue bonds of the Commission are to be issued, and acceptance by the Bank of the trusts created under the terms of the Indenture; (ii) the Memorandum of Agreement between the State of Florida, Department of Transportation ("FDOT"), the State of Florida, Department of insurance, Division of Treasury, Florida Ports Financing Commission (the "Commission") and the Bank (the "Exhibit A Memorandum"), which is attached as Exhibit A to that certain Second Master Agreement as Amended, dated as of September 1, 1999, (the "Master Agreement"), between FDOT and the Commission; and (iii) the Memorandum of Agreement between FDOT, the Commission and the Bank (the "Exhibit B Memorandum"), which is attached as Exhibit B to the Master Agreement. The Exhibit A Memorandum and the Exhibit B Memorandum shall be referred to as the "Memorandums".

We have examined such documents as we have deemed to be appropriate and relevant as a basis for the opinion hereinafter set forth, including certified copies of certain resolutions of the Board of Directors of the Bank and a certificate of an officer of the Bank as to certain matters including the incumbency of the officers of the Bank who executed the Indenture and the Memorandums on behalf of the Bank.

In rendering the opinions expressed herein, we have assumed (i) in good faith the genuineness of the signatures of all persons executing instruments or documents examined or relied upon by us; and (ii) in good faith the conformity with the original documents of all

documents submitted to us as copies. In addition, we have relied in good faith upon certificates of public officials as to matters contained therein and upon certain certificates of representatives of the Bank as to matters of fact. Any opinion expressed herein as being made "to the best of our knowledge" is based upon our having made due inquiry of the Bank or our having actual knowledge as a result of our representation of the Bank in other matters, but not upon our having made an independent investigation,

Based upon and subject to the foregoing, it is our opinion that:

1. The Bank is national banking association duly organized and validly existing under the laws of the United States of America.

2. The Bank is authorized under the laws of the United States of America and the State of Florida, and has the corporate power and capacity, to execute and deliver the Indenture and the Memorandums and to accept the trusts and obligations created under the Indenture.

3. Execution and delivery of the Indenture and the Memorandums have been duly authorized by the Bank, the trust created under the Indenture and the obligations created under the Indenture and the Memorandums have been accepted on behalf of the Bank by an officer of the Bank pursuant to such authority, and the Indenture and the Memorandums (assuming the due and legal authorization, execution and delivery thereof by the other parties thereto, as to which we express no opinion) constitute the legal, valid and binding obligations of the Bank, enforceable in accordance with their terms, except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting generally the enforcement of creditors' rights and by principles of equity relating to the availability of specific performance.

4. The Bank has the power and authority to exercise and perform all duties imposed upon it under the Indenture and the Memorandums.

The foregoing opinions are based solely on the laws of the United States of America and the State of Florida.

Very truly yours,

**EXHIBIT B**

**FORM OF INDENTURE OF TRUST**



---

**FLORIDA PORTS FINANCING COMMISSION,**  
Issuer

and

\_\_\_\_\_,  
Trustee

**FIRST AMENDED AND RESTATED  
INDENTURE OF TRUST**

\$ \_\_\_\_\_  
FLORIDA PORTS FINANCING COMMISSION  
REVENUE BONDS  
(STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM),

Dated as of \_\_\_\_\_, 2011

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This instrument also constitutes a security agreement under the laws of the State of Florida.

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## **FIRST AMENDED AND RESTATED INDENTURE OF TRUST**

**THIS FIRST AMENDED AND RESTATED INDENTURE OF TRUST**, dated as of \_\_\_\_\_, 2011 between the **FLORIDA PORTS FINANCING COMMISSION**, a legal entity organized and existing under the laws of the State of Florida (the "Commission"), and \_\_\_\_\_, \_\_\_\_\_, Florida, as trustee (the "Trustee").

### **WITNESSETH:**

**WHEREAS**, the Commission is duly created and existing pursuant to the Constitution and laws of the State of Florida, including, particularly, Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes (the "Interlocal Act"), and a first amended and restated interlocal agreement, dated as of September 15, 1997 (the "Interlocal Agreement"), among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County; and

**WHEREAS**, the Commission, pursuant to the authority of the Interlocal Act, the Interlocal Agreement and other applicable provisions of law, is authorized, among other things, to issue revenue bonds on behalf of and for the benefit of the ports located in the State of Florida (the "Ports") in order to finance, refinance or reimburse the cost of qualified projects of such Ports, such bonds to be secured by instruments evidencing and securing loans to the Ports and to be payable solely out of payments made by the Ports pursuant to Loan Agreements entered into between the Ports and the Commission or from other moneys designated as available therefor; and

**WHEREAS**, the Commission has determined that the public interest will be best served by the Commission's issuance of revenue bonds in order to provide funds to loan to the participating Ports to finance, refinance or reimburse the cost of qualifying projects pursuant to loan agreements between the respective Ports and the Commission; and

**WHEREAS**, the Commission has heretofore issued its \$153,155,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999 (the "Series 1999 Bonds") pursuant to an Indenture of Trust, dated as of September 1, 1999 (the "Original Indenture"), between the Commission and SunTrust Bank, as Trustee, to provide funds to finance, refinance or reimburse the cost of qualified projects of the participating Ports; and

**WHEREAS**, in order to secure the payment of the principal of, premium, if any, and interest on the Series 1999 Bonds and any additional parity bonds issued under the

Original Indenture, Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City) and City of Pensacola (Port of Pensacola) (collectively, the "Borrowers") have each entered into a loan agreement with the Commission (collectively, the "Loan Agreements") and have agreed in the Loan Agreements to assign, transfer and pledge moneys received by such Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, in order to provide for the payment of principal of, premium, if any, and interest on the Series 1999 Bonds and any additional parity bonds issued under the Original Indenture; and

**WHEREAS**, the Commission determines that is in its best interests to refinance the Series 1999 Bonds in order to achieve debt service savings; and

**WHEREAS**, the Commission deems it in its best interests to amend the Original Indenture in various respects and to restate such Original Indenture in the form of this First Amended and Restated Indenture of Trust (as amended and supplemented, the "Indenture") [and to replace U.S. Bank, National Association, as successor to SunTrust Bank, as Trustee with \_\_\_\_\_]; and

**WHEREAS**, the Commission shall issue its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT) (the "Series 2011A Bonds") and its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT) (the "Series 2011B Bonds" and together with the Series 2011A Bonds, the "Series 2011 Bonds") pursuant to the terms of this Indenture and the First Supplemental Indenture of Trust, dated as of \_\_\_\_\_, 2011 for the principal purposes of refinancing the Series 1999 Bonds and paying the costs of issuance of the Series 2011 Bonds; and

**WHEREAS**, the Series 2011 Bonds shall constitute Bonds pursuant to the terms of this Indenture and the Loan Agreements;

**NOW, THEREFORE**, in consideration of the premises, the Commission and the Trustee hereby further mutually covenant and agree as follows:

## **W I T N E S S E T H:**

### **GRANTING CLAUSES**

The Commission, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the Commission of all the covenants expressed or implied herein and in the Bonds, does hereby grant, bargain, sell, convey, mortgage, assign, pledge and grant, without recourse, a lien in the hereafter-described Trust Estate to the Trustee, and its successors in trust and assigns forever, for the securing of the performance of the obligations of the Commission hereinafter set forth:

#### **GRANTING CLAUSE FIRST**

All right, title and interest of the Commission under the Loan Agreements (excluding fees and expenses payable to, or on behalf of, the Commission and rights of the Commission to indemnity and notices thereunder and excluding any payments made by the Borrowers to comply with the rebate provisions of Section 148(f) of the herein defined Code) entered into by the Borrowers and any documents securing payment thereunder, including all extensions and renewals of any of the terms of the Loan Agreements and any documents securing payment thereunder and without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any income, issues and profits and other sums of money payable to or receivable by the Commission, to bring actions or proceedings under the Loan Agreements, any documents securing payment thereunder or for the enforcement thereof, and to do any and all things which the Commission is or may become entitled to do under or due to its ownership of the interests granted in the Loan Agreements; provided, however, that the Bonds shall be secured only by the right, title and interest of the Commission in the Loan Agreements relating thereto; and

#### **GRANTING CLAUSE SECOND**

All moneys and securities from time to time held by the Trustee under the terms hereof (except for moneys and securities held in the Rebate Fund and the Administrative Expense Fund), including any investment earnings thereon, all in accordance with the provisions hereof; and



### **GRANTING CLAUSE THIRD**

All of the herein defined Revenues (other than the herein defined Additional Payments), any proceeds of Bond Insurance (as herein defined), any and all other property, rights and interests of every kind and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, pledged, hypothecated or otherwise subjected hereto, as and for additional security herewith, by the Commission or any other person on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, to the Trustee and its respective successors in trust and assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future owners of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds, except as otherwise specifically provided herein with respect to the Bonds;

**PROVIDED, HOWEVER**, that the holders of the Bonds shall be entitled to payment only from the Loan Agreements more fully described in Granting Clause First hereof pledged for the payment of the Bonds, the Funds and Accounts set forth in Granting Clause Second hereof established for the Bonds and the Revenues, proceeds of Bond Insurance and other property, rights and interests described in Granting Clause Third pledged for the payment of such Bonds;

**AND FURTHER PROVIDED**, that if the Commission, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds and as provided in Article II hereof according to the true intent and meaning thereof, and shall cause the payments to be made as required under Article II hereof, or shall provide, as permitted hereby, for the payment thereof in accordance with Article VIII hereof, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms hereof to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due in accordance with the terms and provisions hereof, then upon such final payments or deposits as provided in Article VIII hereof, this Indenture of Trust and the rights hereby granted shall cease, terminate and be void and the Trustee shall thereupon cancel and discharge this Indenture and execute and deliver to the Commission such instruments in writing as shall be requisite to evidence the discharge hereof.

**THIS INDENTURE OF TRUST FURTHER WITNESSETH,** and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all of the Trust Estate is to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and the Commission has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective owners, from time to time, of the Bonds, or any part thereof, as follows:

## **ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION**

**SECTION 1.01. DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture, have the meanings herein specified.

**"Accountant"** or **"Accountants"** means an independent certified public accountant or a firm of independent certified public accountants.

**"Accounts"** means the accounts created pursuant to Section 4.02 hereof.

**"Act"** means the Interlocal Act and all other applicable provisions of law, including, without limitation, Part I of Chapter 159, Florida Statutes, and Chapters 311 and 315, Florida Statutes.

**"Additional Bonds"** means any Bonds issued pursuant to the terms of Section 13.09 hereof.

**"Additional Payments"** means payments required by Section 5.02 of the Loan Agreement.

**"Administrative Expense Fund"** means the fund by that name created by Section 4.02(b) hereof.

**"Administrator"** means such program administrator selected by the Commission in accordance with the terms of Section 6.02 hereof to provide certain services to the Commission with respect to the Program and to act as the Commission's agent as set forth in the Program Administration Agreement.

**"Administrator's Account"** means the account by that name created by Section 4.02(b) hereof.

**"Amortization Installment"** means an annual amount designated as such herein relating to redemption of Term Bonds.

**"Arbitrage Regulations"** means the income tax regulations promulgated, proposed or applicable pursuant to Section 148 of the Code, as the same may be amended or supplemented or proposed to be amended or supplemented from time to time.

**"Authorized Denominations"** means \$5,000 and integral multiples thereof.

**"Authorized Representative"** means, when used in respect to the Commission, the Chairman of the Commission and such other designated members, agents or

representatives, including the Administrator, as may hereafter be determined by Commission resolution and, when used with reference to a Borrower, means the person performing the function of the Port Director (or his or her designee) or such other person as may be designated by the Borrower.

**"Basic Payments"** means the payments denominated as such in Section 5.01 of the Loan Agreement.

**"Board"** means the governing body of a Borrower.

**"Bond Counsel"** means Nabors, Giblin & Nickerson, P.A., Tampa, Florida, or any other nationally recognized bond counsel which is selected by the Commission and acceptable to the Trustee to perform such role.

**"Bondholder"** or **"Holder"** or **"holder of Bonds"** or **"Owner"** or **"owner of Bonds"**, whenever used herein with respect to a Bond, means the Person in whose name such Bond is registered.

**"Bond Insurance"** or **"Bond Insurance Policy"** means a municipal bond new issue insurance policy issued by a Bond Insurer which guarantees payment of the principal of and interest on a Series of Bonds, or a portion thereof.

**"Bond Insurance Premium,"** with respect to the Bonds, means the premium payable to the Bond Insurer for the Bond Insurance.

**"Bond Insurer,"** or **"Insurer"** shall mean such Person as shall be in the business of insuring or guaranteeing the payment of principal of and interest on municipal securities and whose credit is such that, at the time of any action or consent required or permitted by the Insurer pursuant to the terms of this Indenture, all municipal securities insured or guaranteed by it are then rated, because of such insurance or guarantee, in one of the two highest rating categories (without regard to gradations, such as "plus" or "minus" of such categories) by Moody's and S&P, or any successor thereto.

**"Bonds"** means the Series 2011 Bonds, any refunding obligations issued hereunder pursuant to Section 2.10 hereof and any Additional Bonds issued pursuant to Section 13.09 hereof.

**"Bond Year"** means a 12-month period beginning on [October 1 and ending on and including the last day of September].

**"Borrowers"** means the Ports which have entered into Loan Agreements and which are borrowing and using the Loan proceeds to finance, refinance and/or be reimbursed for all or a portion of the Costs of one or more Projects. Subject to the provisions of Section 12.05 hereof, the Borrowers shall be Broward County (Port

Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City) and City of Pensacola (Port of Pensacola).

**"Business Day"** means a day of the year which is not a Saturday or Sunday or a day on which banking institutions located in the State of New York or the State are required or authorized to remain closed or on which the New York Stock Exchange is closed.

**"Certificate," "Statement," "Request," "Requisition" and "Order"** of the Commission mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Commission by its Chairman, Secretary-Treasurer, Administrator or such other person as may be designated and authorized to sign for the Commission. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

**"Chairman"** means the Chairman of the Commission, and, in his or her unavailability or absence, the Vice-Chairman.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated, proposed, or applicable thereunder.

**"Commission"** means the Florida Ports Financing Commission, and any successors thereto.

**"Construction Fund"** means the fund by that name created by Section 4.02(f) hereof and all Accounts therein.

**"Cost,"** when used in connection with a Project financed by a Loan made to a Borrower, means (1) such Borrower's cost of physical construction; (2) costs of acquisition by or for the Borrower of such Project; (3) costs of land and interests therein and the cost of the Borrower incidental to such acquisition; (4) the cost of any indemnity and surety bonds and premiums for insurance during construction; (5) all interest due to be paid on the Loan and other obligations relating to such Project during the period of acquisition and construction of such Project and for such period subsequent to completion, all to the extent permitted by the Commission; (6) engineering, legal and other consultant fees and expenses related thereto; (7) costs and expenses of the financing of such Project, including fees and expenses of the Trustee or a Bond Insurer; (8)

amounts, if any, required by this Indenture to be paid into the Interest Account upon the issuance of the Bonds; (9) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any interim or temporary indebtedness of the Borrower (other than the Loan) incurred for such Project, to the extent permitted by the Commission; (10) costs of machinery, equipment and supplies and reserves required by the Borrower for the commencement of operation of such Project; and (11) any other costs properly attributable to such acquisition or construction, and shall include reimbursement to the Borrower for any such items of Cost heretofore paid by the Borrower relating to such Project to the extent permitted by the Loan Agreement. A Supplemental Indenture may provide for additional items to be included in the aforesaid Costs.

**"Cost of Issuance Fund"** means the fund by that name created by Section 4.02(d) hereof.

**"Counsel"** means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the Commission or the Borrower.

**"Default"** means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**"Department"** means the Florida Department of Transportation, and any successors or assigns thereto.

**"DTC"** means The Depository Trust Company, New York, New York, and its successors and assigns.

**"Event of Default"** means any occurrence or event specified in Section 9.01 hereof.

**"Excess Earnings"** shall have the meaning provided in Section 4.05 hereof.

**"Fiscal Year"** means the fiscal year of the Borrowers.

**"Fitch"** means Fitch Inc., and its successors and assigns.

**"FSTED"** means the Florida Seaport Transportation and Economic Development Council created pursuant to Section 311.09, Florida Statutes, and any successors thereto.

**"Funds"** means the funds created pursuant to Section 4.02 hereof.

**"Governmental Obligations"** means (1) cash and the United States obligations described below (the "Defeasance Obligations"), and (2) pre-refunded municipal

obligations (obligations of any state of the United States of America or of any agency, instrumentality, political subdivision or local government unit of such state) meeting the following criteria:

(a) the municipal obligations must be rated "AAA" by S&P and "Aaa" by Moody's and may not be callable prior to maturity or, alternatively, the trustee or escrow agent for such obligations has received irrevocable instructions concerning their calling and redemption;

(b) the municipal obligations are secured by cash or Defeasance Obligations which may be applied only to principal, interest and premium payments of such municipal obligations;

(c) the principal and interest of the Defeasance Obligations (plus any cash in the fund) has been verified by an Accountant as sufficient to pay the principal, interest and premium, if any, of the municipal obligations;

(d) the Defeasance Obligations serving as security for the municipal obligations must be held by an escrow agent or a trustee; and

(e) the Defeasance Obligations are not available to satisfy any other claims, including those of the trustee or escrow agent.

Defeasance Obligations shall consist of:

(1) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series -- "SLGs"); and

(2) Any other direct obligations of the United States of America and obligations fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged.

**"Indenture"** means this First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee, including any Supplemental Indentures.

**"Interest Account"** means the account by that name created pursuant to Section 4.02(c) hereof.

**"Interest Payment Date"** means April 1 and October 1 of each year.

**"Interest Period"** means the period commencing on an Interest Payment Date and ending on the day preceding the next Interest Payment Date, provided that the initial Interest Period shall commence on the dated date of the Bonds.

**"Interlocal Act"** means Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes.

**"Interlocal Agreement"** means that certain First Amended and Restated Interlocal Agreement, dated as of September 15, 1997, among certain Ports executing it from time to time, the original parties to which are Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County, as amended and supplemented from time to time.

**"Investment Securities"** shall mean any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

1. (a) Cash (fully insured by the Federal Deposit Insurance Corporation), (b) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("U.S. Treasury Obligations"), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.
2. Federal Housing Administration debentures.
3. The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:
  - a) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped



- mortgage securities which are purchased at prices exceeding their principal amounts);
- b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes;
  - c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations; and
  - d) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts).
- 4. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks which have capital and surplus of at least \$50 million.
  - 5. Commercial paper (having original maturities of not more than 270 days) rated "A-1+" by S&P and "Prime-1" by Moody's.
  - 6. Money market funds rated "AAAm" or "AAAm-G" by S&P, and if rated by Moody's rated "Aaa".
  - 7. "State Obligations", which means:
    - a) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated at least "A3" by Moody's and at least "A-" by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated;
    - b) Direct general short-term obligations of any state agency or subdivision or agency thereof described in (a) above and rated "A-1+" by S&P and "MIG-1" by Moody's; and
    - c) Revenue bonds of any state or state agency described in (b) above and rated "AA-" or better by S&P and "Aa3" or better by Moody's.

8. Pre-refunded municipal obligations described in the definition of Government Obligations.
9. Repurchase agreements: with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A-" by S&P and "A3" Moody's; or (2) any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A-" by S&P and "A3" by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated at least "A-" by S&P and "A3" Moody's (each an "Eligible Provider"), provided that:
  - a) (i) permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of SBA, GNMA, FNMA, FFCB, FHLB or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and (ii) collateral levels must be at least 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is SBA's and GNMA's and 104% of the total principal when the collateral type is FNMA, FHLB, FFCB, and FHLMC ("Eligible Collateral");
  - b) the Trustee or a third party acting solely as agent therefore or for the Commission (the "Custodian") has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor's books) and such collateral shall be marked to market;
  - c) the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the Commission setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;
  - d) the repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected security interest in the collateral, any substituted collateral and all proceeds thereof; and

- e) the repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A3" by Moody's, as appropriate, the provider must notify the Commission and the Trustee within five days of receipt of such notice. Within ten days of receipt of such notice, the provider shall either: (i) provide a written guarantee, surety bond, letter of credit or similar undertaking from an entity with equal or higher ratings, (ii) post Eligible Collateral, (iii) assign the agreement to an Eligible Provider, or (iv) take any action mutually agreeable by the parties . If the provider does not perform a remedy within ten business days, the provider shall, at the direction of the Trustee repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the Commission or the Trustee.
10. Investment agreements: with a domestic or foreign bank or corporation the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA-" by S&P and "Aa3" by Moody's (each an "Eligible Provider"); provided that:
- a) interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;
  - b) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice; the Commission and the Trustee hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;
  - c) the provider shall send monthly reports to the Trustee and the Commission setting forth the balance the Commission or Trustee has invested with the provider and the amounts and dates of interest accrued and paid by the provider;
  - d) the investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the

provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

- e) [reserved];
- f) the Commission and the Trustee shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms;
- g) the Commission and the Trustee shall receive an opinion of foreign counsel to the provider (if applicable) that (i) the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, (b) the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (c) any judgment rendered by a court in the United States would be recognized and enforceable in such country;
- h) the investment agreement shall provide that if during its term:
  - i) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3", the provider shall, at its option, within ten days of receipt of publication of such downgrade, either (i) provide a written guarantee, (ii) post Eligible Collateral with the Commission, the Trustee or a third party acting solely as agent therefore (the "Custodian") free and clear of any third party liens or claims, or (iii) assign the agreement to an Eligible Provider, or (iv) repay the principal of and accrued but unpaid interest on the investment;
  - ii) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A3", the provider must, at the direction of the Commission or the Trustee, within ten (10) days of receipt of such

direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Commission or Trustee.

- i) in the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, 103% of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). In addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee and the Commission setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;
- j) the investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected security interest in the collateral, any substituted collateral and all proceeds thereof; and
- k) the investment agreement must provide that if during its term: (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Commission or the Trustee, be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Commission or Trustee, as appropriate, and (ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Commission or Trustee, as appropriate.

**"Loan"** means a loan to a Borrower from proceeds of Bonds to finance or refinance a Project or Projects pursuant to a Loan Agreement in the amount specified in

Section 3.01 of such Loan Agreement including the loan made from proceeds of Series 1999 Bonds.

**"Loans"** means all loans made by the Commission under this Indenture and the Loan Agreements to Borrowers. A description of the Loans made from proceeds of the Series 1999 Bonds is provided in Exhibit A attached hereto. Loans shall also include any loans made from proceeds of Additional Bonds in accordance with the terms of the Supplemental Indenture authorizing such Additional Bonds.

**"Loan Agreement"** or **"Loan Agreements"** means the Loan Agreement or Loan Agreements between the Commission and the Borrower(s) participating in the Program with respect to the Bonds (including the Series 1999 Bonds), and any amendments and supplements thereto.

**"Loan Repayment Date"** means [April 1, 2011, and each October 1 and April 1] thereafter or, if such day is not a Business Day, the next preceding Business Day.

**"Loan Repayments"** means the payments of principal and interest and other payments payable by the Borrowers pursuant to the provisions of the Loan Agreements. Loan Repayments shall include Basic Payments and Additional Payments.

**"Loan Term"** means the term provided for in Article IV of the Loan Agreement.

**"Master Agreement"** means the Second Master Agreement As Amended, dated as of September 29, 1999, between the Commission and the Department relating to the Program, as the same may be amended and supplemented from time to time.

**"Moody's"** means Moody's Investors Service and its successors and assigns.

**"Outstanding"** or **"Bonds Outstanding"** means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

- (a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;
- (b) Bonds deemed paid under Article VIII hereof; and
- (c) Bonds in lieu of which other Bonds have been authenticated under Section 2.05, 2.06 or 2.08 hereof.

**"Participant"** means any direct or indirect participant in the book-entry only registration system of DTC.

**"Person"** means any individual, corporation, partnership, association, trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**"Port"** means any port, port authority or port district as described in Section 311.09(1), Florida Statutes, which can participate in the Program pursuant to the laws of the State.

**"Principal Account"** means the account by that name created by Section 4.02(c) hereof.

**"Principal Payment Date"** means the maturity date or mandatory redemption date of any Bond.

**"Program"** means the Commission's program of making Loans under the Act and pursuant to this Indenture.

**"Program Administration Agreement"** means the Program Administration Agreement, dated as of September 1, 1999, between the Commission and the Administrator, relating to the Administrator's responsibilities.

**"Project"** or **"Projects"** means such capital improvements and facilities and such other governmental undertakings approved by FSTED in accordance with the Act, and by the Board of a Borrower which shall be financed or refinanced through the Program pursuant to the Loan Agreements between the Commission and such Borrower.

**"Proportionate Share"** means, at the time such calculation is made, with respect to any Borrower, a fraction the numerator of which is the outstanding principal amount of the Loan of such Borrower made from proceeds of the Bonds and the denominator of which is the outstanding principal amount of all Loans made from proceeds of the Bonds.

**"Rating Category"** means one of the generic rating categories of Moody's, S&P or Fitch, without regard of any refinement or graduation of such rating category by a numerical modifier or otherwise.

**"Rebate Fund"** means the fund by that name created by Section 4.02(e) hereof.

**"Record Date"** means, with respect to any Interest Payment Date, the fifteenth day of the calendar month preceding such Interest Payment Date.

**"Recurring Expense Account"** means the account by that name created by Section 4.02(b) hereof.

**"Redemption Account"** means the account by that name created by Section 4.02(c) hereof.

**"Redemption Price"** means, with respect to any Bond (or portion thereof), the principal amount of such Bond (or portion) plus the applicable premium, if any, payable upon redemption pursuant to the provisions of such Bond and this Indenture.

**"Revenue Fund"** means the fund by that name created by Section 4.02(a) hereof and all Accounts therein.

**"Revenues"** means all Loan Repayments paid to the Trustee for the respective Accounts of the Borrowers for deposit in the Revenue Fund to pay principal of, premium, if any, and interest on the Bonds, and all receipts of the Trustee credited to the Borrowers under the provisions of the Loan Agreements.

**"S&P"** means Standard & Poor's Financial Service LLC, a Division of McGraw-Hill Companies, Inc. and its successors and assigns.

**"Secretary-Treasurer"** means the Secretary-Treasurer of the Commission, and in his or her unavailability or absence, the Assistant Secretary-Treasurer or Vice-Chairman.

**"Serial Bonds"** means the Bonds designated as such pursuant to this Indenture.

**"Series"** shall mean each series of Bonds authorized pursuant to the terms hereof and the related Supplemental Indenture.

**"Sinking Fund"** means the fund by that name created pursuant to Section 4.02(c) hereof.

**"Special Record Date"** means the date established pursuant to Section 9.05 hereof as a record date for the payment of defaulted interest on the Bonds.

**"State"** means the State of Florida.

**"State Transportation Trust Fund"** means the State trust fund created pursuant to Chapter 206.46, Florida Statutes.

**"Supplemental Indenture"** means any indenture hereafter duly authorized and entered into between the Commission and the Trustee, supplementing, modifying or amending this Indenture, as provided in Article XI hereof.

**"Term Bonds"** means the Bonds designated as such pursuant to this Indenture.



**"Trustee"** means \_\_\_\_\_, as Trustee, or any successor thereto under this Indenture.

**"Trust Estate"** means the property, rights, revenues and other assets pledged and assigned to the Trustee pursuant to the Granting Clauses hereof.

**SECTION 1.02. RULES OF INTERPRETATION.** For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) "This Indenture" means this instrument as originally executed and as it may from time to time be supplemented, modified or amended by any Supplemental Indenture.

(b) All reference in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein", "hereof", "hereunder" and "herewith", and other words of similar import, refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles.

(e) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

(f) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(g) The headings or captions used in this Indenture are for convenience of reference only and shall not define, limit or describe any of the provisions hereof or the scope or intent hereof.

## **ARTICLE II THE BONDS**

**SECTION 2.01. AUTHORIZATION, ISSUANCE AND EXECUTION OF BONDS.** The Bonds shall be issued hereunder, from time to time, in such Series as may be authorized hereunder and under a Supplemental Indenture, in order to obtain moneys to carry out the purposes of the Program for the benefit of the Commission and the Borrowers. The Bonds shall be designated as "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series \_\_\_\_\_," with such additional nomenclature, as shall be provided by Supplemental Indenture. At any time after the execution of this Indenture, the Commission may execute and the Trustee shall authenticate and, upon request of the Commission, deliver the Bonds. This Indenture constitutes a continuing agreement with the Owners from time to time of the Bonds appertaining thereto to secure the full payment of the principal of, premium, if any, and interest on all such Bonds subject to the covenants, provisions and conditions herein contained.

The Bonds shall be issuable as fully registered bonds without coupons and shall be executed in the name and on behalf of the Commission with the manual or facsimile signature of its Chairman, under its seal attested by the manual or facsimile signature of its Secretary-Treasurer. Such seal may be in the form of a facsimile of the Commission's seal and may be reproduced, imprinted or impressed on the Bonds. The Bonds shall then be delivered to the Trustee for authentication by it.

In case any of the officers who shall have signed or attested any of the Bonds shall cease to be such officer or officers of the Commission before the Bonds so signed and attested shall have been authenticated or delivered by the Trustee or issued by the Commission, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Commission as though those who signed and attested the same had continued to be such officers of the Commission. Any Bond may be signed and attested on behalf of the Commission by such persons as at the actual date of execution of such Bond shall be the proper officers of the Commission although at the nominal date of such Bond any such person shall not have been such officer of the Commission.

Only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form hereinafter recited, manually executed by the Trustee as hereinafter defined, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

The Bonds shall be issued in the form of a separate single certificated fully registered Bond for each of the maturities of each Series of the Bonds. Upon issuance, the ownership of each such Bond shall be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC. Except as provided in this Section 2.01, all of the outstanding Bonds shall be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC. The Trustee shall have no responsibility or obligation to any Participant. The Commission and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (b) the delivery to any Participant or any other person other than a Bondholder, as shown in the registration books kept by the Trustee, of any notice with respect to the Bonds, including any notice of redemption, or (c) the payment to any Participant or any other person, other than a Bondholder, as shown in the registration books kept by the Trustee, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Commission and the Trustee may treat and consider the person in whose name each Bond is registered in the registration books kept by the Trustee as the holder and absolute Owner of such Bond for the purpose of payment of principal, premium and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Holders, as shown in the registration books kept by the Trustee, or their respective attorneys duly authorized in writing, as provided herein and all such payments shall be valid and effective to fully satisfy and discharge the Commission's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Holder, as shown in the registration books kept by the Trustee, shall receive a certificated Bond evidencing the obligation of the Commission to make payments of principal, premium, if any, and interest pursuant to the provisions hereof. Upon delivery by DTC to the Commission of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." in this Indenture shall refer to such new nominee of DTC; and upon receipt of such a notice the Commission shall promptly deliver a copy of the same to the Trustee.

Upon receipt by the Trustee of written notice (a) to the effect that DTC has received written notice from the Commission to the effect that it has determined, in its sole discretion, to discontinue the book-entry only system of registration and compliance by the Commission with applicable DTC rules and procedures, or (b) to the effect that DTC is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of DTC hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or

names Holders transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

**SECTION 2.02. TERMS AND DETAILS OF BONDS.** The terms and details of a Series of Bonds shall be established by Supplemental Indenture.

**SECTION 2.03. PAYMENT PROVISIONS.** The principal of, premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Principal of and premium, if any, on the Bonds shall be payable at the designated corporate trust office of the Trustee, and payment of the interest on each Bond shall be made by the Trustee on each Interest Payment Date to the person appearing as the registered Owner thereof on the bond registration books maintained by the Trustee as of the close of business on the Record Date preceding the Interest Payment Date (or, if interest on the Bonds is in default and the Bond Insurer is in default under the Bond Insurance, a Special Record Date established pursuant to Section 9.05 hereof), by check mailed to such registered Owner at his address as it appears on such registration books or, at the prior written request and expense of an Owner, by bank wire transfer to a domestic bank account, notwithstanding the cancellation of any such Bonds upon any exchange or transfer thereof subsequent to the Record Date or Special Record Date and prior to such Interest Payment Date. Payment of the principal (or Redemption Price) of all Bonds shall be made upon the presentation and surrender of such Bonds as the same shall become due and payable.

**SECTION 2.04. BOND INSURANCE.** The terms and provisions of any Bond Insurance relating to a Series of Bonds shall be established by Supplemental Indenture.

**SECTION 2.05. MUTILATED, LOST, STOLEN OR DESTROYED BONDS.** If any Bond is mutilated, lost, stolen or destroyed, the Commission shall execute and the Trustee shall authenticate a new Bond of the same date, maturity, Series 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 Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Commission and the Trustee evidence of such loss, theft or destruction satisfactory to the Commission and the Trustee, together with an indemnity satisfactory to them. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate Bond, the Trustee may pay the same. The Commission and the Trustee may charge the Owner of such Bond with their reasonable fees and expenses in connection with replacing any Bond mutilated, lost, stolen or destroyed.

**SECTION 2.06. TRANSFER AND EXCHANGE OF BONDS; PERSONS TREATED AS OWNERS.** The Commission shall cause books for the registration and

transfer of the Bonds, as provided in this Indenture, to be kept by the Trustee. Upon surrender for transfer of any Bond at the designated corporate trust office of the Trustee, accompanied by an assignment duly executed by the registered Owner or his attorney duly authorized in writing, the Commission shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds for a like aggregate principal amount.

Bonds may be exchanged at the designated corporate trust office of the Trustee for a like aggregate principal amount of Bonds of other Authorized Denominations. The Commission shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously outstanding.

The Trustee shall not be required to transfer or exchange any Bonds (a) during the ten days next preceding any day upon which notice of redemption of Bonds is to be mailed, (b) selected, called or being called for redemption in whole or in part, or (c) during a period beginning at the opening of business on the Record Date or Special Record Date next preceding an Interest Payment Date and ending at the close of business on such Interest Payment Date.

The Person in whose name any Bond shall be registered shall be deemed and regarded by the Trustee and the Commission as the absolute Owner thereof for all purposes, and payment of or on account of the principal of, premium, if any, or interest on any Bond shall be made only to or upon the written order of the registered Owner thereof or his legal representative, subject to Section 2.03 hereof, and neither the Commission nor the Trustee shall be affected by any notice to the contrary, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums paid.

A reasonable transfer charge may be made for any exchange or transfer of any Bond and the Trustee shall require the payment by any Bondholder requesting exchange or transfer of a sum sufficient to cover any tax or other governmental charge required to be paid with respect to such exchange or transfer.

**SECTION 2.07. CANCELLATION OF BONDS.** Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount thereof or for replacement pursuant to Section 2.05 hereof or for transfer or exchange pursuant to Sections 2.06 or 2.08 hereof, such Bond shall be canceled by the Trustee, and evidence of such cancellation shall be furnished by the Trustee to the Commission.

**SECTION 2.08. TEMPORARY BONDS.** Pending the preparation of definitive Bonds, the Commission may execute and the Trustee shall authenticate and

deliver temporary Bonds. Temporary Bonds shall be issuable as fully registered Bonds, of any Authorized Denomination, and substantially in the form of the definitive Bonds but with such omissions, insertions and variations as may be appropriate for temporary Bonds, all as may be determined by the Commission. Temporary Bonds may be issued without specific terms and may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Commission and authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Bonds. As promptly as practicable, the Commission shall execute and shall furnish definitive Bonds and thereupon temporary Bonds may be surrendered in exchange therefor without charge at the designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds a like aggregate principal amount of definitive Bonds. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds.

**SECTION 2.09. NONPRESENTMENT OF BONDS.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, or if any interest check shall not be cashed, if funds sufficient to pay such Bond or interest shall have been made available by the Commission to the Trustee for the benefit of the Owner thereof, all liability of the Commission to the Owner thereof for the payment of such Bond or interest, as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, uninvested and without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture. Such unclaimed moneys shall be disposed of in accordance with applicable law.

**SECTION 2.10 REFUNDING OBLIGATIONS.** The Commission reserves the right hereunder to issue Bonds for the purpose of refunding all or a portion of the Outstanding Bonds; provided such refunding Bonds result in no increase in debt service in each year in which the Bonds to be refunded shall be Outstanding. As part of said refunding the Commission may issue Bonds to fund additional Projects provided the aforementioned debt service requirements are not increased or the Trustee is provided a certificate of an Authorized Representative as described in Section 13.09 hereof.

**SECTION 2.11. FORM OF BONDS.** A Series of Bonds to be issued hereunder, and the certificate of authentication by the Trustee to be endorsed on all such Bonds, shall be substantially in the form set forth as Exhibit C hereto, with such variations, omissions and insertions as are permitted by this Indenture or are required to conform the form of Bond to the provisions of this Indenture (any portion of such form of Bond may be printed on the back of the Bonds).

### **ARTICLE III REDEMPTION OF BONDS**

**SECTION 3.01. OPTIONAL REDEMPTION OF THE BONDS.** Each Series of Bonds may be subject to optional redemption as provided by the Supplemental Indenture authorizing such Bonds.

**SECTION 3.02. MANDATORY REDEMPTION OF THE BONDS.** Each Series of Bonds may be subject to mandatory redemption as provided by the Supplemental Indenture authorizing such Bonds.

**SECTION 3.03. SELECTION OF BONDS TO BE REDEEMED.** When Bonds are redeemed by lot, selection of Bonds for redemption shall be in such manner as the Trustee shall determine; provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or any whole multiple thereof, except as otherwise provided by Supplemental Indenture.

**SECTION 3.04. NOTICE AND EFFECT OF REDEMPTION.** Notice of redemption shall specify the Bond or Bonds (or portions thereof) to be redeemed and the date and place for redemption, which shall be given by the Trustee on behalf of the Commission, and shall be mailed first class, postage prepaid, at least 30 days prior to the redemption date to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books held by the Trustee as of the date of mailing of such notice. Failure to mail such notice to the Holders of the Bonds to be redeemed, or any defect therein, shall not affect the proceedings for redemption of Bonds as to which no such failure or defect has occurred.

Each notice of redemption shall state: (i) the CUSIP numbers of all Bonds being redeemed, (ii) the original issue date of such Bonds, (iii) the maturity date and rate of interest borne by each Bond being redeemed, (iv) the redemption date, (v) the Redemption Price, (vi) the date on which such notice is mailed, (vii) if less than all Outstanding Bonds are to be redeemed, the certificate number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed, (viii) that on such redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable, (ix) that the Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated office of the Trustee at an address specified, and (x) the name and telephone number of a person designated by the Trustee to be responsible for such redemption.

Within 60 days of the date of redemption, the Trustee shall give a second notice of redemption by mailing another copy of the redemption notice to the Holders of Bonds called for redemption but which have not been presented for payment within 30 days after the date set for redemption.

In addition to the mailing of the notice described above, each notice of redemption and payment of the Redemption Price shall meet the following requirements; provided, however, the failure to provide such further notice of redemption or to comply with the terms of this paragraph shall not in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed above:

(a) Each further notice of redemption shall be sent by certified mail or overnight delivery service or telecopy to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to two or more national information services which disseminate notices of prepayment or redemption of obligations such as the Bonds.

(b) Each further notice of redemption shall be sent to such other Person, if any, as shall be required by applicable law or regulation.

Except as otherwise provided by Supplemental Indenture, the Commission may provide that a notice of redemption may be contingent upon the occurrence of certain condition(s) and that if such condition(s) do not occur the notice will be rescinded, provided notice of rescission shall be mailed in the manner described above to all affected Bondholders within a reasonable time period after the Commission determines that such conditions will not be satisfied.

**SECTION 3.05. EFFECT OF CALLING FOR REDEMPTION.** On or before the date fixed for redemption, funds shall be deposited with the Trustee to pay the principal of, premium, if any, and interest accruing thereon to the redemption date of the Bonds called for redemption. On the date fixed for redemption, notice having been given in the manner and under the conditions hereinabove provided, the Bonds or portions thereof called for redemption shall be due and payable at the Redemption Price provided therefor, plus accrued interest to such date. If money sufficient to pay the Redemption Price of the Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption, are held by the Trustee in trust for the Owners of Bonds to be redeemed, interest on the Bonds called for redemption shall cease to accrue; such Bonds shall cease to be entitled to any benefits or security under this Indenture; and the Owners of such Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price thereof, plus accrued interest to the date fixed for redemption from the moneys held therefor.

**SECTION 3.06. REDEMPTION OF PORTION OF BONDS.** If a portion of an Outstanding Bond shall be selected for redemption, the Owner thereof or his



attorney or legal representative shall present and surrender such Bond to the Trustee for payment of the principal amount thereof so called for redemption and the premium, if any, on such principal amount, and the Trustee shall authenticate and deliver to or upon the order of such Owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond of the same maturity and bearing interest at the same rate; provided, however, that if the Owner is a securities depository nominee, the securities depository, in its discretion, (a) may surrender such Bond to the Trustee and request that the Trustee authenticate and deliver a new Bond for the unredeemed portion of the principal amount of the Bond so surrendered, or (b) shall make an appropriate notation on the Bond indicating the dates and amounts of such reduction in principal.

**SECTION 3.07. CANCELLATION.** Bonds so redeemed, presented and surrendered shall be cancelled upon the surrender thereof.

## **ARTICLE IV REVENUES AND FUNDS**

**SECTION 4.01. SOURCE OF PAYMENT OF BONDS.** This Indenture creates and shall be and constitute a continuing, irrevocable lien and claim upon, pledge of and grant of the Trust Estate, to the extent provided in this Indenture, to secure first the full payment of the principal of and interest on the Bonds as the same shall become due and then all other amounts due hereunder. The Bonds are, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction, so that the Bonds at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be secured hereby with like effect.

**THE BONDS ARE SOLELY AND EXCLUSIVELY A SPECIAL AND LIMITED OBLIGATION OF THE COMMISSION PAYABLE SOLELY FROM THE TRUST ESTATE AND DO NOT CREATE NOR CONSTITUTE, NOW OR IN THE FUTURE, AN OBLIGATION OR DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS) OTHER THAN THE COMMISSION TO THE EXTENT PROVIDED IN THIS INDENTURE; NOR SHALL THE BONDS CONSTITUTE THE GIVING, PLEDGING OR LOAN OF THE FAITH AND CREDIT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE, BUT SHALL BE PAYABLE SOLELY FROM THE TRUST ESTATE. THE ISSUANCE OF THE BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS). NONE OF THE OBLIGATIONS OF THE BORROWERS UNDER THEIR RESPECTIVE LOAN AGREEMENTS ARE SECURED BY A PLEDGE OF THEIR TAXING POWERS, IF ANY, AND NONE ARE PAYABLE FROM AD VALOREM TAXES. THE LOAN AGREEMENTS DO NOT REPRESENT JOINT LIABILITIES OF THE BORROWERS EXECUTING LOAN AGREEMENTS WITH THE COMMISSION, AND SHALL BE PAYABLE SOLELY AS PROVIDED IN SUCH LOAN AGREEMENTS.**

**SECTION 4.02. CREATION OF FUNDS AND ACCOUNTS.** There are hereby established by the Commission the following Funds and Accounts to be held by the Trustee:

(a) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Revenue Fund." The Trustee shall maintain a separate Account in the Revenue Fund for each Borrower.

(b) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Administrative Expense Fund." The Trustee shall maintain two separate accounts in the Administrative Expense Fund: the "Administrator's Account" and the "Recurring Expense Account."

(c) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Sinking Fund." The Trustee shall maintain three separate accounts in the Sinking Fund: the "Interest Account," the "Principal Account," and the "Redemption Account."

(d) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Cost of Issuance Fund."

(e) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Rebate Fund."

(f) The "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series Construction Fund." The Trustee shall maintain a separate Account in the Construction Fund for each Borrower.

Moneys in the aforementioned Funds and Accounts (except for moneys in the Rebate Fund and Administrative Expense Fund), until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

**SECTION 4.03. CONSTRUCTION FUND.** The Trustee shall establish a subaccount separate Account in the Construction Fund for each Borrower. Proceeds of Additional Bonds shall be deposited into such Accounts as provided by Supplemental Indenture. At the direction of the Commission, the Trustee shall establish a separate subaccount in an Account of the Construction Fund if Additional Bonds are issued pursuant to Section 13.09 hereof. The Trustee is hereby authorized and directed to disburse moneys from the appropriate Account in the Construction Fund to pay the Costs of the Project or Projects of a Borrower to be financed or refinanced from moneys in such Account; provided that such disbursements shall be made only upon requisition of an Authorized Representative of such Borrower meeting the requirements of and submitted

in accordance with Section 3.03 of the Loan Agreement. Moneys shall be disbursed only from the Account indicated in the requisition.

The Trustee is authorized to rely upon the requisition without independently confirming compliance with or satisfaction of the requirements set forth in this Indenture or the Loan Agreements. The Trustee may also rely upon the certification of the Borrowers in the requisitions or in any documents, certificates or instruments submitted in connection therewith as to the factual conditions precedent to any disbursements hereunder and shall have no responsibility or duty to review the attachments to such requisitions (but must determine that all required attachments are present) or investigate the basis for such certifications or representations.

In the event the Commission or the Administrator gives the Trustee notice that a Loan or a portion thereof is being reassigned from one Borrower to another pursuant to Section 12.05 hereof and Section 3.05 of a Loan Agreement, the Trustee shall transfer moneys to the appropriate Account in the Construction Fund as provided in such notice.

**SECTION 4.04. FLOW OF FUNDS.** The Trustee shall deposit, immediately upon receipt, all Loan Repayments received from a Borrower into such Borrower's Account in the Revenue Fund. Basic Payments received by the Trustee from the State Transportation Trust Fund shall be deposited to the Borrower's Accounts of the Revenue Fund in accordance with the requirements of Exhibit D to the Loan Agreements, as the same may be amended from time to time, and the Master Agreement. The Trustee agrees to draw moneys from the escrow account established pursuant to the Master Agreement in the amounts provided in Exhibit C to such Master Agreement. Such moneys are the Basic Payments to be made by the Borrowers and shall be transferred to the Revenue Fund as soon as they become available pursuant to the terms of the Master Agreement. Additional Payments in a Borrower's Account of the Revenue Fund representing such Borrower's Proportionate Share of obligations owing to the Rebate Fund pursuant to Section 4.05 hereof shall be deposited as soon as practicable into such Fund. All other Additional Payments in each Borrower's Account of the Revenue Fund shall be deposited as soon as practicable into the Administrative Expense Fund. The moneys in the Accounts of the Revenue Fund of the Borrowers representing Basic Payments shall be maintained in such Accounts and deposited in the Interest Account and Principal Account as hereinafter described.

Interest Account. On each Interest Payment Date the Trustee shall transfer to the Interest Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all moneys on deposit in the Interest Account, shall be sufficient to pay the interest on all Outstanding Bonds due on such Interest Payment Date as the same become due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Interest Account at such times and in such amounts (a) to pay interest on the Bonds which has become due

and for which insufficient moneys have been deposited, and (b) to pay interest on Bonds which shall be purchased or redeemed in accordance with the terms hereof to the extent insufficient moneys are on deposit therein.

Principal Account. On each Principal Payment Date the Trustee shall transfer to the Principal Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all amounts on deposit in the Principal Account, shall be sufficient to pay the principal or Amortization Installment due on such Principal Payment Date. Moneys in the Principal Account shall be used for the payment of principal of or Amortization Installment on the Bonds when the same become due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Principal Account at such times and in such amounts (a) to pay the principal of the Bonds which has become due and for which insufficient moneys have been deposited, and (b) to pay principal on Bonds which shall be purchased or redeemed in accordance with the terms hereof. Amounts accumulated in the Principal Account with respect to any Amortization Installment (together with amounts accumulated in the Interest Account with respect to interest, if any, on the Term Bonds for which such Amortization Installment was established) shall be applied by the Trustee, at the direction of the Commission, on or prior to the 35th day preceding the due date of such Amortization Installment, (i) to the purchase of Term Bonds of the maturity for which such Amortization Installment was established at a price not exceeding par plus accrued interest, or (ii) to the redemption at the applicable Redemption Prices of such Term Bonds, if then redeemable by their terms at a price not exceeding par plus accrued interest. The applicable Redemption Price (or principal amount of maturing Term Bonds) of any Term Bonds so purchased or redeemed shall be deemed to constitute part of the Principal Account or Redemption Account until such Amortization Installment date, for the purposes of calculating the amount of such Account. As soon as practicable after the 35th day preceding the due date of any Amortization Installment, the Trustee shall proceed to call for redemption on such due date, by causing notice to be given as provided in Section 3.04 hereof, Term Bonds of the maturity for which such Amortization Installment was established (except in the case of Term Bonds maturing on an Amortization Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Amortization Installment. The Trustee shall withdraw out of the Principal Account and the Interest Account on or before the day preceding such redemption date (or maturity date), the amount required for the redemption (or for the payment of such Term Bonds then maturing), and such amount shall be applied by the Trustee to such redemption (or payment). All expenses in connection with the purchase or redemption of Term Bonds shall be paid by the Trustee from the Administrative Expense Fund.

**SECTION 4.05. REBATE FUND.** To the extent the Commission determines there may be a rebate liability pursuant to Section 4.05, within 15 days of the end of each Bond Year and within 15 days after the payment in full of all Outstanding Bonds, the

Commission shall engage an independent certified public accounting firm, firm of attorneys or other consultant, in each case experienced in making these types of calculations, to calculate the amount of the Commission's Excess Earnings as of the end of that Bond Year or the date of such payment in full. Upon the occurrence of an Event of Default or upon the release of this Indenture in accordance with Article VIII hereof, the Commission shall engage an independent certified public accounting firm, firm of attorneys or other consultant, in each case experienced in making these types of calculations, to calculate the amount of the Commission's Excess Earnings as of the date determined by the Commission or as of the date of release of this Indenture under Article VIII hereof, as applicable. The Trustee shall make available to such independent certified public accounting firm, firm of attorneys or other consultant all necessary information and data relating to the Funds and Accounts and investments therein in order that the amount of Excess Earnings may be determined as required by this Section 4.05. After each such calculation, the Trustee on behalf of the Commission, upon written advice of such firm or other consultant, shall notify each Borrower in writing of the amount of each Borrower's Proportionate Share of Excess Earnings; provided, however, Excess Earnings in a Borrower's Account of the Construction Fund shall be payable solely by such Borrower. If the amount then on deposit in the Rebate Fund is in excess of the Excess Earnings, the Trustee shall forthwith pay to each Borrower its Proportionate Share of such excess amount; provided, any such excess moneys relating to a Borrower's Account of the Construction Fund shall be paid to the Borrower's Account of the Construction Fund if it has not been closed, otherwise to the Borrower. If the amount then on deposit in the Rebate Fund is less than the Excess Earnings, the Trustee shall notify each Borrower of such deficiency and each Borrower shall be required to make up its Proportionate Share of such deficiency which shall be billed to the Borrower in accordance with this Section 4.05 and Section 4.09 hereof; provided, however, Excess Earnings in a Borrower's Account of the Construction Fund shall be payable solely by such Borrower.

Within 30 days after the end of the fifth Bond Year for the Bonds and every such fifth Bond Year thereafter, the Trustee, acting on behalf of the Commission, shall pay to the United States, in accordance with Section 148(f) of the Code, from the moneys then on deposit in the Rebate Fund an amount equal to 90% (or such greater percentage not in excess of 100% as the Commission may direct the Trustee to pay) of the Excess Earnings earned from the date of the original delivery of the Bonds to the end of such fifth Bond Year (less the amount of Excess Earnings, if any, previously paid to the United States with respect to the Bonds pursuant to this Section 4.05). Within 60 days after the payment in full of all Outstanding Bonds, the Trustee, acting on behalf of the Commission, shall pay to the United States, in accordance with Section 148(f) of the Code, from the moneys then on deposit in the Rebate Fund an amount equal to 100% of the Excess Earnings earned from the date of the original delivery of the Bonds to the date of such payment (less the amount of Excess Earnings, if any, previously paid to the United States with respect to the Bonds pursuant to this Section 4.05). Any moneys

remaining in the Rebate Fund following such payment shall be paid to each Borrower in an amount equal to their Proportionate Shares. All computations of Excess Earnings shall treat the amount or amounts, if any, previously paid to the United States pursuant to this Section 4.05 as amounts on deposit in the Rebate Fund.

The Trustee shall maintain such records of the investment and disbursement of moneys in each Fund and Account created under this Indenture necessary for such calculations and shall obtain and keep such records of the computations made pursuant to this Section 4.05 as are required under Section 148(f) of the Code.

The procedures provided herein may be modified to the extent necessary to comply with the Arbitrage Regulations as determined in an opinion of Bond Counsel delivered to the Trustee or as set forth in the tax compliance certificate delivered in connection with the issuance of the Bonds.

Amounts on deposit in the Rebate Fund shall be held in trust by the Trustee and used solely to make required rebates to the United States (except to the extent the same may be transferred to the account of a Borrower) and the Bondholders shall have no right to have the same applied for debt service on the Bonds. Under Section 5.02 of the Loan Agreements, each Borrower is required to make the payments described in this Section 4.05.

For purposes of this Section 4.05, "Excess Earnings" means, as of each Computation Date (as defined in the Arbitrage Regulations) for the Bonds, an amount determined in accordance with Section 148(f) of the Code equal to the sum of (a) plus (b) where:

(a) Is the excess of:

(i) the aggregate amount earned from the date the Bonds are invested in "nonpurpose investments," as defined in Treasury Regulations Section 1.148-1 (other than investments attributable to an excess described in this clause (a)), taking into account any gain or loss on the disposition of nonpurpose investments, over

(ii) the amount that would have been earned if the amount of the gross proceeds of the Bonds of such issue invested in those nonpurpose investments (other than investments attributable to an excess described in this clause (a)) had been invested at a rate equal to the yield on the Bonds; and

(b) any income attributable to the excess described in clause (a) above, taking into account any gain or loss on the disposition of investments.

The foregoing sums shall be determined in accordance with Section 148(f) of the Code. As used herein, the terms "gross proceeds," "nonpurpose investments" and "yield" have the meanings assigned to them under Section 148 of the Code and the Arbitrage Regulations.

**SECTION 4.06. ADMINISTRATIVE EXPENSE FUND.** Additional Payments representing fees and expenses payable to the Administrator shall be deposited in the Administrator's Account and shall be used to pay the fees and expenses of the Administrator pursuant to the terms of the Program Administration Agreement; provided the Administrator may, in its discretion, utilize such moneys for other Program expenses. All other Additional Payments transferred to the Administrative Expense Fund shall be deposited in the Recurring Expense Account and shall be used to pay costs and expenses of operating the Program and servicing the Loans and the Bonds (including payments to the Administrator for its out-of-pocket costs and expenses, to the extent not paid from the Administrator's Account). All costs and expenses described in this Section 4.06 shall be paid upon the submission of a requisition by the Administrator or an Authorized Representative of the Commission stating the amount to be paid, the Account from which it is payable, to whom it is to be paid and the reason for such payments, and that the amount of such requisition is justly due and owing and has not been the subject of another requisition which was paid and is a proper expense of such Account of the Administrative Expense Fund. The Commission shall provide the Trustee with all necessary information as to the amount of such costs and expenses to bill to the Borrowers.

**SECTION 4.07. REDEMPTION ACCOUNT.** The Trustee shall deposit to the Redemption Account for redemption of Bonds (a) any amounts deposited by a Borrower for the purpose of paying the Redemption Price of all or a portion of its Loan on an optional prepayment date in accordance with the Loan Agreement, and (b) any moneys required to be transferred to the Redemption Account as a result of an opinion of Bond Counsel that such redemption is necessary to preserve the exclusion of interest on the Bonds from gross income for Federal income taxation. Said moneys shall be set aside in the Redemption Account solely for the purpose of redeeming the Bonds in advance of their maturity and shall be applied to the redemption at the applicable Redemption Price of such Bonds being redeemed on such redemption date. Interest on such redeemed Bonds shall be paid from the Interest Account, except to the extent moneys for payment of interest were deposited to the Redemption Account, in which case it shall be paid from such Redemption Account.

**SECTION 4.08. COST OF ISSUANCE FUND.** The Trustee shall establish a separate Account in the Cost of Issuance Fund for each Series of Bonds. Moneys in an Account of the Cost of Issuance Fund shall be used to pay costs of issuing the related Series of Bonds to the extent not paid from other sources, which costs may include, (a) all printing expenses in connection with this Indenture, the Loan Agreements, the



preliminary and final Official Statements for such Series of Bonds; (b) expenses of the Commission and the Administrator relating to the Program and such Series of Bonds; (c) legal fees and expenses of Counsel to the Commission, Bond Counsel and any disclosure counsel and the fees and expenses of the financial advisor to the Commission; (d) any accounting expenses incurred in connection with the issuance of such Series of Bonds; (e) the Trustee's initial fees and expenses (including attorney's fees); and (f) any other costs associated with the establishment of the Program and the issuance of such Series of Bonds. Such costs shall be paid upon the submission of a requisition by the Administrator or an Authorized Representative of the Commission stating the amount to be paid, to whom it is to be paid and the reason for such payment, and that the amount of such requisition is justly due and owing and has not been the subject of another requisition which was paid and is a proper expense of issuing such Bonds or establishing the Program. Any monies remaining in an Account of the Cost of Issuance Fund six months after the issuance of a Series of Bonds which funded such Account shall be transferred to the Interest Account of the Sinking Fund and be credited on a pro rata basis toward each Borrower's obligation to pay Loan interest.

**SECTION 4.09. NOTIFICATION OF LOAN REPAYMENTS.** On or prior to the 15th day of each month next preceding each Interest Payment Date (or at such time as may be directed by the Commission or the Administrator), the Trustee shall notify each Borrower in writing of the amount of the Borrower's Loan Repayment due during the next ensuing Interest Period. Such notice shall specify the components of the Loan Repayment, including the amount of Basic Payments and any Additional Payments as provided in Sections 5.01 and 5.02 of the Loan Agreements. Basic Payments shall be payable as provided in Exhibit D to the Loan Agreements, as the same may be amended from time to time, and the Master Agreement. Additional Payments shall be due at such times as the Commission shall advise the Trustee such Payments are needed. Such notice shall provide credits for investment earnings and shall state the amount of Excess Earnings to be paid to the Borrowers. Each Borrower shall receive a credit for its Proportionate Share of investment earnings in the Revenue Fund and the Sinking Fund during the preceding Interest Period. The Commission shall advise the Trustee how such investment earnings shall be credited to the Loan Repayments.

**SECTION 4.10. APPLICATION OF BOND PROCEEDS.** Proceeds of a Series of Bonds shall be applied in accordance with the Supplemental Indenture authorizing such Bonds.

**SECTION 4.11. MONEYS TO BE HELD IN TRUST.** With the exception of moneys deposited in the Rebate Fund and the Administrative Expense Fund, all moneys required to be deposited with or paid to the Trustee relating to any Fund or Account established under any provision of this Indenture shall be held by the Trustee, in trust, and except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, and except as otherwise

provided in Section 2.09 hereof, shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the provisions hereof.

**SECTION 4.12. REPORTS FROM TRUSTEE.** Unless otherwise advised in writing, the Trustee shall furnish monthly to the Commission, any Bond Insurer and to any Borrower, upon request, on the 15th day of the month following the month in which the Bonds are delivered, and on the 15th day of each month thereafter, a report on the status of each of the Funds or Accounts established under this Article IV which are held by the Trustee, showing at least the balance in each such Fund or Account as of the first day of the preceding month, the total of deposits to and the total of disbursements from each such Fund or Account, the dates of such deposits and disbursements, and the balance in each such Fund or Account on the last day of the preceding month.

**SECTION 4.13. CERTAIN VERIFICATIONS.** The Commission, the Trustee and/or a Bond Insurer from time to time may cause an Accountant to provide the Commission, the Trustee and said Bond Insurer with such information as the Commission, the Trustee or said Bond Insurer may request in order to determine in a manner reasonably satisfactory to the Commission, the Trustee and the Bond Insurer all matters relating to (a) the sufficiency of projected cash flow receipts and disbursements on the Loans and Funds and Accounts described herein to pay the principal of and interest on the Bonds and (b) the actuarial yields on the Loans and on the Bonds as the same may relate to any data or conclusions necessary to verify that the Bonds are not arbitrage bonds within the meaning of Section 148 of the Code. Payment for costs and expenses incurred in connection with supplying the foregoing information shall be paid from moneys in the Administrative Expense Fund pursuant to Section 4.06 hereof.

## **ARTICLE V PROJECT LOANS**

**SECTION 5.01. TERMS AND CONDITIONS OF LOANS.** The Commission will make Loans to the Borrowers in order to (a) finance the acquisition, installation and construction of Projects by Borrowers and (b) refund or refinance debt incurred by Borrowers to acquire, install and construct Projects, all in accordance with provisions more fully set forth in the Loan Agreements. Proceeds of such Loans may also be used to capitalize interest on the Bonds, acquire Bond Insurance and pay costs of issuance of the Bonds. Exhibit D to the Loan Agreements may be amended from time to time to take into account the assignment of Loans provided in the Loan Agreements, issuance of refunding bonds pursuant to Section 2.10 hereof, and issuance of Additional Bonds pursuant to Section 13.09 hereof.

**SECTION 5.02. LOAN CLOSING SUBMISSION.** No Loan shall be made by the Commission unless and until the documents required by Section 4.03 of the Loan Agreements are submitted to the Commission.

## **ARTICLE VI LOANS AND ADMINISTRATOR**

### **SECTION 6.01. PURPOSE, TERMS AND CONDITIONS OF LOANS.**

The Commission shall make Loans to the Borrowers to finance, refinance or reimburse the Costs of the Projects and shall enter into Loan Agreements and make Loans thereunder on the terms and conditions and upon submission of the documents as provided in the Loan Agreements.

**SECTION 6.02. ADMINISTRATOR.** The Florida Ports Council shall be the initial Administrator for the Program. If such Administrator shall be removed in accordance with the terms of the Program Administration Agreement, the Commission shall by resolution appoint as Administrator any person to act in such capacity as it deems appropriate. The Program Administration Agreement shall provide that resignation by, or removal of, the Administrator shall be accomplished upon 60 days' notice to the affected party, as well as to the Trustee.

The Administrator shall agree in writing to all the duties and obligations of the Administrator set forth in this Indenture and the Program Administration Agreement, such Agreement to be enforceable by the Trustee and to inure to the benefit of the Trustee, any Bond Insurer and the Bondholders. The Program Administration Agreement may provide that any of the duties, rights, obligations and responsibilities of the Commission provided hereunder and in the Loan Agreements may be assigned by the Commission to the Administrator.

**SECTION 6.03. SERVICES OF ADMINISTRATOR.** The Commission appoints the Administrator to provide various services with respect to the Loans and the Program and the Administrator agrees to provide such services pursuant to the terms hereof and of the Program Administration Agreement.

**SECTION 6.04. ENFORCEMENT.** The Trustee and the Commission shall diligently enforce, and take all reasonable steps, actions and proceedings necessary for the enforcement of, all terms, covenants and conditions of all Loan Agreements, including the prompt payment of all Loan Repayments and all other amounts due thereunder. Upon receipt of satisfactory indemnity for its costs and expenses, the Trustee shall, pursuant to the direction of the Commission, diligently enforce, and take all reasonable steps, actions and proceedings necessary for the enforcement of, all terms, covenants and conditions of all Loan Agreements, including the prompt payment of all Loan Repayments and all other amounts due thereunder. The Trustee shall not, without the prior written consent of each Bond Insurer, if any, release any Borrower from any obligations under any Loan Agreement and shall at all times, to the extent permitted by law, defend, enforce, preserve and protect the rights and privileges under each Loan Agreement of the Commission and any Bond Insurer.

**SECTION 6.05. LOAN FILES.** The Administrator shall retain all the documents it receives under the Loan Agreements. All documents with regard to a particular Loan shall be retained by the Administrator in a file pertaining to that Loan.

## **ARTICLE VII INVESTMENT OF MONEYS**

**SECTION 7.01. INVESTMENTS.** All moneys in any of the Funds and Accounts shall be invested by the Trustee in Investment Securities. All Investment Securities shall be acquired subject to the limitations set forth in Section 13.07 hereof, at the direction of the Commission, which may be telephonically made and promptly confirmed in writing. Moneys in the Funds and Accounts shall be invested in Investment Securities with respect to which payments of principal thereof and interest thereon are scheduled or otherwise payable not later than the dates on which it is estimated that such moneys will be required by the Trustee for the purposes specified in this Indenture.

Investment Securities acquired as an investment of moneys in any Fund or Account shall be credited to such Fund or Account. For the purpose of determining the amount in any Fund or Account, all Investment Securities credited to any such Fund or Account shall be valued at cost. All interest, profits and other income earned from investment of all moneys in any Fund or Account shall be retained in such Fund or Account; provided, however, investment earnings on moneys in the Revenue Fund and Sinking Fund may be transferred, at the direction of the Commission, to the Administrative Expense Fund or Rebate Fund. All amounts representing accrued interest shall be held by the Trustee in the Interest Account and invested only in Government Obligations.

Subject to Section 13.07 hereof and except as provided herein, investments in any and all Funds and Accounts may be commingled for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in particular Funds and Accounts of amounts received or held by the Trustee hereunder; provided that, notwithstanding any such commingling, the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts to which they are credited and otherwise as provided in this Indenture. The Trustee may act as principal or agent in the acquisition or disposition of Investment Securities. The Trustee may sell, or present for redemption, any Investment Securities so purchased whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the Fund or Account to which such Investment Security is credited, and the Trustee shall not be liable or responsible for any loss resulting from any investment made pursuant to this Article VII.

## **ARTICLE VIII DISCHARGE OF INDENTURE**

**SECTION 8.01. DISCHARGE.** If the Commission shall pay or cause to be paid to the Owner of any Bond secured hereby the principal of and interest due and payable, and thereafter to become due and payable, upon such Bond, or any portion of such Bond in the principal amount of \$5,000 or any integral multiple thereof, such Bond or portion thereof shall cease to be entitled to any lien, benefit or security under this Indenture. If the Commission shall pay or cause to be paid to the Owners of all the Bonds secured hereby the principal of and interest due and payable, and thereafter to become due and payable thereon, and shall pay or cause to be paid all other sums payable hereunder by the Commission, then, and in that case, the right, title and interest of the Trustee and the Bondholders in the Trust Estate shall thereupon cease, terminate and become void. In such event, the Trustee shall assign, transfer and turn over to the Commission the Trust Estate.

Notwithstanding the release and discharge of the lien of this Indenture as provided above, those provisions of this Indenture relating to the maturity of the Bonds, interest payments and dates thereof, exchange and transfer of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of moneys in trust, and the duties of the Trustee in connection with all of the foregoing, remain in effect and shall be binding upon the Trustee and the Bondholders.

Any Bond or portion thereof shall be deemed to be paid within the meaning of this Article VIII and for all purposes of this Indenture when (a) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided herein), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment (A) moneys sufficient to make such payment and/or (B) Governmental Obligations maturing as to principal and interest in such amounts and at such time as will provide for the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation and expenses of the Trustee and the Commission pertaining to such Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. The sufficiency of moneys and Government Obligations deposited with the Trustee as described above shall be verified by a nationally recognized Accountant. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Governmental Obligations.

Notwithstanding the foregoing paragraph, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed a payment of such Bond as aforesaid until the Commission shall have given the Trustee, in form satisfactory to the Trustee, irrevocable instructions:

(i) stating the date when the principal of each such Bond is to be paid, whether at maturity or on a redemption date (which shall be any redemption date permitted by this Indenture);

(ii) to call for redemption pursuant to this Indenture any Bonds to be redeemed prior to maturity pursuant to (i) hereof; and

(iii) if all the Bonds are not to be redeemed within 60 days, to mail, as soon as practicable, in the manner prescribed by Article III hereof, a notice to the Owners of such Bonds that the deposit required by (a)(ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Article VIII and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal or Redemption Price, if applicable, of said Bonds.

No deposit under this Article VIII shall be made or accepted hereunder and no use made of any such deposit unless the Trustee shall have received an opinion of Bond Counsel to the effect that such deposit and use would not cause the Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Article VIII, all moneys or Governmental Obligations set aside and held in trust pursuant to the provisions of this Article VIII for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds with respect to which such moneys or obligations have been so set aside in trust; provided any surplus moneys may be paid to the order of the Commission.

Anything to the contrary provided elsewhere in this Indenture notwithstanding, this Indenture shall not be discharged as long as any amounts are owing to any Bond Insurer and no Bond shall be deemed paid under this Indenture if any Bond Insurer shall have made any payment under its Bond Insurance in respect of the principal of or interest on such Bond until the amount of such principal or interest, together with interest thereon provided for herein and in the Bonds on past-due principal and interest, shall have been paid to such Bond Insurer.



**ARTICLE IX**  
**DEFAULT PROVISIONS AND REMEDIES OF**  
**TRUSTEE AND BONDHOLDERS**

**SECTION 9.01. DEFAULTS; EVENTS OF DEFAULT.** If any of the following events occurs with respect to the Bonds, it is hereby defined as and declared to be and to constitute an "Event of Default" with respect to such Bonds:

(a) Default in the payment of the principal of or interest on any Bond after the principal or interest has become due, whether at maturity or upon call for redemption.

(b) Default in the performance or observance of any covenant, agreement or condition on the part of the Commission contained in this Indenture or in the Bonds (other than defaults described in Sections 9.01(a) and (c) hereof) and failure to remedy the same after notice of the default pursuant to Section 9.10 hereof.

(c) If the Commission shall file a petition seeking a composition of indebtedness under the federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State, or the commission by the Commission of any act of bankruptcy, or adjudication of the Commission as a bankrupt, or assignment by the Commission for the benefit of its creditors or the approval by a court of competent jurisdiction of a petition applicable to the Commission in any proceeding for its reorganization instituted under federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State.

In determining whether a payment default has occurred as described in (a) above or whether a payment on the Bonds has been made under this Indenture, no effect shall be given to payments made under any Bond Insurance Policy.

**SECTION 9.02. REMEDIES; RIGHTS OF BONDHOLDERS.** Upon the occurrence of an Event of Default with respect to the Bonds, the Trustee shall have the following rights and remedies:

(a) The Trustee may, and in the case of Event of Default under Section 9.01(c) above shall, pursue any available remedy at law or in equity or by statute, including the federal bankruptcy laws or other applicable law or statute of the United States of America or of the State, to enforce the payment of principal of and interest on the Bonds then Outstanding, including enforcement of any rights of the Commission or the Trustee under the Loan Agreements.

(b) The Trustee may by action or suit in equity require the Commission to account as if it were the trustee of an express trust for the Owners of the Bonds and may then take such action with respect to the related Loan Agreements as the Trustee shall

deem necessary or appropriate and in the best interest of the Bondholders, subject to the terms of the Loan Agreements.

(c) Upon the filing of a suit or other commencement of judicial proceedings to enforce any rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the Revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

(d) The Trustee shall give written notice of any Event of Default to the Commission and the Bond Insurer as promptly as practicable after the occurrence of an Event of Default becomes known to the Trustee.

If an Event of Default shall have occurred, and if requested so to do by the Bond Insurer or by the Owners of a majority in aggregate principal amount of Outstanding Bonds affected thereby and indemnified as provided in Section 10.01(k) hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section 9.02 as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders. No acceleration of the Bonds may occur hereunder.

No right or remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders or any Bond Insurer) is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute. The assertion or employment of any right or remedy shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

No delay or omission in exercising any right or remedy accruing upon any default or Event of Default shall impair any such right or remedy or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon. No waiver of any default or Event of Default hereunder by the Trustee shall be effective without the approval of the Bond Insurer, if any.

**SECTION 9.03. RIGHT OF BONDHOLDERS TO DIRECT PROCEEDINGS.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Outstanding Bonds affected thereby shall have the right, at any time during the continuance of an Event of Default, by an instrument or instruments in writing executed and delivered to the Trustee, to direct

the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**SECTION 9.04. APPOINTMENT OF RECEIVERS.** Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce any rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the Revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**SECTION 9.05. APPLICATION OF MONEYS.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article IX, including by virtue of action taken under provisions of any Loan Agreement, shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees (including reasonable Trustee's fees), expenses, liabilities and advances payable to, incurred or made by the Trustee (including reasonable fees and disbursements of its counsel), be applied, along with any other moneys available for such purposes, as follows:

(a) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST -- To the payment to the persons entitled to unpaid installments of interest due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at stated maturity or pursuant to a call for redemption (other than such Bonds called for redemption for the payment of which moneys are held pursuant to the other provisions of this Indenture), in the order of their due dates and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

THIRD -- To payment to the persons entitled thereto of all administrative expenses payable pursuant to Section 4.06; and

FOURTH -- To be held as provided in Article IV hereof for the payment to the persons entitled thereto as the same shall become due of the amounts payable pursuant to this Indenture (including principal of such Bonds due upon call for redemption) and, if the amount available shall not be sufficient to pay in full amounts due on any particular date, payment shall be made ratably according to the priorities set forth in subparagraphs FIRST, SECOND and THIRD above.

(b) If the principal of all the Bonds shall have become due, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid upon the Bonds and amounts payable pursuant to Section 4.06, with Bond principal and interest to be paid first, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, and with the items enumerated in Section 4.06 to be paid second to the persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of this Section 9.05, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal and past-due interest to be paid on such date shall cease to accrue. Defaulted interest on a Bond shall be payable to the person in whose name such Bond is registered at the close of business on a Special Record Date for the payment of defaulted interest established by notice mailed by the Trustee to the registered Owners of Bonds not more than 15 days preceding such Special Record Date. Such notice shall be mailed to the person in whose name the Bonds are registered at the close of business on the fifth day preceding the date of mailing. The Trustee shall not be required to make payment of principal of any Bond to the Owner of such Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of and interest on all Bonds have been paid under the provisions of this Section 9.05 and all expenses and charges of the Trustee and the Bond Insurer have been paid, any balance remaining in the Funds and Accounts shall be transferred to the Commission as provided in Article VIII hereof.

**SECTION 9.06. REMEDIES VESTED IN TRUSTEE.** All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding related thereto and any trial or other proceeding related thereto and any such suit or proceeding instituted by the Trustee shall

be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Owners of all the Outstanding Bonds affected thereby.

**SECTION 9.07. RIGHTS AND REMEDIES OF BONDHOLDERS.** No Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred, (b) such default shall have become an Event of Default and the Owners of not less than a majority in aggregate principal amount of Outstanding Bonds affected thereby, made a written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (c) such Owners of Bonds shall have offered to the Trustee indemnity as provided in Section 10.01(k) hereof, and (d) the Trustee shall for 60 days after receipt of such request and indemnification fail or refuse to exercise the rights and remedies hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder. It being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the Owners of all Outstanding Bonds affected thereby. However, nothing contained in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of and interest on any Bond at and after the maturity or redemption date of such principal or interest, or the obligation of the Commission to pay the principal of and interest on each of the Bonds issued hereunder to the respective registered Owners thereof at the time, place, from the source and in the manner in this Indenture and in the Bonds expressed.

**SECTION 9.08. TERMINATION OF PROCEEDINGS.** In case the Trustee or any Owner of any Bonds shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Commission, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and with regard to the property herein subject to this Indenture, and all rights, remedies and powers of the Trustee and Owners of Bonds shall continue as if no such proceedings had been taken.

**SECTION 9.09. WAIVERS OF EVENTS OF DEFAULT.** The Trustee may, at its discretion, waive any Event of Default hereunder (other than an Event of Default specified in Section 9.01(c) above) and its consequences and may rescind any declaration of maturity of all the Bonds affected thereby and shall do so upon the written request of the Owners of (a) more than two-thirds in aggregate principal amount of all Outstanding Bonds affected thereby in the case of default in the payment of principal or interest, or (b) more than a majority in aggregate principal amount of all Outstanding Bonds affected thereby in the case of any other default; provided, however, that there shall not be waived (i) any default in the payment of the principal of any such Outstanding Bond at the date of maturity specified therein or (ii) any default in the payment when due of the interest on any such Outstanding Bond, unless prior to such waiver all arrears of interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then, and in every such case, the Commission, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. No such waiver shall affect the rights of third parties to payment of amounts provided for hereunder.

**SECTION 9.10. NOTICE OF DEFAULTS UNDER SECTION 9.01(b); OPPORTUNITY OF COMMISSION TO CURE SUCH DEFAULTS.** Anything herein to the contrary notwithstanding, no default under Section 9.01(b) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given to the Commission by the Trustee or the Owners of not less than a majority in aggregate principal amount of all Outstanding Bonds affected thereby and the Commission shall have had 30 days after receipt of such notice to correct the default or cause the default to be corrected, and shall not have corrected the default or caused the default to be corrected within the applicable period; provided, however, if the default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Commission within the applicable period and diligently pursued until the default is corrected.

With regard to any alleged default concerning which notice is given to the Commission under the provisions of this Section 9.10, the Commission hereby grants the Trustee full authority for the account of the Commission (but the Trustee shall not be required) to perform any covenant or obligation alleged in said notice to constitute a default, in the name and stead of the Commission with full power to do any and all things and acts to the same extent that the Commission could do and perform any such things and acts and with power of substitution.

**SECTION 9.11. BOND INSURER TO BE DEEMED BONDOWNER; RIGHTS OF BOND INSURER.** Notwithstanding any provisions of this Indenture to the contrary, unless a Bond Insurer is in default under its Bond Insurance, such Bond Insurer shall at all times be deemed the exclusive Owner of all Bonds it insures for all purposes except for the purpose of payment of the principal of and premium, if any, and interest on the Bonds prior to the payment by such Bond Insurer of the principal of and interest on the Bonds. A Bond Insurer shall have the exclusive right to direct any action or remedy to be undertaken by the Trustee, by the Owners of Bonds insured by it or by any other party pursuant to the Indenture and the Loan Agreements, and no Event of Default shall be waived, without each Bond Insurer's consent. All rights to collect, receive and dispose of such collateral shall be independent of any rights to effect acceleration of the Bonds. Any notice that is required to be given to the Bondholders or the Trustee pursuant to this Indenture shall also be provided to each Bond Insurer.

A Bond Insurer shall be subrogated to any and all of the rights of the Owners of any and all of the Bonds insured by such Bond Insurer (unless such Bond Insurer is in default under the Bond Insurance) at all times for the purpose of the execution and delivery of a Supplemental Indenture or of any amendment, change or modification of the Loan Agreements or the initiation by Bondholders of any action to be undertaken by the Trustee at the Bondholder's request.

## **ARTICLE X THE TRUSTEE**

**SECTION 10.01. ACCEPTANCE OF THE TRUSTS.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may but need not be the attorney or attorneys for the Commission, any Bond Insurer or a Borrower) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for the validity of the execution by the Commission of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee.

(e) Unless an officer of the corporate trust department of the Trustee shall have actual knowledge thereof, the Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except defaults under Section 9.01(a) hereof unless the Trustee shall be specifically notified in writing of such default by the Commission or a Bond Insurer or a court of law or by any Owner of Bonds. All notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the designated corporate trust office of the Trustee and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid. The Trustee shall provide copies of any such notices as soon as practicable to the Commission, any Bond Insurer and the Borrowers.



(f) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. The Trustee shall not withhold unreasonably its consent, approval or action to any reasonable request of the Commission. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the registered Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(g) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled in good faith to rely upon a certificate signed by an authorized officer of the Commission as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has knowledge, or is deemed to have notice pursuant to Section 10.01(e), shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Administrator or Secretary-Treasurer of the Commission under its seal to the effect that a resolution in the form therein set forth has been adopted by the Commission as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(h) All moneys received by the Trustee hereunder, until used or applied as herein provided, shall be held in trust for the purposes for which they were received.

(i) At any and all reasonable times, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives and any Bond Insurer, shall have the right to inspect any and all of the books, papers and records of the Commission pertaining to the Revenues and receipts under the Loan Agreements and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Before taking the action referred to in Sections 9.02 or 9.07 hereof, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

**SECTION 10.02. FEES, CHARGES AND EXPENSES OF TRUSTEE.** The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably

and necessarily made or incurred by the Trustee but solely from moneys available therefor pursuant to Section 4.06 hereof or Section 9.05 hereof and pursuant to the Loan Agreements.

**SECTION 10.03. NOTICE TO BONDHOLDERS IF DEFAULT OCCURS UNDER INDENTURE.** If the Trustee becomes aware of an Event of Default, then the Trustee shall promptly give written notice thereof by registered or certified mail to any Bond Insurer and by first-class mail to the Owners of all Outstanding Bonds affected thereby, as shown by the bond registration books.

**SECTION 10.04. INTERVENTION BY TRUSTEE.** In any judicial proceeding to which the Commission is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Owners of the Bonds, the Trustee may intervene on behalf of the Bondholders, and shall do so if requested in writing by the Owners of at least a majority of the aggregate principal amount of Bonds then Outstanding.

**SECTION 10.05. SUCCESSOR TRUSTEE.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become, to the extent permitted by law, successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 10.06. RESIGNATION BY TRUSTEE.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 90 days' written notice by registered or certified mail to the Commission and each Bond Insurer and by first- class mail to the registered Owner of each Bond, and such resignation shall take effect upon the appointment of a successor Trustee as hereinafter provided and the acceptance of such appointment by such successor.

**SECTION 10.07. REMOVAL OF TRUSTEE.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee and signed by the Commission or the Owners of a majority in aggregate principal amount of all Bonds then Outstanding.

**SECTION 10.08. APPOINTMENT OF SUCCESSOR TRUSTEE.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver

appointed by a court, a successor may be appointed by a resolution of the Commission, or if the Commission shall not have appointed a successor Trustee, by filing with the Commission an instrument or concurrent instruments in writing signed by Owners of not less than a majority in principal amount of Bonds outstanding, or by their attorneys in fact, duly authorized. Notice of the appointment of a successor Trustee shall be given in the same manner as provided by Section 10.06 hereof with respect to the resignation of a Trustee. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing having a corporate trust office in the State, having combined capital, surplus and undivided profits of not less than \$50,000,000 and subject to examination by federal or State authority, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. The Bond Insurer shall be notified immediately upon the resignation or termination of the Trustee and the appointment of a successor Trustee.

**SECTION 10.09. CONCERNING ANY SUCCESSOR TRUSTEE.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Commission an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the Commission, or of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities, moneys, documents and other property held by it as the Trustee hereunder to its or his successor hereunder. Should any instrument in writing from the Commission be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Commission. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Indenture shall have been filed or recorded. Such successor Trustee shall give notice of such successors to Moody's, S&P and Fitch.

**SECTION 10.10. PRESERVATION AND INSPECTION OF DOCUMENTS.** All documents received by the Trustee under the provisions of the Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Commission and any Bond Insurer, at reasonable hours and under reasonable conditions.

## **ARTICLE XI SUPPLEMENTAL INDENTURES**

**SECTION 11.01. SUPPLEMENTAL INDENTURES NOT REQUIRING CONSENT OF BONDHOLDERS.** The Commission and the Trustee may, without the consent of or notice to any of the Bondholders, enter into any indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

(a) To cure or correct any ambiguity or omission or formal defect in this Indenture;

(b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or the Trustee, or to make any change which, in the judgment of the Trustee, is not to the material prejudice of the Bondholders;

(c) To subject to this Indenture additional revenues, properties or collateral;

(d) To make such changes as shall be necessary to issue refunding obligations pursuant to Section 2.10 hereof;

(e) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute;

(f) To make such changes as shall be necessary to issue Additional Bonds pursuant to Section 13.09 hereof and loan the proceeds thereof to Borrowers pursuant to the Loan Agreements; or

(g) To make any other change that, in the opinion of the Commission, would not materially adversely affect the security for the Bonds.

Amendments to this Indenture resulting from reassignment of Loans as provided in Section 12.05 hereof shall not require the consent of either any Bond Insurer or the Owners of the Bonds.

**SECTION 11.02. SUPPLEMENTAL INDENTURES REQUIRING CONSENT OF BONDHOLDERS.** Exclusive of Supplemental Indentures covered by Sections 11.01 or 11.03 hereof and subject to the terms and provisions contained in this

Section 11.02, and not otherwise, the Owners of not less than a majority aggregate principal amount of the Outstanding Bonds affected thereby shall have the right, from time to time, to consent to and approve the execution by the Commission and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular manner, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section 11.02 contained shall permit, or be construed as permitting (a) without the consent of the Owners of all then Outstanding Bonds affected thereby, of (i) an extension of the maturity date of the principal of or the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or (iii) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, or (v) the creation of any lien hereunder other than a lien ratably securing all of the Bonds at any time Outstanding hereunder, or (b) any modification of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee without the written consent of the Trustee.

If at any time the Commission shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section 11.02, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed by registered or certified mail to each Owner of a Bond affected thereby at the address shown on the registration books. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Bondholders. If, within 60 days, or such longer period as shall be prescribed by the Commission, following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Outstanding Bonds affected thereby at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Commission from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as in this Section 11.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**SECTION 11.03. SUPPLEMENTAL INDENTURE WITH CONSENT OF BOND INSURER ONLY.** If one or more Bond Insurer has honored all its obligations under its Bond Insurance involving a majority of Bonds Outstanding, the Commission and the Trustee may enter into one or more Supplemental Indentures which amends all or any part of this Indenture with the written consent of such Bond Insurer(s). The consent

of the Owners of the Bonds shall not be necessary. The foregoing right of amendment does not apply to any amendments to Section 13.07 hereof nor may such amendment permit modifications described in clauses (a) and (b) of the first paragraph of Section 11.02 hereof. Upon filing with the parties hereto of the consent of such Bond Insurer(s) as aforesaid, a Supplemental Indenture may be entered into. Subsequent to execution of such Supplemental Indenture notice thereof shall be mailed to the Owners in the same manner as notice of amendment under Section 11.02 hereof.

**SECTION 11.04. NOTICE TO S&P, MOODY'S AND FITCH.** The Trustee shall give notice to S&P, Moody's and Fitch of any Supplemental Indentures or any amendments to any Loan Agreement. The Trustee shall also provide notice to such rating agencies of any situation that requires the consent of a Bond Insurer.

## **ARTICLE XII**

### **AMENDMENT OF LOAN AGREEMENTS**

**SECTION 12.01. AMENDMENTS NOT REQUIRING CONSENT OF BONDHOLDERS.** The Commission and the Trustee may, without the consent of or notice to the Bondholders consent to any amendment, change or modification of any Loan Agreement that may be required (a) by the provisions of such Loan Agreement or to conform to the provisions of this Indenture, (b) for the purpose of curing any ambiguity or inconsistency or formal defect or omission, (c) so as to add additional rights acquired in accordance with the provisions of such Loan Agreement or (d) in connection with any other change therein which, in the judgment of the Commission, is not to the material prejudice of the Trustee or the Owners of the Bonds. Amendments to the Loan Agreements provided in Sections 12.04 or 12.05 hereof shall not require the consent of either any Bond Insurer or the Owners of the Bonds.

**SECTION 12.02. AMENDMENTS REQUIRING CONSENT OF BONDHOLDERS.** Except for amendments, changes or modifications provided for in Sections 12.01 or 12.03 hereof, neither the Commission nor the Trustee shall consent to any amendment, change or modification of any Loan Agreement without the mailing of notice and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and procured as in this Section 12.02 provided. If at any time the Commission and a Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of a Loan Agreement, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be mailed in the same manner as provided by Section 11.02 hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file with the Trustee for inspection by all Bondholders. Nothing contained in this Section 12.02 shall permit, or be construed as permitting, a reduction of the aggregate principal amount of Bonds the Owners of which are required to consent to any amendment, change or modification of a Loan Agreement, a reduction in, or a postponement of, the payments under any Loan Agreement or any changes that affect the exclusion of interest on the Bonds from the gross income of the Holders thereof for purposes of Federal income taxation, without the consent of the Owners of all of the Bonds then Outstanding.

Nothing contained in this Section 12.02 shall be construed to prevent the Trustee, with the consent of the Commission and any Bond Insurer, from settling a default under any Loan Agreement on such terms as the Trustee may determine to be in the best interests of the Owners of the Bonds.

**SECTION 12.03. BOND INSURER CONSIDERED BONDHOLDER.** If the Bond Insurer has honored its obligations under its Bond Insurance, for purposes of Section 12.02 hereof, the Bond Insurer shall be considered the sole Owner of the Bonds and may consent as such Owner to any amendments to the Loan Agreements; provided such right does not apply to amendments requiring the consent of all Owners.

**SECTION 12.04. MODIFICATION OF PROJECTS.** In accordance with Section 3.04 of the Loan Agreements, the Borrower may, from time to time, amend a Project payable from the Loan made to such Borrower. Prior to amending such Project, the Commission or the Borrower shall provide the Trustee and the Department the documentation required by Section 3.04 of the Loan Agreement. If the Commission provides such documentation to the Trustee and the Department, no Bondholder or any Bond Insurer consent to the amended Project shall be required.

**SECTION 12.05. REASSIGNMENT OF LOANS.** In accordance with Section 3.05 of the Loan Agreements, the Administrator may reassign all or a portion of a Loan made to a Borrower to a Port which shall thereupon become the Borrower of such Loan or portion thereof. Prior to reassigning such Loan or portion thereof the Administrator shall provide the Trustee and the Department the documentation required by Section 3.05 of the Loan Agreement. If the Administrator provides such documentation to the Trustee and the Department, no Bondholder or any Bond Insurer consent to the Loan reassignment shall be required. The Loan Agreements relating to the Borrowers to which and from which the Loan or portion thereof is reassigned shall reflect the Loan Repayments incorporating such reassignment. Accounts and subaccounts established in the Construction Fund shall be adjusted by the Trustee to reflect the reassignment. Notwithstanding anything herein to the contrary, the Loan or portion thereof may be reassigned to a Port which shall not be a Borrower prior to the time of such reassignment. If the Loan or portion thereof is reassigned to such a Port, such Port shall enter into a Loan Agreement with the Commission and comply with the provisions of Section 4.03 thereof. At such time as such Port shall execute the Loan Agreement, it shall become a Borrower under the Program.

**SECTION 12.06. REPAYMENT OF UNALLOWABLE COSTS.** In accordance with Section 3.06 of the Loan Agreements, each Borrower has agreed to repay to the Trustee, on behalf of the Commission, all Project Costs which are found to be unallowable pursuant to a final Project audit. The Trustee shall deposit such repaid amounts into the Borrower's Account (or subaccount) of the Construction Fund; provided, however, at the request of FSTED, such amounts may be deposited to the Account (or subaccount) of the Construction Fund of another Borrower. If such repaid amounts are deposited in another Borrower's Account (or subaccount) of the Construction Fund, such deposit shall be considered a reassignment of a portion of a Loan pursuant to Section 12.05 hereof and the Administrator shall provide the Trustee and the Department the documentation required by said Section.



## **ARTICLE XIII GENERAL COVENANTS**

**SECTION 13.01. PAYMENT OF PRINCIPAL AND INTEREST.** The Commission covenants that it will promptly pay the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof; provided that the principal and interest are payable by the Commission solely from the Trust Estate as provided in this Indenture, and nothing in the Bonds or this Indenture shall be considered as assigning or pledging any other funds or assets of the Commission other than such Trust Estate.

**SECTION 13.02. PERFORMANCE OF COVENANTS; THE COMMISSION.** The Commission covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The Commission covenants that it is duly authorized under the Constitution and laws of the State, including particularly the Act, to issue the Bonds authorized hereby and to execute this Indenture, to execute and deliver Loan Agreements, to assign the Loan Agreements and collateral documents and amounts payable thereunder, and to pledge the Revenues and any other property hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the Commission according to the terms thereof and hereof.

**SECTION 13.03. INSTRUMENTS OF FURTHER ASSURANCE.** The Commission agrees that the Trustee may defend its rights to the payments of the Revenues for the benefit of the Owners of the Bonds, against the claims and demands of all persons whomsoever. The Commission covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the rights assigned hereby and the amounts and other property pledged hereby to the payment of the principal of and interest on the Bonds. The Commission covenants and agrees that, except as provided herein or in the Loan Agreements, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the Revenues or the proceeds of the Bonds or its rights under the Loan Agreements.

**SECTION 13.04. RIGHTS UNDER THE LOAN AGREEMENTS.** The Loan Agreements, which have been filed with the Trustee, as required by Section 13.05

hereof, set forth the covenants and obligations of the Commission and the Borrowers, and reference is hereby made to the Loan Agreements for a detailed statement of said covenants and obligations of the Borrowers under the Loan Agreements, and the Commission agrees that the Trustee in its name or to the extent permitted by law, in the name of the Commission, may enforce all rights of the Commission and all obligations of the Borrowers under the Loan Agreements (and waive the same except for rights expressly granted to the Commission) on behalf of the Bondholders whether or not the Commission is in default hereunder. The Trustee shall perform any obligations required of it pursuant to the terms of the Loan Agreements.

**SECTION 13.05. POSSESSION AND INSPECTION OF LOAN AGREEMENTS.** The Trustee shall retain possession of an executed copy of each Loan Agreement to which it is a party or in which it has an interest and release them only in accordance with the provisions of this Indenture. The Commission and the Trustee covenant and agree that all books and documents in their possession relating to the Loan Agreements and to the distribution of proceeds thereof shall at all times be open to inspection by such accountants or other agencies or persons as the other party or the Bond Insurer may from time to time designate.

**SECTION 13.06. PROVISION OF DOCUMENTS TO BONDHOLDERS.** If any Bondholder shall request of the Commission or Trustee a copy of the Indenture, any Bond Insurance or any Loan Agreement, the Trustee shall, at the expense of the Bondholder, provide such Bondholder with a photocopy or other copy of any such document requested.

**SECTION 13.07. TAX COVENANTS.** The Commission shall not use or permit the use of any proceeds of the Bonds or any other funds of the Commission, and the Trustee shall not use or permit the use of any proceeds of the Bonds or any other funds of the Commission held by the Trustee, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the Commission or Trustee with respect to the Loan Agreements in any manner, and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148, or "federally guaranteed" within the meaning of the Code. If at any time the Commission is of the opinion that for purposes of this paragraph it is necessary to restrict or limit the yield on or change in any way the investment of any moneys held by the Trustee under this Indenture, the Commission shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

The Commission covenants that it will maintain adequate accounting records, and rebate investment income from the investment of proceeds of the Bonds to the United States Treasury within the time allowed and in the manner specified by the Code and regulations and will otherwise comply with such laws and regulations.

The Commission shall take all action within its control that is necessary in order that the interest on the Bonds be excludable from gross income for purposes of Federal income taxation (other than interest on the Bonds (which are private activity bonds) held by a person who is deemed a "substantial user" of such Project or a "related person" to a "substantial user" of such Project within the meaning of Section 147(a) of the Code) and shall refrain from taking any action which results in such interest becoming so taxable.

The Commission shall provide in each Loan Agreement the requirement that the Borrower take all action within its control that is necessary in order that the interest on the Bonds be excludable from gross income for purposes of Federal income taxation (other than interest on the Bonds (which are private activity bonds) held by a person who is deemed a "substantial user" of such Project or a "related person" to a "substantial user" of such Project within the meaning of Section 147(a) of the Code) and shall refrain from taking any action which results in such interest becoming so taxable.

In order to insure compliance with the rebate provisions of Section 148(f) of the Code, the Commission shall create the Rebate Fund. Such Fund may be held by the Commission or, at the option of the Commission, by the Trustee. The Rebate Fund need not be maintained if the Commission shall have received an opinion of Bond Counsel acceptable to the Commission to the effect that failure to maintain the Rebate Fund shall not adversely affect the exclusion of interest on the Bonds from gross income for purposes of Federal income taxation. Moneys in the Rebate Fund shall not be considered moneys held under the Indenture and shall not constitute a part of the Trust Estate held for the benefit of the Bondholders or the Commission. Moneys in the Rebate Fund (including earnings and deposits therein) shall be held for future payment to the United States Government as required by the regulations and as set forth in instructions delivered to the Commission upon issuance of the Bonds.

**SECTION 13.08. LIMITED LIABILITY OF OFFICERS OF THE COMMISSION.** No Bondholder shall look to any officer, agent, member or employee of the Commission, including the Administrator, or of any Borrower for damages suffered by such Bondholder as a result of the failure of the Commission, or any officer, agent or employee thereof, while acting in good faith, to perform any covenant, undertaking or obligation under this Indenture, the Bonds or any instrument pertaining to the issuance, sale and deliver of the Bonds, nor as a result of any officer, agent or employee thereof, including the Administrator, in good faith, in any such instrument. In acting under this Indenture, or in refraining from acting under this Indenture, the Commission, its officers, agents, members and employees, including the Administrator, may conclusively rely on advice of counsel. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future employee, member, officer or agent of the Commission, including the Administrator, in his individual capacity, and neither the

members of the Commission or any Borrower or any officer executing this Indenture or the Bonds shall be subject to any personal liability or accountability by reason hereof.

**SECTION 13.09. ADDITIONAL BONDS.** The Basic Payments made by the Borrowers pursuant to their respective Loan Agreements are derived from moneys transferred by the State to the Trustee from the State Transportation Trust Fund in accordance with the terms of the Loan Agreements and Section 320.20(4), Florida Statutes. The Commission agrees that it will not issue any obligations which are payable, directly or indirectly, from the State Transportation Trust Fund as provided in Section 320.20(4), Florida Statutes, unless an Authorized Representative of the Commission shall certify to the Trustee that (a) no Event of Default has occurred and is ongoing and (b) the maximum annual amount of moneys available in the State Transportation Trust Fund to pay debt service on the Outstanding Bonds in accordance with the terms of the Loan Agreements and any other obligations of the Commission or any Ports which are payable principally from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, including the obligations proposed to be issued, will be sufficient for such purpose. The Commission shall not issue any variable rate debt which is secured by moneys in the State Transportation Trust Fund pursuant to the provisions of Section 320.20(4), Florida Statutes.

## **ARTICLE XIV MISCELLANEOUS**

**SECTION 14.01. CONSENTS OF BONDHOLDERS.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Commission, the Trustee and any subsequent Owners of the Bonds with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of Bonds, and the date of owning the same shall be proved by the registration books of the Commission maintained by the Trustee.

**SECTION 14.02. LIMITATION OF RIGHTS.** With the exception of rights herein expressly conferred or as otherwise provided herein, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto and the owners of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners of the Bonds as herein provided.

**SECTION 14.03. SEVERABILITY.** If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

**SECTION 14.04. NOTICES.** Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram or telex, addressed to the parties as follows:

Commission: Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301  
Telephone: 850/222-8028  
Telecopy: 850/222-7552

Administrator: Florida Ports Council  
502 East Jefferson Street  
Tallahassee, Florida 32301  
Telephone: 850/222-8028  
Telecopy: 850/222-7552

Trustee:

Bond Counsel: Nabors, Giblin & Nickerson, P.A.  
2502 Rocky Point Drive, Suite 1060  
Tampa, Florida 33607  
Telephone: 813/281-2222  
Telecopy: 813/281-0129

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**SECTION 14.05. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS.** In any case where the date of payment of principal of or interest on the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or a legal holiday in the city of payment or a day or on which banking institutions are authorized by law to close in the city of payment, then payment of interest or principal shall be made on the succeeding Business Day with the same force and effect as if made on the interest payment date or the date of maturity or the date fixed for redemption.

**SECTION 14.06. COUNTERPARTS.** This Indenture may be simultaneously executed in several counterparts, each of which, when so executed and delivered, shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 14.07. APPLICABLE PROVISIONS OF LAW.** This Indenture shall be governed by and construed in accordance with the laws of the State.

**IN WITNESS WHEREOF**, the Commission has caused this Indenture to be executed on its behalf by its Chairman and the seal of the Commission to be hereunto affixed and duly attested by its Secretary-Treasurer; and the Trustee, to evidence its acceptance of the trusts created hereunder, has caused this Indenture to be executed in its name by its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the day and year first above written.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

(SEAL)

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

## **EXHIBIT A**

### **DESCRIPTION OF LOANS**



**EXHIBIT B**

**DEPOSIT OF LOAN PROCEEDS**

## EXHIBIT C

No. R-\_\_\_\_\_

\$

FLORIDA PORTS FINANCING COMMISSION  
REFUNDING REVENUE BOND  
(STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM)  
SERIES \_\_\_\_\_

Maturity Date

Interest Rate

Dated Date

CUSIP

Registered Owner:

Principal Amount:

FLORIDA PORTS FINANCING COMMISSION, a legal entity duly created and existing under the Constitution and laws of the State of Florida (the "Commission"), for value received, hereby promises to pay (but only out of the Revenues and other assets pledged therefor as hereinafter described) to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above (subject to any right of prior redemption hereinafter mentioned), the Principal Amount identified above, in lawful money of the United States of America; and to pay interest thereon in like lawful money from the Dated Date, until payment of said Principal Amount has been made or duly provided for, at the Interest Rate set forth above, on \_\_\_\_\_, and on each October 1 and April 1 thereafter (the "Interest Payment Dates"), unless interest on this Bond is in default, in which event it shall bear interest from the last date to which interest has been paid until payment of such Principal Amount shall be discharged as provided in the hereinafter described Indenture. The principal (or redemption price) hereof is payable upon presentation hereof at the designated corporate trust office of SunTrust Bank, Central Florida, National Association, as Trustee. Interest hereon is payable by check mailed, except as provided in the Indenture, to the person whose name appears on the bond registration books maintained by the Trustee as the Registered Owner hereof as of the close of business on the 15th day of the calendar month preceding each Interest Payment Date, at such person's address as it appears on such registration books.

This Bond is one of a duly authorized issue of bonds of the Commission designated as "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series \_\_\_\_\_" (the "Bonds"), issued in

the aggregate principal amount of \$\_\_\_\_\_, pursuant to the provisions of Section 320.20(4), Florida Statutes, Part I of Chapter 163, Florida Statutes, and other applicable provisions of law (collectively, the "Act"), and pursuant to a First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee (together with any supplements or amendments thereto, the "Indenture"). The Bonds are issued for the purpose of providing funds to make loans to Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City) and City of Pensacola (Port of Pensacola) (collectively, the "Borrowers") to finance, refinance or reimburse the costs of various capital projects, pursuant to loan agreements between the Commission and such Borrowers (together with any supplements or amendments thereto, the "Loan Agreements").

Capitalized terms used but not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture (a copy of which is on file at the designated corporate trust office of the Trustee) and to the Act for a description of the rights and remedies thereunder (and limitations thereon) of the registered owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Commission thereunder, to all the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds and the interest thereon are payable from the Trust Estate (as defined in the Indenture) and are secured by a lien on said Trust Estate, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Bonds are further secured by an assignment of the right, title and interest of the Commission in the Loan Agreements to the Trustee, to the extent and as more particularly described in the Indenture.

The Bonds maturing before October 1, \_\_\_\_ are not subject to optional redemption prior to their respective maturities. The Bonds maturing on and after October 1, \_\_\_\_ are subject to redemption at the option of the Commission on or after October 1, \_\_\_\_, as a whole or in part at any time, and if in part, in any manner or order of maturity determined by the Commission (or the Trustee if the Commission makes no determination) in its discretion and by lot within a maturity if less than an entire maturity is being redeemed, during the following periods and at the following redemption prices, expressed as a

percentage of the principal amount of the Bonds to be redeemed, plus accrued interest to the redemption date:

Redemption Period (Both Dates Inclusive)	<u>Redemption Price</u>
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The Bonds that mature on October 1, \_\_\_\_ are subject to mandatory redemption, in part, by lot, at redemption prices equal to 100% of the principal amount thereof, plus interest accrued to the redemption date, beginning on October 1, \_\_\_\_, and on each October 1 thereafter, in the following Amortization Installments in the following years:

<u>Year</u>	Amortization <u>Installment</u>
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\_\_\_\_\_  
\*Maturity

The Bonds that mature on October 1, \_\_\_\_ are subject to mandatory redemption, in part, by lot, at redemption prices equal to 100% of the principal amount thereof, plus interest accrued to the redemption date, beginning on October 1, \_\_\_\_, and on each October 1 thereafter, in the following Amortization Installments in the following years:

<u>Year</u>	Amortization <u>Installment</u>
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\_\_\_\_\_  
\*Maturity

In the case of every redemption, the Trustee shall cause notice of such redemption to be given to the registered owner of any Bonds designated for redemption in whole or

in part as provided in the Indenture. The failure of the Trustee to give notice to a Bondholder or any defect in such notice shall not affect the validity of the redemption of any other Bonds. On the redemption date, the principal amount and premium, if any, of each Bond to be redeemed, together with the accrued interest thereon to such date, shall become due and payable; from and after such date of redemption (such notice having been given and moneys available solely for such redemption being on deposit with the Trustee), the Bonds or portions thereof to be redeemed shall not be deemed to be outstanding under the Indenture, and the Commission shall be under no further liability in respect thereof.

The Commission has established a book-entry system of registration for the Bonds. Except as specifically provided otherwise in the Indenture, an agent will hold this Bond on behalf of the beneficial owner hereof. By acceptance of a confirmation of purchase, delivery or transfer, the beneficial owner of this Bond shall be deemed to have agreed to such arrangement.

The Indenture and the rights and obligations of the Commission and of the Bondholders and of the Trustee may be modified or amended from time to time and at any time, without consent of the Bondholders in the manner, to the extent and upon the terms provided in the Indenture.

The Bonds are solely and exclusively a special and limited obligation of the Commission payable solely from the Trust Estate and do not create nor constitute, now or in the future, an obligation or debt of the State or any political subdivision thereof or any public corporation, port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective loan agreements) other than the Commission; nor shall the Bonds constitute the giving, pledging or loan of the faith and credit of the State or any political subdivision thereof or any public corporation, port or governmental agency existing under the laws of the State, but shall be payable solely from the Trust Estate. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the State or any political subdivision thereof or any public corporate, port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective loan agreements). None of the obligations of the Borrowers under their respective loan agreements are secured by a pledge of their taxing powers, if any, and none are payable from ad valorem taxes. The loan agreements do not represent joint liabilities of the Borrowers executing loan agreements with the Commission, and shall be payable solely as provided in such loan agreements.

It is further agreed between the Commission and the Registered Owner of this Bond that this Bond and the indebtedness evidenced hereby shall not constitute a lien upon any property of the Commission or of or in any of the Borrowers (except to the

extent otherwise provided in the Loan Agreements), but shall be payable only from the Trust Estate and bond insurance.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Act, as hereinafter defined, and by the Constitution and laws of the State of Florida, and that the amount of this Bond, together with all other indebtedness of the Commission, does not exceed any limit prescribed by the Act, or by the Constitution and laws of the State of Florida, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been signed by the Trustee.

**IN WITNESS WHEREOF**, FLORIDA PORTS FINANCING COMMISSION has caused this Bond to be executed in its name and on its behalf by the manual signature of its Chairman and its seal to be imprinted hereon and attested by the manual signature of its Secretary-Treasurer, all as of the Dated Date of the Bonds.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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Chairman

ATTEST:

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Secretary-Treasurer

## CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Bonds described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by the authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

### ASSIGNMENT

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto

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Insert Social Security or Other Identifying Number of Assignee

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(Name and Address of Assignee)

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the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, as attorneys to register the transfer of the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed:

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**NOTICE:** Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

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**NOTICE:** The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or other identifying number of such assignee must be supplied.



**EXHIBIT C**

**FORM OF FIRST SUPPLEMENTAL INDENTURE**

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**FLORIDA PORTS FINANCING COMMISSION,  
Issuer**

**TO**

\_\_\_\_\_,  
**Trustee**

**FIRST SUPPLEMENTAL INDENTURE OF TRUST**

**Dated as of \_\_\_\_\_, 2011**

**\$ \_\_\_\_\_  
FLORIDA PORTS FINANCING COMMISSION  
REFUNDING REVENUE BONDS  
(STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM),  
SERIES 2011A (NON-AMT)**

**and**

**\$ \_\_\_\_\_  
FLORIDA PORTS FINANCING COMMISSION  
REFUNDING REVENUE BONDS  
(STATE TRANSPORTATION TRUST FUND - INTERMODAL PROGRAM),  
SERIES 2011B (AMT)**

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## **FIRST SUPPLEMENTAL INDENTURE OF TRUST**

**THIS FIRST SUPPLEMENTAL INDENTURE OF TRUST**, dated as of \_\_\_\_\_, 2011 (the "First Supplemental Indenture"), supplementing the First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_ (together with this First Supplemental Indenture and all supplements and amendments thereto, the "Indenture"), between the **FLORIDA PORTS FINANCING COMMISSION**, a legal entity organized and existing under the laws of the State of Florida (the "Commission"), and \_\_\_\_\_, \_\_\_\_\_, Florida, as trustee (the "Trustee").

### **W I T N E S S E T H:**

**WHEREAS**, the Commission is duly created and existing pursuant to the Constitution and laws of the State of Florida, including, particularly, Sections 320.20(3) and 320.20(4), Florida Statutes, and Part I of Chapter 163, Florida Statutes (the "Interlocal Act"), and a first amended and restated interlocal agreement, dated as of September 15, 1997 (the "Interlocal Agreement"), among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority, Panama City Port Authority, Port of Palm Beach District and St. Lucie County; and

**WHEREAS**, the Commission, pursuant to the authority of the Interlocal Act, the Interlocal Agreement and other applicable provisions of law, is authorized, among other things, to issue revenue bonds on behalf of and for the benefit of the ports located in the State of Florida (the "Ports") in order to finance, refinance or reimburse the cost of qualified projects of such Ports, such bonds to be secured by instruments evidencing and securing loans to the Ports and to be payable solely out of payments made by the Ports pursuant to Loan Agreements entered into between the Ports and the Commission or from other moneys designated as available therefor; and

**WHEREAS**, the Commission has determined that the public interest will be best served by the Commission's issuance of revenue bonds in order to provide funds to loan to the participating Ports to finance, refinance or reimburse the cost of qualifying projects pursuant to loan agreements between the respective Ports and the Commission; and

**WHEREAS**, the Commission has heretofore issued its \$153,155,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999 (the "Series 1999 Bonds"), pursuant to an Indenture of Trust, dated as of September 1, 1999 (the "Original Indenture"), between the Commission and

SunTrust Bank, as Trustee, to provide funds to finance, refinance or reimburse the cost of qualified projects of the participating Ports; and

**WHEREAS**, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds and any additional parity bonds issued under the Original Indenture, Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Miami-Dade County (Port of Miami), Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City) and City of Pensacola (Port of Pensacola) (collectively, the "Borrowers") have each entered into a loan agreement with the Commission (collectively, the "Loan Agreements") and have agreed in the Loan Agreements to assign, transfer and pledge moneys received by such Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, in order to provide for the payment of principal of, premium, if any, and interest on the Series 1999 Bonds and any additional parity bonds issued under the Original Indenture; and

**WHEREAS**, the Commission determines that is in its best interests to refinance the Series 1999 Bonds in order to achieve debt service savings; and

**WHEREAS**, the Commission has deemed it in its best interests to amend the Original Indenture in various respects and restate such Original Indenture in the form of the First Amended and Restated Indenture of Trust; and

**WHEREAS**, the Commission shall issue its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT) (the "Series 2011A Bonds") and its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT) (the "Series 2011B Bonds" and together with the Series 2011A Bonds, the "Series 2011 Bonds") pursuant to the terms of the First Amended and Restated Indenture of Trust and this First Supplemental Indenture (collectively, the "Indenture") for the principal purposes of refinancing the Series 1999 Bonds and paying the costs of issuance of the Series 2011 Bonds; and

**WHEREAS**, proceeds of the Series 2011 Bonds, together with other available moneys of the Commission, shall be deposited into an escrow deposit trust fund (the "Escrow Fund") in accordance with the terms of an Escrow Deposit Agreement, between the Commission and the Trustee, as escrow agent; and

**WHEREAS**, moneys in the Escrow Fund shall be invested in Government Obligations such that the principal and interest on such Government Obligations shall be

sufficient to pay the principal of and interest on the Series 1999 Bonds as same becomes due or are redeemed; and

**WHEREAS**, the Series 2011 Bonds shall constitute Bonds pursuant to the terms of the Indenture and the Loan Agreements;

**NOW, THEREFORE**, in consideration of the premises, the Commission and the Trustee hereby further mutually covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

**SECTION 101. DEFINITIONS.** Words and terms which are defined in the Indenture shall have the same meanings ascribed to them when used herein unless the context or use indicates a different meaning or intent. In addition to the words and terms elsewhere defined in this First Supplemental Indenture or the Indenture, the following words and terms as used in this First Supplemental Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

**"Escrow Deposit Agreement"** shall mean the Escrow Deposit Agreement, dated as of \_\_\_\_\_, between the Commission and the Trustee, as escrow agent, relating to the Refunded Bonds.

**"Escrow Fund"** shall mean the escrow deposit trust fund established pursuant to the Escrow Deposit Agreement.

**"First Supplemental Indenture"** shall mean this First Supplemental Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee.

**"Indenture"** shall mean the First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, between the Commission and the Trustee.

**"Refunded Bonds"** shall mean all of the Outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999.

**"Series 2011A Bonds"** shall mean the Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT), in the aggregate principal amount of \$\_\_\_\_\_ authorized to be issued by the Commission pursuant to the terms and conditions of the Indenture and this First Supplemental Indenture.

**"Series 2011B Bonds"** shall mean the Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT), in the aggregate principal amount of \$\_\_\_\_\_ authorized to be issued by the Commission pursuant to the terms and conditions of the Indenture and this First Supplemental Indenture.

**"Series 2011 Bonds"** shall mean the Series 2011A Bonds and the Series 2011B Bonds.

## **ARTICLE II THE SERIES 2011 BONDS**

**SECTION 201. ISSUANCE OF SERIES 2011A BONDS.** The Series 2011A Bonds are hereby authorized to be issued and shall be designated "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (Non-AMT)." The Series 2011A Bonds shall be in the aggregate principal amount of \$\_\_\_\_\_ and shall be issuable as fully registered bonds, without coupons, in the denominations of \$5,000 and integral multiples thereof. Unless the Commission shall otherwise direct, the Series 2011A Bonds shall be numbered RA-1 upward.

The Series 2011A Bonds shall be dated as of \_\_\_\_\_, 2011. The Series 2011A Bonds issued on or after the first Interest Payment Date therefor shall be dated as of the first Interest Payment Date preceding the date of authentication thereof to which interest has been paid or duly provided for; provided, however, if such date of authentication shall be an Interest Payment Date to which interest has been paid or duly provided for, then such Series 2011A Bonds shall be dated as of such date of authentication. However, if, as shown by the records of the Trustee, the Commission shall be in default with respect to the payment of interest on such Series 2011A Bonds, Series 2011A Bonds issued in exchange for Series 2011A Bonds surrendered for transfer or exchange shall be dated as of the date to which interest has been paid or duly provided for in full on the Series 2011A Bonds so surrendered or, if no interest has been paid or duly provided for on the Series 2011A Bonds, from the dated date thereof.

The Series 2011A Bonds shall bear interest from their dated date at the respective rates per annum set forth in the Maturity Table below. Notwithstanding the foregoing, if a Series 2011A Bond is authenticated after a Record Date and before the following Interest Payment Date, such Series 2011A Bond shall bear interest from such Interest Payment Date; provided, however, that if the Commission shall default in the payment of interest due on such Interest Payment Date, then such Series 2011A Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest shall have been paid or duly provided for, from the dated date. Interest shall be payable semiannually on the Interest Payment Dates which shall be [April 1 and October 1 of each year, commencing April 1, 2011].



The Series 2011A Bonds shall mature on the respective dates, in the respective principal amounts and bear interest at the respective rates as follows:

#### MATURITY TABLE

<u>Principal Maturity Date</u> <u>(October 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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**SECTION 202. ISSUANCE OF SERIES 2011B BONDS.** The Series 2011B Bonds are hereby authorized to be issued and shall be designated "Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT)." The Series 2011B Bonds shall be in the aggregate principal amount of \$\_\_\_\_\_ and shall be issuable as fully registered bonds, without coupons, in the denominations of \$5,000 and integral multiples thereof. Unless the Commission shall otherwise direct, the Series 2011B Bonds shall be numbered RB-1 upward.

The Series 2011B Bonds shall be dated as of \_\_\_\_\_, 2011. The Series 2011B Bonds issued on or after the first Interest Payment Date therefor shall be dated as of the first Interest Payment Date preceding the date of authentication thereof to which interest has been paid or duly provided for; provided, however, if such date of authentication shall be an Interest Payment Date to which interest has been paid or duly provided for, then such Series 2011B Bonds shall be dated as of such date of authentication. However, if, as shown by the records of the Trustee, the Commission shall be in default with respect to the payment of interest on such Series 2011B Bonds, Series 2011B Bonds issued in exchange for Series 2011B Bonds surrendered for transfer or exchange shall be dated as of the date to which interest has been paid or duly provided for in full on the Series 2011B Bonds so surrendered or, if no interest has been paid or duly provided for on the Series 2011B Bonds, from the dated date thereof.

The Series 2011B Bonds shall bear interest from their dated date at the respective rates per annum set forth in the Maturity Table below. Notwithstanding the foregoing, if a Series 2011B Bond is authenticated after a Record Date and before the following Interest Payment Date, such Series 2011B Bond shall bear interest from such Interest Payment Date; provided, however, that if the Commission shall default in the payment of interest due on such Interest Payment Date, then such Series 2011B Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or

duly provided for, or, if no interest shall have been paid or duly provided for, from the dated date. Interest shall be payable semiannually on the Interest Payment Dates which shall be [April 1 and October 1 of each year, commencing April 1, 2011].

The Series 2011B Bonds shall mature on the respective dates, in the respective principal amounts and bear interest at the respective rates as follows:

#### MATURITY TABLE

<u>Principal Maturity Date</u> <u>(October 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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**SECTION 203. EXECUTION.** The Series 2011 Bonds shall be executed in the name of the Commission as provided in Section 2.01 of the Indenture. The Commission hereby directs the Trustee to authenticate and deliver the Series 2011 Bonds as provided in Section 2.01 of the Indenture.

**SECTION 204. SECURITY.** The Series 2011 Bonds shall be secured equally and ratably by a lien on the Trust Estate with all Bonds which may be Outstanding from time to time as provided in the Indenture.

**SECTION 205. BOOK-ENTRY ONLY REGISTRATION FOR SERIES 2011 BONDS.** The Commission hereby elects to issue the Series 2011 Bonds as book-entry obligations in accordance with the provisions of this Section 205. So long as the Series 2011 Bonds remain in book-entry-only form with DTC, the following provisions shall be applicable:

The Series 2011 Bonds shall be initially issued in the form of a separate single certificated fully registered Bond for each of the maturities of the Series 2011 Bonds. Upon initial issuance, and (except as provided below in this Section 205) so long as such Bonds are Outstanding, the ownership of each such Bond shall be registered in the registration books kept by the Trustee in the name of Cede & Co., as nominee of DTC. As long as the Series 2011 Bonds shall be registered in the name of Cede & Co., all payments of principal, redemption premium, if any, and interest on the Series 2011 Bonds shall be made by the Trustee by check or draft or by bank wire transfer to Cede & Co., as Holder of the Series 2011 Bonds, upon presentation of the Series 2011 Bonds to the Trustee of the Series 2011 Bonds to be paid.

With respect to the Series 2011 Bonds registered in the name of Cede & Co., as nominee of DTC, the Commission and the Trustee shall have no responsibility or obligation to any direct or indirect participant in the DTC book-entry program (the "Participants"). Without limiting the immediately preceding sentence, the Commission and the Trustee shall have no responsibility or obligation with respect to (A) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest on the Series 2011 Bonds, (B) the delivery to any Participant or any other Person other than a Bondholder, as shown in the registration books kept by the Trustee, of any notice with respect to the Series 2011 Bonds, including any notice of redemption, or (C) the payment to any Participant or any other Person, other than a Series 2011 Bondholder, as shown in the registration books kept by the Trustee, of any amount with respect to principal of, redemption premium, if any, or interest on the Series 2011 Bonds. The Commission and the Trustee may treat and consider the Person in whose name each Series 2011 Bond is registered in the registration books kept by the Trustee as the Holder and absolute Holder of such Bond for the purpose of payment of principal of, redemption premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of, redemption premium, if any, and interest on the Series 2011 Bonds only to or upon the order of the respective Holders, as shown in the registration books kept by the Trustee, or their respective attorneys duly authorized in writing, as provided herein and all such payments shall be valid and effective to fully satisfy and discharge the Commission's obligations with respect to payment of principal, redemption premium, if any, and interest on the Series 2011 Bonds to the extent of the sum or sums so paid. No Person other than a Holder, as shown in the registration books kept by the Trustee, shall receive a certificated Bond evidencing the obligation of the Commission to make payments of principal, redemption premium, if any, and interest pursuant to the provisions of the Indenture. Upon delivery by DTC to the Commission of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to transfers during the 15 days next preceding an Interest Payment Date or mailing of notice of redemption, the words "Cede & Co." shall refer to such new nominee of DTC; and upon receipt of such notice, the Commission shall promptly deliver a copy of the same to the Trustee.

In the event the Commission determines that it is in the best interest of the beneficial owners of the Series 2011 Bonds to obtain Series 2011 Bond certificates, the Commission may notify DTC and the Trustee, whereupon DTC will notify the Participants, of the availability through DTC of Series 2011 Bond certificates. In such event, the Commission shall prepare and execute and the Trustee shall authenticate, transfer and exchange Series 2011 Bond certificates as requested by DTC in appropriate amounts within the guidelines set forth in the Indenture. DTC may determine to

discontinue providing its services with respect to the Series 2011 Bonds at any time by giving written notice to the Commission and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the Commission and the Trustee shall be obligated to deliver Series 2011 Bond certificates. In the event Series 2011 Bond certificates are issued, the provisions of the Indenture shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal of and interest on such certificates. Whenever DTC requests the Commission and the Trustee to do so, the Commission will direct the Trustee to cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the Series 2011 Bonds to any Participant having such Series 2011 Bonds credited to its DTC account; or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the Series 2011 Bonds.

**ARTICLE III**  
**APPLICATION OF SERIES 2011 BOND PROCEEDS**

**SECTION 301. APPLICATION OF SERIES 2011A BOND PROCEEDS.**

The Commission shall deposit the proceeds from the sale of the Series 2011A Bonds, net of any underwriting discount, with the Trustee which shall transfer such proceeds as follows:

(A) An amount equal to \$\_\_\_\_\_ for deposit to the "2011A Account" which is hereby established in the Cost of Issuance Fund to pay the costs of issuance associated with the Series 2011A Bonds as provided in Section 4.08 of the Indenture; and

(B) An amount equal to \$\_\_\_\_\_ shall be deposited in the Escrow Fund established pursuant to the Escrow Deposit Agreement, which amount shall be used in accordance with the terms of the Escrow Deposit Agreement to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds.

**SECTION 302. APPLICATION OF SERIES 2011B BOND PROCEEDS.**

The Commission shall deposit the proceeds from the sale of the Series 2011B Bonds, net of any underwriting discount, with the Trustee which shall transfer such proceeds as follows:

(A) An amount equal to \$\_\_\_\_\_ for deposit to the "2011B Account" which is hereby established in the Cost of Issuance Fund to pay the costs of issuance associated with the Series 2011B Bonds as provided in Section 4.08 of the Indenture; and

(B) An amount equal to \$\_\_\_\_\_ shall be deposited in the Escrow Fund established pursuant to the Escrow Deposit Agreement, which amount shall be used in accordance with the terms of the Escrow Deposit Agreement to pay the principal of, redemption premium, if any, and interest on the Refunded Bonds.

**ARTICLE IV**  
**REDEMPTION OF SERIES 2011 BONDS**

**SECTION 401. REDEMPTION DATES AND PRICES OF SERIES 2011A BONDS.** The Series 2011A Bonds shall be redeemable prior to their maturity as provided in Article III of the Indenture and on the following terms and conditions:

(A) Optional Redemption of Series 2011A Bonds. The Series 2011A Bonds maturing on or after October 1, 20\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after October 1, 20\_\_, if in part by maturities to be selected by the Commission, and by lot within a maturity if less than a full maturity, at a Redemption Price of 100% of the principal amount of the Series 2011A Bonds redeemed together with accrued interest to the redemption date.

(B) Mandatory Amortization Redemption of Series 2011A Term Bonds. The Series 2011A Term Bonds maturing on October 1, 20\_\_ shall be subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011A Term Bonds on the following dates:

Year (October 1)	<u>Amortization Installment</u>
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\*Maturity

The Redemption Price shall be 100% of the principal amount of the Series 2011A Term Bonds or portions thereof so redeemed, plus accrued interest to the redemption date, and without redemption premium. The particular Series 2011A Term Bonds or portions thereof to be redeemed on each particular redemption date shall be selected by the Trustee by lot. The Trustee shall give notice of the call for such redemptions in the manner provided in Section 3.04 of the Indenture, and if applicable, such notice shall state that any redemption is conditional on such funds being deposited with the Trustee on or prior to the redemption date and that a failure to make such deposit shall not constitute an Event of Default.

**SECTION 402. REDEMPTION DATES AND PRICES OF SERIES 2011B BONDS.** The Series 2011B Bonds shall be redeemable prior to their maturity as provided in Article III of the Indenture and on the following terms and conditions:

(A) Optional Redemption of Series 2011B Bonds. The Series 2011B Bonds maturing on or after October 1, 20\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after October 1, 20\_\_, if in part by maturities to be selected by the Commission, and by lot within a maturity if less than a full maturity, at a Redemption Price of 100% of the principal amount of the Series 2011B Bonds redeemed together with accrued interest to the redemption date.

(B) Mandatory Amortization Redemption of Series 2011B Term Bonds. The Series 2011B Term Bonds maturing on October 1, 20\_\_ shall be subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011B Term Bonds on the following dates:

Year (October 1)	<u>Amortization Installment</u>
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\*Maturity

The Redemption Price shall be 100% of the principal amount of the Series 2011B Term Bonds or portions thereof so redeemed, plus accrued interest to the redemption date, and without redemption premium. The particular Series 2011B Term Bonds or portions thereof to be redeemed on each particular redemption date shall be selected by the Trustee by lot. The Trustee shall give notice of the call for such redemptions in the manner provided in Section 3.04 of the Indenture, and if applicable, such notice shall state that any redemption is conditional on such funds being deposited with the Trustee on or prior to the redemption date and that a failure to make such deposit shall not constitute an Event of Default.

**ARTICLE V**  
**GENERAL COVENANTS**

**SECTION 501. WARRANTIES.** The Commission represents that it is duly authorized under the Constitution and laws of the State of Florida, including particularly the Act, to issue the Series 2011 Bonds authorized hereby and to execute, deliver and perform this First Supplemental Indenture, and that all action on its part for the issuance of the Series 2011 Bonds and the execution and delivery of this First Supplemental Indenture has been duly and effectively taken.

**SECTION 502. CERTIFICATION.** The Commission hereby certifies to the Trustee that it is current on all deposits into the various funds and accounts established by the Indenture and all payments required to have been deposited or made by it under the provisions of the Indenture have been deposited or made and have complied with the covenants and agreements of the Indenture.



## **ARTICLE VI MISCELLANEOUS**

**SECTION 601. APPLICABILITY OF THE INDENTURE.** In all respects not inconsistent with the terms and provisions of this First Supplemental Indenture, the provisions of the Indenture are hereby ratified, approved and confirmed and, except as otherwise provided in this First Supplemental Indenture, shall be applicable to the authorization, execution, authentication, issuance, redemption, payment, sale and delivery of the Series 2011 Bonds, the custody and distribution of the proceeds and the security, payment and enforcement of payment thereof.

**SECTION 602. SEVERABILITY.** If any provision of this First Supplemental Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this First Supplemental Indenture contained, shall not affect the remaining portions of this First Supplemental Indenture, or any part thereof.

**SECTION 603. PURPOSE; EXCLUSIVE BENEFIT OF THE PARTIES.** Except as herein otherwise specifically provided, nothing in this First Supplemental Indenture expressed or implied is intended or shall be construed to confer upon any Person other than the Commission, the Trustee and the Holders of the Bond, any right, remedy or claim under or by reason of this First Supplemental Indenture, this First Supplemental Indenture being intended to be for the sole and exclusive benefit of the Commission, the Trustee and the Holders of the Series 2011 Bonds issued hereunder.

**SECTION 604. COUNTERPARTS.** This First Supplemental Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Commission has caused this First Supplemental Indenture to be executed in its name and on its behalf by its Chairman and its Secretary thereunto duly authorized and its seal to be hereunto affixed, and the Trustee has caused this First Supplemental Indenture to be executed in its name and behalf by its duly authorized officers and its corporate seal to be hereunto affixed, all as of the date first above written.

**FLORIDA PORTS FINANCING  
COMMISSION**

(SEAL)

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

Attest:

By: \_\_\_\_\_  
Secretary-Treasurer

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

**EXHIBIT D**

**FORM OF ESCROW DEPOSIT AGREEMENT**

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**ESCROW DEPOSIT AGREEMENT**

**BETWEEN**

**FLORIDA PORTS FINANCING COMMISSION**

**AND**

\_\_\_\_\_,  
**as Trustee and Escrow Agent**

\_\_\_\_\_  
**Dated as of \_\_\_\_\_, 2011**

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## **ESCROW DEPOSIT AGREEMENT**

**ESCROW DEPOSIT AGREEMENT**, dated as of \_\_\_\_\_, 2011 (the "Escrow Agreement"), by and between **FLORIDA PORTS FINANCING COMMISSION**, a legal entity duly created and validly existing under the laws of the State of Florida (the "Commission"), and \_\_\_\_\_, as Trustee under the hereinafter defined Original Indenture and Escrow Agent (the "Escrow Agent"), [a State of \_\_\_\_\_/national banking corporation/association] authorized to exercise trust powers in the State of Florida, as escrow agent hereunder.

**WHEREAS**, pursuant to the Indenture of Trust, dated as of September 1, 1999, (the "Original Indenture"), by and between the Commission and \_\_\_\_\_ (the "Trustee"), the Commission has heretofore issued its \$153,115,000 Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 1999, \$[117,880,000] of which are currently outstanding (the "Refunded Bonds"); and

**WHEREAS**, the Commission has determined to provide for the payment in full of the debt service on all of the outstanding Refunded Bonds; and

**WHEREAS**, Article VIII of the Original Indenture provides that the Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Original Indenture upon compliance with the provisions contained therein and relating thereto; and

**WHEREAS**, pursuant to the First Amended and Restated Indenture of Trust, dated as of \_\_\_\_\_, 2011, by and between the Commission and the Trustee, the Commission has determined to issue its \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 2011A (Non-AMT) and \$\_\_\_\_\_ Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 2011B (AMT) (collectively, the "Series 2011 Bonds"), the proceeds of which Series 2011 Bonds, [together with certain other available funds,] will be used to purchase certain government securities in order to provide for payment in full of the Refunded Bonds and discharge and satisfy the Original Indenture; and

**WHEREAS**, the issuance of the Series 2011 Bonds, the purchase by the Escrow Agent of the hereinafter defined Escrow Securities, the deposit of such Escrow Securities into an escrow deposit trust fund to be held by the Escrow Agent and the termination of the right, title and interest of the holders of the Refunded Bonds in the Trust Estate (as defined in the Original Indenture) under the Original Indenture in regard to the Refunded Bonds shall occur as a simultaneous transaction; and

**WHEREAS**, this Escrow Agreement is intended to effectuate such simultaneous transaction;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**SECTION 1. PREAMBLES.** The recitals stated above are true and correct and are incorporated by reference herein.

**SECTION 2. RECEIPT OF ORIGINAL INDENTURE AND VERIFICATION REPORT.** Receipt of a true and correct copy of the above-mentioned Original Indenture and this Escrow Agreement is hereby acknowledged by the Escrow Agent. The applicable and necessary provisions of the Original Indenture, including, in particular, Articles III and VIII of the Original Indenture, are incorporated herein by reference. The Escrow Agent also acknowledges receipt of the verification report of \_\_\_\_\_, a firm of independent certified public accountants, dated \_\_\_\_\_, 2011 (the "Verification Report") which is attached hereto as EXHIBIT A. Reference herein to or citation herein of any provisions of the Original Indenture or the Verification Report shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein. Capitalized terms used herein shall have the meanings ascribed thereto by the Original Indenture, except to the extent such terms are defined herein or the context indicates another meaning.

**SECTION 3. DISCHARGE OF LIEN OF HOLDERS OF REFUNDED BONDS.** In accordance with Articles III and VIII of the Original Indenture, the Commission by this writing, exercises the option to have the rights, title and interests in the Trust Estate that were granted to the holders of the Refunded Bonds under the terms and provisions of the Original Indenture to cease, terminate and become void.

**SECTION 4. ESTABLISHMENT OF ESCROW FUND.** There is hereby created and established with the Escrow Agent a special, segregated and irrevocable escrow fund designated the "Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 1999 Escrow Deposit Trust Fund" (the "Escrow Fund") to be held in the custody of the Escrow Agent as a trust fund for the benefit of the holders of the Refunded Bonds, separate and apart from other funds of the Commission and the Escrow Agent. The Escrow Agent hereby accepts the Escrow Fund and acknowledges the receipt of and deposit to the credit of the Escrow Fund the sum of \$\_\_\_\_\_, consisting of (A) \$\_\_\_\_\_ received from the Commission from proceeds of the Series 2011 Bonds (the "Bond Proceeds"), (B) other available funds of the Commission heretofore deposited in the Sinking Fund established for the Refunded Bonds pursuant to the Original Indenture in the amount of \$\_\_\_\_\_ (the "Commission Funds").

**SECTION 5. DEPOSIT OF MONEYS AND SECURITIES IN ESCROW FUND.** The Escrow Agent represents and acknowledges that, concurrently with the deposit of the moneys under Section 4 above, and pursuant to the written directions of the Commission, it has used all of the Commission Funds and \$\_\_\_\_\_ of the Bond Proceeds to purchase on behalf of and for the account of the Commission certain United States Treasury obligations – State and Local Government Series (collectively, together with any other securities which may be on deposit, from time to time, in the Escrow Fund, the "Escrow Securities"), which are described in SCHEDULE 1 hereto, and the Escrow Agent will deposit such Escrow Securities and \$\_\_\_\_ of the remaining Bond Proceeds (the "Cash Deposit") in the Escrow Fund. For purposes of this Escrow Agreement, Escrow Securities shall consist only of direct, noncallable obligations of the United States of America to which the full faith and credit of the United States of America has been pledged.

In the event any of the Escrow Securities described in SCHEDULE 1 hereto are not available for delivery on \_\_\_\_\_, 2011, the Escrow Agent may, with the prior written approval of Bond Counsel, substitute other United States Treasury obligations and shall credit such other obligations to the Escrow Fund and hold such obligations until the aforementioned Escrow Securities have been delivered. Bond Counsel may, as a condition precedent to giving its approval, require the Commission to provide it with a revised Verification Report in regard to the adequacy of the Escrow Securities, taking into account the obligations substituted to pay the Refunded Bonds in accordance with the terms hereof and of the Original Indenture. The Escrow Agent shall in no manner be responsible or liable for failure or delay of Bond Counsel or the Commission to promptly approve the substitutions of other United States Treasury obligations for the Escrow Fund.

**SECTION 6. SUFFICIENCY OF ESCROW SECURITIES.** In reliance upon the Verification Report, the Commission represents that the interest on and the principal amounts successively maturing on the Escrow Securities in accordance with their terms (without consideration of any reinvestment of such maturing principal and interest), are sufficient such that moneys will be available to the Escrow Agent in amounts sufficient and at the times required to pay the amounts of principal of, redemption premium, and interest due and to become due on the Refunded Bonds as described in SCHEDULE 2 attached hereto. If the Escrow Securities shall be insufficient to make such payments, the Commission shall timely deposit to the Escrow Fund, solely from legally available funds of the Commission, such additional amounts as may be required to pay the Refunded Bonds as described in SCHEDULE 2 hereto. Notice of any insufficiency shall be given by the Escrow Agent to the Commission as promptly as possible, but the Escrow Agent shall in no manner be responsible for the Commission's failure to make such deposits.

**SECTION 7. ESCROW SECURITIES IN TRUST FOR HOLDERS OF REFUNDED BONDS.** The deposit of the Escrow Securities in the Escrow Fund shall constitute an irrevocable deposit of Governmental Obligations by the Commission in accordance with Articles III and VIII of the Original Indenture in trust solely for the payment of the principal, redemption premium and interest due and to become due on the Refunded Bonds on the Redemption Date as set forth in SCHEDULE 2 hereto, and, except as provided in Section 9 hereof, the principal of and interest earnings on such Escrow Securities shall be used solely for such purposes.

**SECTION 8. ESCROW AGENT TO PAY REFUNDED BONDS FROM ESCROW FUND.** The Commission hereby directs, and the Escrow Agent hereby agrees, that it will take all actions required to be taken by it as Escrow Agent under the provisions hereof and as Trustee under the Original Indenture, including the timely payment of the Refunded Bonds in the amounts and at the times provided in SCHEDULE 2 hereto. The Escrow Securities shall be used to pay the principal of, interest and redemption premium, on the Refunded Bonds as the same may mature or be redeemed. If any payment date shall be a day on which the Escrow Agent is not open for the acceptances or delivery of funds, then the Escrow Agent shall make payment on the next succeeding business day. The liability of the Escrow Agent for the payment of the principal of, redemption premium and interest due and to become due on the Refunded Bonds pursuant to this Escrow Agreement shall be limited to the application of the Escrow Securities and the interest earnings thereon and the Cash Deposit available for such purposes in the Escrow Fund solely in accordance with this Escrow Agreement.

**SECTION 9. REINVESTMENT OF MONEYS AND SECURITIES IN ESCROW FUND.** Money deposited in the Escrow Fund shall be invested only in the Escrow Securities listed in SCHEDULE 1 hereto and this Section 9, and neither the Commission nor the Escrow Agent shall otherwise invest or reinvest any money in the Escrow Fund. In no event may moneys in the Escrow Fund be invested or reinvested in any securities other than Government Obligations.

Except as provided in Section 5 hereof and this Section 9, the Escrow Agent may not sell or otherwise dispose of any or all of the Escrow Securities in the Escrow Fund and reinvest the proceeds thereof in other securities nor may it substitute securities for any of the Escrow Securities, except upon prior written direction of the Commission and where, prior to any such reinvestment or substitution, the Escrow Agent has received the following:

(a) a written verification report by an independent certified public accountant or firm of independent certified public accountants, of recognized standing, appointed by the Commission, to the effect that after such reinvestment or substitution the principal amount of Escrow Securities, together with the interest thereon, will be sufficient to pay the Refunded Bonds as described in SCHEDULE 2 hereto (such verification shall not be



necessary in the event the Commission shall determine to reinvest cash in Escrow Securities which mature on or before the next principal and/or interest payment date for the Refunded Bonds); and

(b) a written opinion of nationally recognized Bond Counsel to the effect that (i) such investment will not cause the Refunded Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code, as amended, and the regulations promulgated thereunder or otherwise cause the interest on the Refunded Bonds or the Series 2011 Bonds to be subject to federal income tax, and (ii) such investment does not violate any provision of Florida law or of the Original Indenture.

In the event the above-referenced verification concludes that there are surplus moneys in the Escrow Fund, such surplus moneys shall be released to the Commission upon its written direction. The Escrow Fund shall continue in effect until the date upon which the Escrow Agent makes the final payment of the Refunded Bonds as described in SCHEDULE 2 hereto, whereupon the Escrow Agent shall sell or redeem any Escrow Securities remaining in the Escrow Fund, and shall remit to the Commission the proceeds thereof, together with all other money, if any, then remaining in the Escrow Fund.

**SECTION 10. REDEMPTION OF REFUNDED BONDS.** The Commission hereby irrevocably instructs the Escrow Agent, as Trustee, to give at the appropriate times the notice or notices required by Section 3.04 of the Original Indenture in connection with the redemption of the Refunded Bonds. Such notice of redemption shall be given in accordance with said Section 3.04 of the Original Indenture and shall, at a minimum, contain the information set forth in EXHIBIT B attached hereto. All of the Refunded Bonds shall be redeemed on \_\_\_\_\_, [2010/11] at the prepayment price equal to 100.5% of the par amount thereof plus interest accrued thereon to the date set for redemption.

**[SECTION 11. DEFEASANCE NOTICE TO HOLDERS OF REFUNDED BONDS.** Upon the deposit of the Escrow Securities set forth in Section 5 hereof, the Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Original Indenture. Pursuant to Section 8.01 of the Original Indenture, the Escrow Agent, as Trustee, shall, within three business days of deposit of the Escrow Securities in the Escrow Fund, cause to be mailed to the Holders of the Refunded Bonds a notice substantially in the form provided in EXHIBIT C attached hereto. MAY NOT NEED DEPENDING ON TIMING]

**SECTION 12. ESCROW FUND IRREVOCABLE.** The Escrow Fund hereby created shall be irrevocable and the holders of the Refunded Bonds shall have an express lien on all cash and Escrow Securities deposited in the Escrow Fund pursuant to the terms hereof and the interest earnings thereon until paid out, used and applied in accordance with this Escrow Agreement and the Original Indenture and neither the

Commission nor the Escrow Agent shall cause nor permit any other lien or interest whatsoever to be imposed upon the Escrow Fund.

**SECTION 13. AMENDMENTS TO ESCROW AGREEMENT.** This Escrow Agreement is made for the benefit of the Commission and the holders from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the prior written consent of all such holders; provided, however, that the Commission and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Escrow Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Escrow Agreement, for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Escrow Agreement;

(b) to grant, or confer upon, the Escrow Agent for the benefit of the holders of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent;

(c) to subject to this Escrow Agreement additional funds, securities or properties; and

(d) in order to reflect a transaction being entered into pursuant to Section 9 hereof.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of Bond Counsel with respect to compliance with this Section 13, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section 13.

**SECTION 14. FEES AND EXPENSES OF ESCROW AGENT; INDEMNIFICATION.** In consideration of the services rendered by the Escrow Agent under this Escrow Agreement, the Commission agrees to and shall pay to the Escrow Agent the fees and expenses as shown on the attached SCHEDULE 3. The Escrow Agent shall have no lien or right of set-off whatsoever upon any of the cash or Escrow Securities in said Escrow Fund for the payment of such proper fees and expenses. The Commission further agrees to indemnify and save the Escrow Agent harmless, to the extent allowed by law, against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its gross negligence or willful misconduct. Indemnification provided under this Section 14 shall survive the termination of this Escrow Agreement.

Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Commission. The Escrow Agent may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, opinion or other document furnished to the Escrow Agent pursuant to any provision of this Escrow Agreement; the Escrow Agent shall be protected and shall not be liable for acting or proceeding, in good faith, upon such reliance; and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Escrow Agent may consult with counsel, who may be counsel to the Commission or independent counsel, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance herewith. Prior to retaining such independent counsel, the Escrow Agent shall notify the Commission of its intention to retain counsel.

**SECTION 15. REPORTING REQUIREMENTS OF ESCROW AGENT.**

As soon as practicable after \_\_\_\_\_, [2010/2011] the Escrow Agent shall forward in writing to the Borrower a statement in detail of the withdrawals of money from the Escrow Fund.

**SECTION 16. RESIGNATION OR REMOVAL OF ESCROW AGENT.**

The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than 45 days' written notice to the Commission and mailing notice thereof, specifying the date when such resignation will take effect, to the Commission, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the Commission and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent, signed by either the Commission or by the holders of a majority in aggregate principal amount of the Refunded Bonds then outstanding. Such instrument shall provide for the appointment of a successor Escrow Agent, which appointment shall occur simultaneously with the removal of the Escrow Agent.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the Commission. The Commission shall mail notice of any such

appointment made by it at the times and in the manner described in the first paragraph of this Section 16.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by the Commission pursuant to the foregoing provisions of this Section 16 within 60 days after written notice of resignation of the Escrow Agent has been given to the Commission, the holder of any of the Refunded Bonds or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

In the event of replacement or resignation of the Escrow Agent, the Escrow Agent shall remit to the Commission the prorated portion of prepaid fees not yet incurred or payable less any termination fees and expenses at the time of discharge and shall have no further liability hereunder and the Commission shall indemnify and hold harmless Escrow Agent from any such liability, including reasonable costs or expenses incurred by Escrow Agent or its counsel.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers organized under the banking laws of the United States or any State, and shall have at the time of appointment capital and surplus of not less than \$75,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Commission an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of such successor Escrow Agent or the Commission execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trust of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Escrow Agent shall be paid in full. Should any transfer, assignment or instrument in writing from the Commission be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the Commission.

Any corporation into which the Escrow Agent, or any successor to it in the trusts created by this Escrow Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party or any corporation to which the Escrow Agent or successor to it shall sell or transfer all or substantially all of its corporate trust business, shall be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**SECTION 17. TERMINATION OF ESCROW AGREEMENT.** This Escrow Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made. Upon such termination, all moneys remaining in the Escrow Fund shall be released to the Commission.

**SECTION 18. GOVERNING LAW.** This Escrow Agreement shall be governed by the applicable laws of the State of Florida.

**SECTION 19. SEVERABILITY.** If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Commission or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

**SECTION 20. COUNTERPARTS.** This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

**SECTION 21. NOTICES.** Any notice, authorization, request or demand required or permitted to be given in accordance with the terms of this Escrow Agreement shall be in writing and sent by registered or certified mail addressed to:

If to the Escrow Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to the Commission: Florida Ports Financing Commission  
502 East Jefferson Street  
Tallahassee, Florida 32301  
Attention: Chairman

**IN WITNESS WHEREOF**, Florida Ports Financing Commission has caused these presents to be signed in its name and on its behalf by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary and \_\_\_\_\_, has caused these presents to be signed in its name by its Authorized Signatory, all as of the day and year first above written.

(SEAL)

**FLORIDA      PORTS      FINANCING  
COMMISSION**

ATTEST:

\_\_\_\_\_  
Secretary

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

\_\_\_\_\_, as Trustee and  
Escrow Agent

By: \_\_\_\_\_  
Authorized Officer

## **SCHEDULE 1**

### **ESCROW SECURITIES**

**SCHEDULE 2**

**DEBT SERVICE REQUIREMENTS FOR REFUNDED BONDS**



**SCHEDULE 3**

**SCHEDULE OF FEES AND EXPENSES**

Administration Fee \$\_\_\_\_\_

**EXHIBIT A**

**VERIFICATION REPORT**

**EXHIBIT B**  
**(FORM OF)**  
**NOTICE OF FULL REDEMPTION**  
**\$153,115,000**  
**FLORIDA PORTS FINANCING COMMISSION**  
**REVENUE BONDS (STATE TRANSPORTATION TRUST FUND –**  
**INTERMODAL PROGRAM), SERIES 1999**  
**DATED SEPTEMBER 1, 1999**

**NOTICE IS HEREBY GIVEN** on behalf of the Florida Ports Financing Commission (the "Commission"), pursuant to Articles III and VIII of the Original Indenture of Trust, dated as of September 1, 1999 (the "Original Indenture"), by and between the Commission and \_\_\_\_\_ (the "Trustee") that all of the outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 1999, dated September 1, 1999 (the "Bonds") will be redeemed on \_\_\_\_\_, 2010/11 (the "Redemption Date") at the redemption price of 100.5% of the principal amount of each Bond to be redeemed together with the interest accrued thereon to the Redemption Date.

The Bonds to be redeemed are:

<u>Maturity</u>	<u>Interest Rate</u>	<u>Amount</u>	<u>CUSIP No.</u>
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Payment of the redemption price, including redemption premium and interest, of such Bonds will be made on or after such redemption date at the office of the Trustee set forth below, as paying agent for the Bonds upon surrender thereof. Interest on such Bonds will cease to accrue from and after such redemption date. The Bonds are deemed to be paid within the meaning of Articles III and VIII of said Original Indenture, shall no longer be secured from the Trust Estate (as such term is defined in the Original Indenture), and shall only be secured from the deposit in irrevocable escrow of cash and United States Treasury obligations made by the Commission pursuant to said Articles III and VIII of the Original Indenture.

Pursuant to the governing documents, payment of the Redemption Price on the Bonds called for redemption will be paid without presentation of the Bonds if presentment is not required and upon presentation of the Bonds if presentment is

required. If presentment is required, surrender thereof can be made in the following manner:

*If by Mail:*

*If by Hand or Overnight Mail:*

[Bondholders presenting their bonds in person for same day payment **must** surrender their bond(s) by 1:00 P.M. on the Redemption Date and a check will be available for pick up after 2:00 P.M. Checks not picked up by 4:30 P.M. will be mailed out to the bondholder via first class mail. If payment of the Redemption Price is to be made to the registered owner of the Bond, you are not required to endorse the Bond to collect the Redemption Price.]

### **REQUIREMENT INFORMATION**

For a list of redemption requirements please visit our website at \_\_\_\_\_ and click on the [**"Bondholder Information"**] link.

### **IMPORTANT NOTICE**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

\*The Undersigned shall not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in the Redemption Notice. It is included solely for the convenience of the Holders.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

***By:*** \_\_\_\_\_, ***as Trustee or Agent***

**EXHIBIT C**  
**(FORM OF)**  
**NOTICE OF DEFEASANCE**  
**\$153,115,000**  
**FLORIDA PORTS FINANCING COMMISSION**  
**REVENUE BONDS (STATE TRANSPORTATION TRUST FUND –**  
**INTERMODAL PROGRAM), SERIES 1999**  
**DATED SEPTEMBER 1, 1999**

**NOTICE IS HEREBY GIVEN** pursuant to Articles III and VIII of the Indenture of Trust, dated as of September 1, 1999 (the "Original Indenture"), by and between the by and between the Commission and \_\_\_\_\_ (the "Trustee") that all of the outstanding Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 1999, dated September 1, 1999 (the "Bonds") are deemed to be paid within the meaning of Articles III and VIII of said Original Indenture, shall no longer be secured from the Trust Estate (as such term is defined in the Original Indenture), and shall only be secured from the deposit in irrevocable escrow of cash and United States Treasury obligations made by the Florida Ports Financing Commission pursuant to said Articles III and VIII of the Original Indenture.

**NOTICE IS HEREBY FURTHER GIVEN**, on behalf of Florida Ports Financing Commission that the Bonds will be redeemed on \_\_\_\_\_, 2010/11 at the redemption price equal to 100.5% of the principal amount of each Bond to be redeemed, plus interest accrued thereon to such date.

Payment of the redemption price, including redemption premium and interest, of such Bonds will be made on or after such redemption date at the office of \_\_\_\_\_, the paying agent for the Bonds upon surrender thereof. Interest on such Bonds will cease to accrue from and after such redemption date.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_, as Trustee

**EXHIBIT E**

**PRELIMINARY OFFICIAL STATEMENT**

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2010**

**NEW ISSUE - BOOK-ENTRY ONLY**

In the opinion of Bond Counsel, under existing statutes, regulations, rulings and court decisions, and subject to the conditions described herein under "TAX MATTERS," interest on the Series 2011 Bonds (as hereinafter defined) is excluded from gross income of the holders of such Series 2011 Bonds for federal income tax purposes, except that such exclusion shall not apply during any period such Series 2011B Bonds are held by a "substantial user" of the facilities refinanced with proceeds of the Series 2011B Bonds or a "related person" within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended. Interest on the Series 2011A Bonds will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. However, interest on the Series 2011B Bonds is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. Such interest may be subject to other federal income tax consequences referred to herein under "TAX MATTERS."

\$ \_\_\_\_\_ \*

**Florida Ports Financing Commission  
Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program),  
Series 2011A (NON-AMT)**

**and**

\$ \_\_\_\_\_ \*

**Florida Ports Financing Commission  
Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program),  
Series 2011B (AMT)**

**Dated: Date of Delivery**

**Due: As shown on Inside cover page**

The Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (NON-AMT) (the "Series 2011A Bonds") and the Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT) (the "Series 2011B Bonds" and, collectively with the Series 2011A Bonds, the "Series 2011 Bonds") are being issued as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. The Series 2011 Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Series 2011 Bonds. Purchasers will not receive certificates representing their beneficial ownership interests in the Series 2011 Bonds when purchased. Interest on the Series 2011 Bonds will be paid semi-annually on April 1 and October 1 of each year, commencing [April 1, 2011]. The principal of, premium, if any, and interest on the Series 2011 Bonds are payable by \_\_\_\_\_, \_\_\_\_\_, Florida, as Trustee, or its successor, to DTC, which in turn is to remit such payments to the herein described DTC Participants, who are in turn to remit such payments to the Beneficial Owners (as defined herein) of the Series 2011 Bonds, as described herein. The Series 2011 Bonds are subject to redemption prior to maturity as more fully described herein.

This cover page contains information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement, including the appendices to obtain information essential to the making of an informed investment decision.

The Florida Ports Financing Commission (the "Commission") previously issued its \$153,115,000 original aggregate principal amount of Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 1999 (the "Series 1999 Bonds") to make loans to certain participating Ports (as defined herein) in Florida or the political subdivisions of the State of Florida (the "State") which own and operate such Ports (each, a "Borrower" and collectively, the "Borrowers") pursuant to separate loan agreements (collectively, the "Loan Agreements") to finance, refinance or reimburse the cost of approved capital projects and to pay certain costs of issuing the Series 1999 Bonds, all as more fully described herein. The Series 2011 Bonds are being issued by the Commission to refinance and redeem all of the outstanding Series 1999 Bonds, as described herein and to pay certain costs of issuance on the Series 2011 Bonds.

The Series 2011 Bonds are solely and exclusively a special and limited obligations of the Commission payable solely from and secured by (a) all right, title and interest of the Commission under the Loan Agreements (excluding fees and expenses payable to, or on behalf of, the Commission and rights of the Commission to indemnity and notices thereunder and excluding any payments made by the Borrowers to comply with the rebate provisions of Section 148(f) of the herein defined Code), as more particularly described herein (b) all moneys and securities from time to time held by the Trustee under the terms of the Indenture (except for moneys and securities held in the Rebate Fund and the Administrative Expense Fund), including any investment earnings thereon, all in accordance with the provisions of the Indenture and (c) all of the Revenues (as defined herein) (other than the herein defined Additional Payments), any proceeds of Bond Insurance (as herein defined), any and all other property, rights and interests of every kind and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, pledged, hypothecated or otherwise subjected to the Indenture, as and for additional security therewith, by the Commission or any other person on its behalf or with its written consent (collectively, the "Trust Estate"). See "SECURITY FOR THE SERIES 2011 BONDS."

**The Series 2011 Bonds do not create nor constitute, now or in the future, an obligation or debt of the State or any political subdivision thereof or any public corporation, Port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective Loan Agreements) other than the Commission to the extent provided in the**

Indenture; nor shall the Series 2011 Bonds constitute the giving, pledging or loan of the faith and credit of the State or any political subdivision thereof or any public corporation, port or governmental agency existing under the laws of the State, but shall be payable solely from the Trust Estate under the Indenture. The issuance of the Series 2011 Bonds shall not, directly, indirectly or contingently, obligate the State or any political subdivision thereof or any public corporation, Port or governmental agency existing under the laws of the State (excluding the Borrowers to the extent of their liabilities under their respective Loan Agreements). None of the obligations of the Borrowers under their respective Loan Agreements are secured by a pledge of their taxing powers, if any, and none are payable from ad valorem taxes. The Loan Agreements do not represent joint liabilities of the Borrowers executing Loan Agreements with the Commission, and shall be payable solely as provided in such Loan Agreements.

The Series 2011 Bonds are limited and special obligations of the Commission payable solely from payments of principal and interest ("Basic Payments") by the Borrowers under Loan Agreements between the Commission and the Borrowers and investment earnings to the extent provided in the herein described Indenture. Basic Payments are required to be paid by the Borrowers solely from moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, which provides that \$10,000,000 in certain revenues derived from the registration of motor vehicles in Florida be deposited annually in the State Transportation Trust Fund for funding certain Port projects and to secure the payment of refunding bonds issued to refinance the Series 1999 Bonds. The obligation of the State to make such deposit is subordinate to the satisfaction of other obligations of the State payable from revenues derived from the registration of motor vehicles including certain bonds issued by the State Board of Education and the Florida Ports Financing Commission. See "SECURITY FOR THE BONDS" herein.

[Payment of the principal of and interest on the Series 2011 Bonds, when due, will be guaranteed by a municipal bond insurance policy to be issued by \_\_\_\_\_ simultaneously with the delivery of the Series 2011 Bonds. See "MUNICIPAL BOND INSURANCE" herein.]

[Insurer logo]

*The Series 2011 Bonds are being offered by the Underwriters when, as and if issued by the Commission and accepted by the Underwriters subject to the delivery an approving opinion by Nabors, Giblin & Nickerson, P.A., Tampa, Florida, Bond Counsel. Certain legal matters will be passed upon for the Commission by \_\_\_\_\_, and for the Underwriters by their counsel, Squire, Sanders & Dempsey (US) LLP, Miami, Florida. First Southwest Company, Aventura, Florida is serving as Financial Advisor to the Commission. It is expected that the Series 2011 Bonds will be available for delivery in New York, New York on or about \_\_\_\_\_, 2011.*

**CITI**

**BofA Merrill Lynch**

**Morgan Stanley**

**Siebert Brandford Shank & Co.,  
L.L.C.**

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\* Preliminary, subject to change.



**FLORIDA PORTS FINANCING COMMISSION**  
**Refunding Revenue Bonds (State Transportation Trust Fund -Intermodal Program),**  
**Series 2011A (NON-AMT)**

**MATURITY DATES, AMOUNTS, INTEREST RATES, YIELDS AND CUSIP NOS.**

\$ \_\_\_\_\_ **Serial Series 2011A Bonds**

<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>	<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>
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\$ \_\_\_\_\_ Term Series 2011A Bond due October 1, \_\_\_\_\_, at \_\_\_\_\_%, Yield \_\_\_\_\_%, Cusip No. \_\_\_\_\_.

**FLORIDA PORTS FINANCING COMMISSION**  
**Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program),**  
**Series 2011B (AMT)**

**MATURITY DATES, AMOUNTS, INTEREST RATES, YIELDS AND CUSIP NOS.**

\$ \_\_\_\_\_ **Serial Series 2011B Bonds**

<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>	<u>Maturity</u> <u>(October 1)</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <u>No.</u>
---------------------------------------	---------------	--------------------------------	--------------	----------------------------	---------------------------------------	---------------	--------------------------------	--------------	----------------------------

\$ \_\_\_\_\_ Term Series 2011B Bond due October 1, \_\_\_\_\_, at \_\_\_\_\_%, Yield \_\_\_\_\_%, Cusip No. \_\_\_\_\_.

No dealer, salesperson, or other person has been authorized to give any information or to make any representation, other than the information contained in this Official Statement, in connection with the offering of the Series 2011 Bonds, and, if given or made, such information or representation must not be relied upon as having been authorized by the Underwriters. The information in this Official Statement is subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the such entities or others since the date hereof. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation.

**IN MAKING ANY INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE VARIOUS ENTITIES DESCRIBED ABOVE AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE SERIES 2011 BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2011 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF THE SECURITIES LAWS OF THE STATES, IF ANY, IN WHICH THE SERIES 2011 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN CERTAIN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2011 BONDS OR THE ACCURACY, ADEQUACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

**THE PRICES AT WHICH THE SERIES 2011 BONDS ARE OFFERED TO THE PUBLIC BY THE UNDERWRITERS MAY VARY FROM THE INITIAL PUBLIC OFFERING PRICES APPEARING ON THE INSIDE COVER PAGE HEREOF. IN ADDITION, THE UNDERWRITERS MAY ALLOW CONCESSIONS OR DISCOUNTS FROM SUCH INITIAL PUBLIC OFFERING PRICES TO DEALERS AND OTHERS. IN CONNECTION WITH THE OFFERING OF THE SERIES 2011 BONDS, THE UNDERWRITERS MAY EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2011 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

The information set forth herein has been obtained from the Florida Ports Financing Commission (the "Commission") and other sources which are believed to be reliable. The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information. The information and expressions of opinion stated herein are

subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in the affairs of the Commission or the Borrowers since the date hereof or the earliest date as of which such information is given or the implication that any information herein is correct as of any time subsequent to its date.

This Official Statement contains certain “forward-looking statements” concerning the Commission’s or the Borrower’s operations, performance and financial condition, including its future economic performance, plans and objectives. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Commission. The words “may,” “could,” “will,” “expect,” “anticipate,” “believe,” “intend,” “plan,” “estimate” and similar expressions are meant to identify these forward-looking statements. Actual results may differ materially from those expressed or implied by these forward-looking statements.

The Commission has deemed this Preliminary Official Statement “final,” except for permitted omissions, within the contemplation of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

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## OFFICIAL STATEMENT

*relating to*

\$ \_\_\_\_\_ \*

### FLORIDA PORTS FINANCING COMMISSION

**Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program),  
Series 2011A (NON-AMT)**

**and**

\$ \_\_\_\_\_ \*

### FLORIDA PORTS FINANCING COMMISSION

**Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program),  
Series 2011B (AMT)**

## INTRODUCTORY STATEMENT

The purpose of this Official Statement is to set forth certain information concerning the issuance and sale by the Florida Ports Financing Commission (the “Commission”) of its \$ \_\_\_\_\_ \* original aggregate principal amount of Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011A (NON-AMT) (the “Series 2011A Bonds”) and its \$ \_\_\_\_\_ \* original aggregate principal amount of Refunding Revenue Bonds (State Transportation Trust Fund - Intermodal Program), Series 2011B (AMT) (the “Series 2011B Bonds” and, together with the Series 2011A Bonds, the “Series 2011 Bonds”). The Series 2011 Bonds are being issued pursuant to the Constitution and laws of the State of Florida (the “State”), particularly Section 320.20(4), Florida Statutes, and Chapter 163, Part I, Florida Statutes (collectively, the “Interlocal Act”), and other applicable provisions of law, including, without limitation, Part I of Chapter 159, Florida Statutes, Chapter 311, Florida Statutes, and Chapter 315, Florida Statutes (together with the Interlocal Act, the “Act”), and under an Indenture of Trust dated as of September 1, 1999 (the “Original Indenture”), as amended and restated by the First Amended and Restated Indenture of Trust, dated as of the date of issuance of the Bonds, as supplemented by the First Supplemental Indenture of Trust, dated as of the date of issuance of the Bonds (collectively, the “Indenture”), each between the Commission and \_\_\_\_\_, \_\_\_\_\_, Florida, as trustee (the “Trustee”).

The Commission was created pursuant to the Interlocal Act through an Interlocal Agreement dated July 17, 1996, as amended and restated by a First Amended and Restated Interlocal Agreement dated as of September 15, 1997, (collectively, the “Interlocal Agreement”) by and among Broward County (Port Everglades), Canaveral Port Authority, Miami-Dade County (Port of Miami), Hillsborough County Port District, Jacksonville Port Authority, Manatee County Port Authority (Port Manatee), Panama City Port Authority, Port of Palm Beach District (Port of Palm Beach) and St. Lucie County (Port of Ft. Pierce). The Commission has established a financing program under the Act (the “Program”) pursuant to which the

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\* Preliminary, subject to change.

Commission issued under the Original Indenture its \$153,115,000 original aggregate principal amount of Revenue Bonds (State Transportation Fund - Intermodal Program), Series 1999 (the "Series 1999 Bonds") and lent the proceeds thereof to ports, port authorities and port districts in Florida described in Section 311.09(1), Florida Statutes (each, a "Port" and collectively, the "Ports") in order to finance, refinance or reimburse the cost of acquiring and constructing capital projects pursuant to Section 320.20, Florida Statutes (each a "Project" and collectively, the "Projects"), for certain participating Ports and to pay certain costs of issuing the Series 1999 Bonds. See "THE COMMISSION-- Loans from Proceeds of the Series 1999 Bonds" herein. The Commission accomplished such financing, refinancing and reimbursement for such Projects through loans to such Ports or the political subdivisions of the State (each a "Loan" and collectively the "Loans") which own and operate such Ports (each, a "Borrower" and collectively, the "Borrowers") pursuant to separate loan agreements entered into between each Borrower and the Commission (each, an "Original Loan Agreement" and collectively, the "Original Loan Agreements").

The Series 2011 Bonds are being issued to provide funds to refund all of the Outstanding Series 1999 Bonds, as described herein. Upon the issuance of the Series 2011 Bonds and the refunding of the Series 1999 Bonds, the Commission and the Borrowers pursuant to certain resolutions of the Borrowers will revise the payment schedules under the Original Loan Agreements to provide for the new debt service schedule for the Series 2011 Bonds. The Original Loan Agreements as revised are hereinafter referred to as the "Loan Agreements". The Series 2011 Bonds, together with any Additional Bonds issued pursuant to the Indenture are referred to herein as the "Bonds".

All capitalized words and phrases used herein and not otherwise defined herein shall have the meaning ascribed to them in the Indenture and the Loan Agreements, the forms of which are included in APPENDIX A and APPENDIX B attached hereto, respectively.

In addition to the Series 1999 Bonds, on December 19, 1996, the Commission issued, pursuant to a separate Indenture, \$222,320,000 in aggregate principal amount of its Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds"). Concurrently with the issuance of the Series 2011 Bonds, the Commission intends to issue pursuant to a separate indenture, refunding bonds to refund all or a portion of the Series 1996 Bonds. See "THE COMMISSION - Prior Financing" herein.

The Borrowers of the proceeds of the Series 1999 Bonds are Broward County (Port Everglades), Canaveral Port Authority (Port Canaveral), Miami-Dade County (Port of Miami), Hillsborough County Port District (Port of Tampa), Jacksonville Port Authority (Port of Jacksonville), Manatee County Port Authority (Port Manatee), Ocean Highway and Port Authority, Port of Fernandina, Port of Palm Beach District (Port of Palm Beach), Panama City Port Authority (Port of Panama City), and City of Pensacola (Port of Pensacola). Under the provisions of the Original Loan Agreements, all or portions of the original Loans were reassigned to another Port, however none of the proceeds of the Loans were reassigned to a Port which was not a Borrower under the Original Loan Agreements.

This Official Statement contains brief descriptions of, among other things, the Commission, the Series 2011 Bonds, [the Bond Insurance Policy,] [the Bond Insurer,] DTC and



the book-entry only system of registration, the Ports, the Projects, the Loan Agreements and the Indenture. Such descriptions do not purport to be comprehensive or definitive. All descriptions in this Official Statement of the Indenture, the Loan Agreements and any other documents relating to the Series 2011 Bonds are qualified in their entirety by reference to the Indenture, the Loan Agreements and such other documents. Until the issuance and delivery of the Series 2011 Bonds, copies of the forms of documents relating to the Series 2011 Bonds which are not included as an Appendix to this Official Statement may be obtained from the Underwriters. After issuance and delivery of the Series 2011 Bonds, copies of the Indenture, the Loan Agreements and other documents relating to the Series 2011 Bonds may be obtained from the Florida Ports Council, as Administrator of the Program, 502 East Jefferson Street, Tallahassee, Florida 32301.

## **PLAN OF FINANCE**

### **General**

The Series 2011 Bonds are being issued to provide funds, [together with other available moneys of the Commission,] to (i) refund all of the Outstanding Series 1999 Bonds, as described below (the “Refunded Bonds”), and (ii) pay related costs and expenses in connection with the issuance of the Series 2011 Bonds[, including municipal bond insurance premium].

### **The Refunded Bonds**

A portion of the proceeds of the Series 2011 Bonds will be applied by the Commission to refund the Refunded Bonds. The Refunded Bonds will be called for redemption on \_\_\_\_\_, 2011 at a redemption price of one hundred and one-half of one percent (100.5%) of the principal amount of the Refunded Bonds plus accrued interest to the date of redemption. A portion of the proceeds of the Series 2011 Bonds, together with other available moneys of the Commission, will be deposited into an Escrow Fund pursuant to an Escrow Deposit Agreement dated the date of issuance of the Bonds between the Commission and the Trustee, to provide for the payment of such redemption price and accrued interest.

The monies deposited to the Escrow Fund, other than a cash deposit, will be applied to the purchase of noncallable direct obligations of the United States of America so as to produce sufficient funds, together with the cash deposit held therein, to pay the principal of, premium, and interest on the Refunded Bonds, as the same become due and payable, on the date set for redemption. See “VERIFICATION OF MATHEMATICAL COMPUTATIONS” herein.

Upon the deposit of such monies in the Escrow Fund and investment thereof, receipt of schedules and the report of [\_\_\_\_\_], the Verification Agent with respect to such deposit, in the opinion of Bond Counsel rendered in reliance upon such report and schedules and in reliance upon the certificates and representations of the Commission, the Refunded Bonds will no longer be deemed to be outstanding for purposes of the Indenture. The monies and securities on deposit in the Escrow Fund will not be available for payment of the Series 2011 Bonds.

## THE BONDS

### General

The Series 2011 Bonds will be issuable as fully registered bonds without coupons in denominations of \$5,000 and integral multiple thereof. The Series 2011 Bonds will be dated as of their date of issuance, will bear interest at the rates and mature at the times and in the amounts set forth on the inside cover page hereof and will be subject to [optional and mandatory redemption prior to maturity as described below under “Redemption Provisions” below]. Interest on the Bonds will be payable semi-annually on each April 1 and October 1, commencing April 1, [2011] (each, an “Interest Payment Date”).

The Series 2011 Bonds will be issued in book-entry only form and, when issued, will be registered to Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). See “Book-Entry-Only System” below.

### Series 2011A Bonds Redemption Provisions

*Optional Redemption.* The Series 2011A Bonds maturing before October 1, [\_\_\_\_] are not subject to optional redemption by the Commission. The Series 2011A Bonds maturing on and after October 1, \_\_\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after October 1, [\_\_\_\_], if in part by maturities to be selected by the Commission, and by lot within a maturity if less than a full maturity at a Redemption Price of 100% of the principal amount of the Series 2011A Bonds redeemed together with accrued interest to the redemption date.

*Mandatory Redemption.* The Series 2011A Term Bonds maturing on October 1, \_\_\_\_ are subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011A Term Bonds on the following Dates:

Year (October 1)	Amortization Installments
---------------------	------------------------------

### Series 2011B Bonds Redemption Provisions

*Optional Redemption.* The Series 2011B Bonds maturing before October 1, [\_\_\_\_] are not subject to optional redemption by the Commission. The Series 2011B Bonds maturing on and after October 1, \_\_\_\_ are callable for redemption at the option of the Commission as a whole or in part on any date on or after October 1, [\_\_\_\_], if in part by maturities to be selected by the

Commission, and by lot within a maturity if less than a full maturity at a Redemption Price of 100% of the principal amount of the Series 2011B Bonds redeemed together with accrued interest to the redemption date.

***Mandatory Redemption.*** Series 2011B Bonds. The Series 2011B Term Bonds maturing on October 1, \_\_\_\_ are subject to mandatory redemption by operation of Amortization Installments. The Trustee shall redeem, with moneys available in the Principal Account, the following principal amounts of Series 2011B Term Bonds on the following Dates:

<u>Year</u> <u>(October 1)</u>	<u>Amortization</u> <u>Installments</u>
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The Redemption Price shall be 100% of the principal amount of the Series 2011 Term Bonds or portions thereof so redeemed, plus accrued interest to the redemption date, without redemption premium. The particular Series 2011 Term Bonds or portions thereof to be redeemed on each particular redemption date shall be selected by the Trustee by lot. The Trustee shall give notice of the call for such redemptions in the manner provided in the Indenture and set forth below, and if applicable, such notice shall state that any redemption is conditional on such funds being deposited with the Trustee on or prior to the redemption date and that a failure to make such deposit will not constitute an Event of Default.

***Notice of Redemption.*** Notice of redemption shall specify the Bond or Bonds (or portions thereof) to be redeemed and the date and place for redemption and shall be given by the Trustee on behalf of the Commission by first class mail, postage prepaid, at least 30 days prior to the redemption date to all Holders of Bonds to be redeemed at their addresses as they appear on the registration books held by the Trustee as of the date of mailing such notice. Failure to mail such notice to the Holders of the Bonds to be redeemed, or any defect therein, shall not affect the proceedings for redemption of Bonds as to which no such failure or defect has occurred. Such notice shall state: (a) the CUSIP numbers of all Bonds being redeemed, (b) the original issue date of such Bonds, (c) the maturity date and rate of interest borne by each Bond being redeemed, (d) the redemption date, (e) the Redemption Price, (f) the date on which such notice is mailed, (g) if less than all Outstanding Bonds are to be redeemed, the certificate number (and, in the case of a partial redemption of any Bond, the principal amount) of each Bond to be redeemed, (h) that on such redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such date, interest thereon shall cease to accrue and be payable, (i) that the Bonds to be redeemed, whether as a whole or in part, are to be surrendered for payment of the Redemption Price at the designated corporate trust office of the

Trustee at an address specified, and (j) the name and telephone number of a person designated by the Trustee to be responsible for such redemption.

The Commission may provide that a notice of redemption may be contingent upon the occurrence of certain condition(s) and that if such condition(s) do not occur, the notice will be rescinded, provided notice of rescission shall be mailed in the manner described in the Indenture to all affected Bondholders within a reasonable time period after the Commission determines that such conditions will not be satisfied.

Upon the giving of notice as described above, and moneys available for such redemption being on deposit with the Trustee, interest on the Series 2011 Bonds or portions thereof called for redemption will no longer accrue after the date fixed for redemption.

AT ANY TIME DURING WHICH THE BOOK-ENTRY-ONLY SYSTEM IS IN EFFECT, THE ABOVE NOTICE OF REDEMPTION SHALL BE SENT BY THE TRUSTEE ONLY TO DTC.

### **Selection of Bonds to be Redeemed**

When Series 2011 Bonds are redeemed by lot, selection of Series 2011 Bonds for redemption shall be in such manner as the Trustee shall determine; provided, however, that the portion of any Series 2011 Bond to be redeemed shall be in the principal amount of \$5,000 or any whole multiple thereof, except as otherwise provided by Supplemental Indenture.

### **Book-Entry-Only System**

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2011 Bonds. The Series 2011 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2011 Bonds certificate will be issued for each maturity and each interest rate, if different within the same maturity of a series of the Series 2011 Bonds as set forth on the inside cover of this Official Statement, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned

subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Series 2011 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2011 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2011 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2011 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2011 Bonds, except in the event that use of the book-entry system for the Series 2011 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2011 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2011 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2011 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2011 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Beneficial Owners of Series 2011 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2011 Bonds, such as redemptions and proposed amendments to the Series 2011 Bond documents. For example, Beneficial Owners of Series 2011 Bonds may wish to ascertain that the nominee holding the Series 2011 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of a series of the Series 2011 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2011 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2011 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, if any, and interest payments on the Series 2011 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the Commission on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with Series 2011 Bonds held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, the Registrar, Paying Agent or the Commission, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, if any, and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Commission and/or the Paying Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Commission and the Underwriters believe to be reliable, but the Commission and the Underwriters take no responsibility for the accuracy thereof.

DTC may discontinue providing its services as securities depository with respect to the Series 2011 Bonds at any time by giving reasonable notice to the Commission, the Trustee, or Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2011 Bond certificates are required to be printed and delivered.

The Commission may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered to DTC.

**NEITHER THE COMMISSION NOR THE REGISTRAR, THE TRUSTEE OR PAYING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO ANY DTC PARTICIPANT OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE SERIES 2011 BONDS IN RESPECT OF THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT, THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT IN RESPECT OF THE PRINCIPAL OF OR INTEREST ON THE SERIES 2011 BONDS, ANY NOTICE**

**WHICH IS PERMITTED OR REQUIRED TO BE GIVEN TO HOLDERS OF SERIES 2011 BONDS UNDER THE INDENTURE, THE SELECTION BY DTC OR ANY DTC PARTICIPANT OR ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2011 BONDS, OR ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER. SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE SERIES 2011 BONDS, AS NOMINEE OF DTC, REFERENCES IN THIS OFFICIAL STATEMENT TO THE HOLDERS OF SERIES 2011 BONDS OR REGISTERED OWNERS OF THE SERIES 2011 BONDS SHALL MEAN CEDE & CO., AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE SERIES 2011 BONDS.**

The Commission and the Trustee shall have no responsibility or obligation with respect to: (i) the accuracy of the records of DTC or any Participant with respect to any beneficial ownership interest of the Series 2011 Bonds; (ii) the delivery to any Participant, Beneficial Owner of the Series 2011 Bonds or other person, other than DTC, of any notice with respect to the Series 2011 Bonds; (iii) the payment to any Participant, Beneficial Owner of the Series 2011 Bonds or other person, other than DTC, of any amount with respect to the principal of or interest on, the Series 2011 Bonds; or (iv) any consent given by DTC as registered owner.

## **SECURITY FOR THE SERIES 2011 BONDS**

### **General**

The Indenture creates a continuing, irrevocable lien and claim upon, pledge of and grant of the Trust Estate, to the extent provided therein, to secure the full payment of the principal of and interest on the Bonds as the same shall become due. The Series 2011 Bonds are, to the extent provided in the Indenture, equally and ratably secured by the Indenture without preference, priority or distinction, so that the Bonds at any time Outstanding thereunder shall have the same right, lien and preference under and by virtue of the Indenture and shall all be secured thereby with like effect.

The “Trust Estate” is defined in the Indenture as:

(1) all right title and interest of the Commission under the Loan Agreements (excluding fees and expenses payable to, or on behalf of, the Commission and rights of the Commission to indemnity and notices thereunder and excluding any payments made by the Borrowers to comply with the rebate provisions of Section 148(f) of the Code) entered into by the Borrowers and any documents securing payment thereunder, including all extensions and renewals of any of the terms of the Loan Agreements and any documents securing payment thereunder and, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any income, issues and profits and other sums of money payable to or receivable by the Commission, to bring actions or proceedings under the Loan Agreements, any documents securing payment thereunder or for the enforcement thereof, and to do any and all things which the Commission is or may become entitled to do under or due to its ownership of the interests granted in the Loan Agreements; provided, however, that the Bonds shall be secured only by the right, title and interest of the Commission in the Loan Agreements relating thereto; and

(2) all moneys and securities from time to time held by the Trustee under the terms of the Indenture (except for moneys and securities held in the Rebate Fund and the Administrative Expense Fund), including any investment earnings thereon, all in accordance with the provisions of the Indenture; and

(3) all Revenues (other than Additional Payments), any proceeds of Bond Insurance, any and all other property, rights and interests of every kind and nature from time to time by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, pledged, hypothecated or otherwise subjected hereto, as and for additional security under the Indenture, by the Commission or any other person on its behalf or with its written consent.

THE SERIES 2011 BONDS ARE SOLELY AND EXCLUSIVELY A SPECIAL AND LIMITED OBLIGATION OF THE COMMISSION PAYABLE SOLELY FROM THE TRUST ESTATE AND DO NOT CREATE NOR CONSTITUTE, NOW OR IN THE FUTURE, AN OBLIGATION OR DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS) OTHER THAN THE COMMISSION TO THE EXTENT PROVIDED IN THE INDENTURE; NOR SHALL THE SERIES 2011 BONDS CONSTITUTE THE GIVING, PLEDGING OR LOAN OF THE FAITH AND CREDIT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE, BUT SHALL BE PAYABLE SOLELY FROM THE TRUST ESTATE. THE ISSUANCE OF THE SERIES 2011 BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR ANY PUBLIC CORPORATION, PORT OR GOVERNMENTAL AGENCY EXISTING UNDER THE LAWS OF THE STATE (EXCLUDING THE BORROWERS TO THE EXTENT OF THEIR LIABILITIES UNDER THEIR RESPECTIVE LOAN AGREEMENTS). NONE OF THE OBLIGATIONS OF THE BORROWERS UNDER THEIR RESPECTIVE LOAN AGREEMENTS ARE SECURED BY A PLEDGE OF THEIR TAXING POWERS, IF ANY, AND NONE ARE PAYABLE FROM AD VALOREM TAXES. THE LOAN AGREEMENTS DO NOT REPRESENT JOINT LIABILITIES OF THE BORROWERS EXECUTING LOAN AGREEMENTS WITH THE COMMISSION, AND SHALL BE PAYABLE SOLELY AS PROVIDED IN SUCH LOAN AGREEMENTS.

#### **Basic Payments from State Transportation Trust Fund**

Pursuant to the respective Loan Agreements, each Borrower is required to pay to the Trustee, for the account of the Commission, among other payments, semiannual payments of principal and interest (“Basic Payments”) on each April 1 and October 1, or if such day is not a Business Day, the next preceding Business Day, (each, a “Loan Repayment Date”). Basic Payments received from all Borrowers shall be applied by the Trustee, together with investment earnings to the extent provided in the Indenture, to pay principal of and interest on the Bonds as the same become due and payable. Basic Payments are required to be paid by the Borrowers solely from moneys due the Borrowers from revenues derived from Motor Vehicle License



Taxes (as hereinafter defined) deposited annually to the State trust fund created pursuant to Section 206.46, Florida Statutes (the “State Transportation Trust Fund”) under the provisions of Section 320.20(4), Florida Statutes. See “Motor Vehicle License Taxes” below.

Under the respective Loan Agreements, each Borrower assigned to the Trustee, on behalf of the Commission, all its rights, title and interest in such moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, to repay the loan. Pursuant to that certain Second Master Agreement as Amended between the State’s Department of Transportation (the “Department” or the “Department of Transportation”) and the Commission (the “Master Agreement”) such moneys shall be transferred by the Department annually into an escrow account held by the State’s Department of Insurance, Division of Treasury (the “State Treasury”), on behalf of the Trustee, and be available to be drawn upon by the Trustee in order to pay the debt service on the Bonds as the same becomes due, See “The Master Agreement” below.

### **Motor Vehicle License Taxes**

There is levied in Florida pursuant to Chapter 320, Florida Statutes, an annual license tax for the operation of motor vehicles which must be paid to and collected by the State Department of Highway Safety and Motor Vehicles upon the registration or re-registration of automobiles, motorcycles, motor trucks and all other vehicles operated over the public highways and streets of Florida and propelled by power other than muscular power.

***Distribution.*** Under the provisions of Section 320.20, Florida Statutes, the revenue derived by the State from the registration of such motor vehicles, including any delinquent fees and excluding those revenues collected and distributed under the provisions of Section 320.081, Florida Statutes, relating to mobile homes and park trailers and to travel trailers and fifth-wheel trailers exceeding 35 feet in body length (collectively, the “Motor Vehicle License Taxes”), must be distributed monthly, as collected, as follows:

(1) The first proceeds, to the extent necessary to comply with the provisions of Section 18, Article XII of the State Constitution of 1885, as adopted by Section 9(d), Article XII of the State Constitution of 1968, as amended in 1972 (the “School Capital Outlay Amendment”), and Section 1010.57, Florida Statutes, must be deposited in the School District and Community College District Capital Outlay and Debt Service Fund (the “School Capital Outlay Fund”).

(2) Twenty-Five million dollars (\$25,000,000) per year of such revenues must be deposited in the State Transportation Trust Fund, with priority use assigned to completion of the interstate highway system. However, any excess funds may be utilized for general transportation purposes, consistent with the Department’s legislatively approved objectives.

(3) Notwithstanding any other provision of law except (1) and (2) above, on July 1, 1996, and annually thereafter, fifteen million dollars (\$15,000,000) shall be deposited in the State Transportation Trust Fund solely for purposes of funding the Florida Seaport Transportation and Economic Development Program as provided for in Chapter 311, Florida Statutes. Such revenues are to be distributed on a 50-50 matching basis to any port listed in

Section 311.09(1), Florida Statutes, to be used for funding projects as described in Section 311.07(3)(b), Florida Statutes. Such revenues are not pledged as a trust for the payment of the Bonds; rather, such revenues are pledged as a trust for the payment of principal and interest on the Florida Ports Financing Commission Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds"), which were originally issued in an aggregate principal amount of \$222,320,000, of which \$161,380,000 aggregate principal .

(4) Notwithstanding any other provision of law except (1), (2), and (3) above, on July 1, 1999 and annually thereafter, ten million dollars (\$10,000,000) shall be deposited in the State Transportation Trust Fund solely for the purposes of funding the Florida Seaport Transportation and Economic Development Program as provided in Chapter 311, Florida Statutes, and for funding seaport intermodal access projects of statewide significance as provided in Section 341.053, Florida Statutes. Such revenues shall be distributed to any port listed in Section 311.09(1), Florida Statutes, to be used for funding projects as follows:

(a) For any seaport intermodal access projects that are identified in the 1997-1998 Tentative Work Program of the Department of Transportation, up to the amounts needed to offset the funding requirements of Section 320.20, Florida Statutes;

(b) For seaport intermodal access projects as described in Section 341.053(5), Florida Statutes, that are identified in the 5-year Florida Seaport Mission Plan as provided in Section 311.09(3), Florida Statutes. Funding for such projects shall be on a matching basis as mutually determined by the Florida Seaport Transportation and Economic Development Council and the Department, provided a minimum of 25 percent of total project funds shall come from any Port funds, local funds, private funds, or specifically earmarked federal funds;

(c) On a 50-50 matching basis for projects as described in Section 311.07(3)(b), Florida Statutes; or

(d) For seaport intermodal access projects that involve the dredging or deepening of channels, turning basins, or harbors; or the rehabilitation of wharves, docks, or similar structures. Funding for such projects shall require a 25 percent match of the Funds received pursuant to Section 320.20(4), Florida Statutes. Matching funds shall come from any Port funds, federal funds, local funds, or private funds.

(5) As permitted by Section 320.20(4), Florida Statutes, such revenues may be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds and other forms of indebtedness issued by an individual Port or appropriate local government having jurisdiction thereof, or collectively by interlocal agreement among any of the ports, such as through the Commission. The revenues available under Subsection (4) of Section 320.20, Florida Statutes may not be pledged to the payment of any bonds other than the Series 1996 Bonds and the Series 1999 Bonds, currently Outstanding; provided, however, such revenues may be pledged to secure payment of refunding bonds to refinance the Series 1996 Bonds and the Series 1999 Bonds. Section 320.20(4), Florida Statutes, also provides that the issuance of refunding bonds secured by such revenues, such as the Series 2011 Bonds, may not be issued

with a final maturity later than the final maturity of the Series 1999 Bonds to be refunded or which provides for a higher debt service in any year than is currently payable on such bonds.

(6) Subject to certain exceptions provided in Section 320.20(5) (c), Florida Statutes, the remainder of such revenues must be deposited in the State Transportation Trust Fund.

***School Capital Outlay Amendment.*** As set forth in clause (1) above, the first proceeds of the revenues derived from the Motor Vehicle License Taxes must be deposited monthly in the School Capital Outlay Fund to the extent necessary to comply with the provisions of the School Capital Outlay Amendment. Such revenue must be distributed annually among the school districts and community college districts in Florida in the ratio of the number of instruction units in each school district or community college district in each year computed as follows: the amount of the first revenues derived from the Motor Vehicle License Taxes to be so set aside in each year and distributed shall be an amount equal in the aggregate to the product of six hundred dollars (\$600) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1967-68, plus an amount equal in the aggregate to the product of eight hundred dollars (\$800) multiplied by the total number of instruction units in all the school districts of Florida for the school fiscal year 1972-73 and for each school fiscal year thereafter which is in excess of the total number of such instruction units in all the school districts of Florida for the school fiscal year 1967-68, such excess units being designated "growth units." The amount of the first revenues derived from the Motor Vehicle License Taxes to be so set aside in each year and distributed shall additionally be an amount equal in the aggregate to the product of four hundred dollars (\$400) multiplied by the total number of instruction units in all community college districts of Florida. The number of instruction units in each school district or community college district in each year for the purposes of the School Capital Outlay Amendment shall be the greater of (1) the number of instruction units in each school district for the school fiscal year 1967-68 or community college district for the school fiscal year 1968-69 computed in the manner theretofore provided by general law, or (2) the number of instruction units in such school district, including growth units, or community college district for the school fiscal year computed in the manner theretofore or thereafter provided by general law and approved by the State Board of Education (the "State Board"), or (3) the number of instruction units in each school district, including growth units, or community college district on behalf of which the State Board has issued bonds or motor vehicle tax anticipation certificates under the School Capital Outlay Amendment which will produce sufficient revenues under the School Capital Outlay Amendment to equal one and twelve-hundredths times (1.12x) the aggregate amount of principal of and interest on all bonds or motor vehicle tax anticipation certificates issued under the School Capital Outlay Amendment which will mature and become due in such year, computed in the manner theretofore or thereafter provided by general law and approved by the State Board.

Pursuant to the School Capital Outlay Amendment, the State Board shall limit the amount of bonds or motor vehicle tax anticipation certificates which can be issued on behalf of any school district or community college district to ninety percent (90%) of the amount which it determines can be serviced by the revenue accruing to the school district or community college district under the provisions of the School Capital Outlay Amendment, and such determination shall be conclusive. All such bonds or motor vehicle tax anticipation certificates shall be issued in the name of the State Board but shall be issued for and on behalf of the school board of the

school district or board of trustees of the community college district requesting the issuance thereof, and no election or approval of qualified electors shall be required for the issuance thereof.

There are currently outstanding \$742,000,000 in such bonds issued by the State Board. The State Board expects to issue additional bonds in the future pursuant to the School Capital Outlay Amendment.

***Historical and Projected Collections.*** Set forth below is the historical (fiscal years 2001-2010) and projected (fiscal years 2011-2015) collections of revenues derived from Motor Vehicle License Taxes as well as the distribution thereof pursuant to the School Capital Outlay Amendment, and pursuant to Section 320.20(3), Florida Statutes. The State of Florida's Fiscal Year begins on July 1<sup>st</sup> and ends on June 30<sup>th</sup> of the next calendar year. The projected collections of Motor Vehicle License Taxes are revised semi-annually by the State's Consensus Estimating Conference. The projections are based on the best information available when the estimates are made. Investors should be aware that there have been material differences between past projections and actual collections of Motor Vehicle License Taxes, and no assurance can be given that there will not continue to be material differences relating to such amounts.

**Historical And Projected Motor Vehicle License Tax Revenue  
and Distribution Pursuant to School Capital Outlay Amendment  
and Section 320.20(3) Bond Program**

<b>—————Historical—————</b>			
<b><u>Fiscal Year</u></b>	<b><u>Total Motor Vehicle License Tax Revenue<sup>(1)</sup></u></b>	<b><u>Distribution Amount to Education<sup>(1)</sup></u></b>	<b><u>Distribution Amount to Section 320.20(3) Bond Program</u></b>
2001	\$521,755,779	\$104,275,738	\$15,000,000
2002	513,803,545	108,626,638	15,000,000
2003	538,088,898	110,504,442	15,000,000
2004	563,739,007	114,286,138	15,000,000
2005	601,153,197	115,498,726	15,000,000
2006	636,081,900	118,862,918	15,000,000
2007	611,698,661	117,892,798 <sup>(2)</sup>	15,000,000
2008	639,720,870	118,810,342 <sup>(2)</sup>	15,000,000
2009	634,728,147	119,244,262	15,000,000
2010	730,443,605 <sup>(3)</sup>	119,600,000	15,000,000

**Projected**

<b><u>Fiscal Year</u></b>	<b><u>Total Motor Vehicle License Tax Revenue<sup>(4)</sup></u></b>	<b><u>Distribution Amount to Education<sup>(4)</sup></u></b>	<b><u>Distribution to Section 320.20(3) Bond Program</u></b>
2011	\$695,900,000	\$121,200,000	\$15,000,000
2012	721,500,000	121,200,000	15,000,000
2013	757,400,000	121,200,000	15,000,000
2014	792,300,000	121,200,000	15,000,000
2015	818,000,000	121,200,000	15,000,000

(1) Source: Department of Highway Safety and Motor Vehicles Revenue Reports 2001-2010.

(2) An over distribution occurred in 2007 of \$4 million, which was corrected in 2008.

(3) Rate increase effective September 1, 2009.

(4) Source: Revenue Estimating Conference Forecast December 2010.

### **The Master Agreement**

Under the provisions of the Master Agreement, the parties agreed that the \$10,000,000 annual appropriation from the State Transportation Trust Fund described by Section 320.20(4), Florida Statutes, represents “State appropriated funds” and shall be programmed by the Department annually as a budgeted item pursuant to Section 339.135, Florida Statutes, so long as Bonds are outstanding under the Indenture. The Department acknowledged in the Master Agreement that the Commission would make loans to the Ports, including the Loans to the Borrowers, and that as security for the Loans, each of the Borrowers would, pursuant to the respective Loan Agreements, assign all of its right, title and interest to the moneys allocated to said Borrower from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, to the Trustee, on behalf of the Commission, to pay the portion of the debt service on the Bonds corresponding to the debt service related to its respective Loan.

In order to provide security to the Owners of the Bonds, the Department agreed in the Master Agreement and established a “Florida Ports escrow account” (the “Florida Ports Escrow Account”) on behalf of the Trustee with the Department of Insurance, Division of Treasury, State of Florida as provided in an escrow agreement attached as Exhibit A to the Master Agreement (the “Florida Ports Escrow Account Agreement”).

The Master Agreement further provides that the payments required to be made thereunder may be amended or modified, from time to time, to reflect (a) the issuance of any additional obligations of the Commission payable by transfers from funds deposited in the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, (b) the purchase, redemption or refunding of outstanding Bonds and (c) any reassignment of all or any portion of any Loan pursuant to the respective Loan Agreements. The Master Agreement is deemed to have been entered into for the benefit of the holders of the Bonds and shall be enforceable by the Trustee, on behalf of the holders of the Bonds, and the Department agrees therein to do nothing to impair the rights or security of the holders of the Bonds. For further information relating to the Master Agreement, see “APPENDIX C - FORM OF MASTER AGREEMENT” attached hereto.

The Commission requires that the Ports pursuant to the respective Loan Agreements retain documentation sufficient to support: (a) Project data included in each Port's annual report and financial statements issued by an independent Certified Public Accountant (C.P.A.), and (b) a final Project audit as required by the Department provided that each Port shall retain Project audit documentation and invoicing information sufficient to prepare a final Project audit for inclusion in each Borrower's annual financial report and the Borrower's annual report and as required by the Department for its audit review.

In order to review Projects and meet Project certification requirements to the State of Florida, the Department employed PB Americas, Inc., a Seaport Construction Inspector/Fiscal Monitor (the "Project Monitor") for project monitoring and certification. The Department is responsible for the performance of services rendered by the Project Monitor. The cost for such services have been paid by the Commission from a one time payment which was set aside from the initial transfer of \$10,000,000 in 1999 as more fully described in "APPENDIX C - THE MASTER AGREEMENT" attached hereto. The Commission deposited such funds into a "Project Monitor escrow account" (the "Project Monitor Escrow Account") as provided in an escrow agreement attached as Exhibit B to the Master Agreement (the "Project Monitor Escrow Account Agreement") within ten (10) days of the Department's deposit of the initial \$10,000,000.

A final Project audit was performed by PB Americas, Inc., and a Final Summary Report dated June 30, 2009 was prepared for the Department (the "Final Project Report"). According to the Final Project Report all of the proceeds of the Loans were used by the Borrowers for eligible Project costs.

For a complete copy of the Master Agreement, including the Florida Ports Escrow Account Agreement and the Project Monitor Escrow Account Agreement, see "APPENDIX C - FORM OF THE MASTER AGREEMENT" attached hereto.

### **Additional Indebtedness**

The Commission, pursuant to the Indenture, has agreed that it will not issue obligations including Additional Bonds under the Indenture which are payable, directly or indirectly, from the State Transportation Trust Fund as provided in Section 320.20(4), Florida Statutes, unless an Authorized Representative of the Commission certifies to the Trustee that (a) no Event of Default has occurred and is ongoing and (b) the maximum annual amount of moneys available in the State Transportation Trust Fund to pay debt service on the Outstanding Bonds and any other obligations of the Commission and Ports which are payable principally from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, including the obligations or Additional Bonds proposed to be issued, will be sufficient for such purpose.

### **Refunding Obligations**

The Commission reserves the right under the Indenture to issue obligations for the purpose of refunding all or a portion of the Bonds; provided such refunding obligations result in no increase in debt service in each year in which the Bonds to be refunded shall be Outstanding.

## Ceiling on State Revenue Collections

An amendment to the State Constitution was approved by the voters of the State at the November 1994 general election. This amendment limits the amount of taxes, fees, licenses and charges for services imposed by the State Legislature and collected during any fiscal year to the amount of revenues allowed for the prior fiscal year, plus an adjustment for growth. Growth is defined as the amount equal to the average annual rate of growth in Florida personal income over the most recent twenty quarters times the State revenues allowed for the prior fiscal year. The revenues allowed for any fiscal year may be increased by a two-thirds vote of each house of the Legislature. The limit became effective starting with fiscal year 1995-1996. Excess revenues generated will initially be deposited in the budget stabilization fund until it is fully funded; any additional excess revenues will then be refunded to taxpayers.

The Motor Vehicle License Taxes are included in the “State revenues” limited by the above constitutional amendment.

## DEBT SERVICE REQUIREMENTS

The following table sets forth the annual debt service requirements for the Series 2011 Bonds.

<u>Period Ending</u> <u>September 30</u>	<u>Principal</u>	<u>Interest</u> <sup>(1)</sup>	<u>Total</u> <u>Debt Service</u>
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## ESTIMATED SOURCES AND USES OF FUNDS

It is expected that the proceeds of the Series 2011 Bonds, together with other available money under the Indenture, will be applied as follows:

Sources of Funds:	Series <u>2011A Bonds</u>	Series <u>2011B Bonds</u>	<u>Total</u>
Par Amount of Series 2011 Bonds	\$ _____	\$ _____	\$ _____
Less Net Original Issue Discount	_____	_____	_____
Other Moneys	_____	_____	_____
 Total Sources	 \$ _____	 \$ _____	 \$ _____
 Uses of Funds			
Deposit to Escrow Fund	\$ _____	\$ _____	\$ _____
Deposit to Cost of Issuance Fund [including insurance premium]	_____	_____	_____
Underwriters' Discount	_____	_____	_____
 Total Uses	 \$ _____	 \$ _____	 \$ _____

## [MUNICIPAL BOND INSURANCE]

[The following information has been furnished by \_\_\_\_\_ (the "Bond Insurer") for use in this Official Statement. Reference is made to APPENDIX G attached hereto for a specimen of the Bond Insurer's municipal bond insurance policy.]

## [TO COME]

## THE COMMISSION

### General

The Commission was created pursuant to the Interlocal Act through the Interlocal Agreement. The initial members of the Commission were the Canaveral Port Authority (Port Canaveral), Jacksonville Port Authority (Port of Jacksonville) and Panama City Port Authority (Port of Panama City), and the current members additionally include Broward County (Port Everglades), Miami-Dade County (Port of Miami), Hillsborough County Port District (Port of Tampa), Manatee County Port Authority (Port Manatee), Port of Palm Beach District (Port of Palm Beach), and St. Lucie County (Port of Ft. Pierce). Such membership does not include the Ocean Highway and Port Authority, Nassau County (Port of Fernandina), the Port St. Joe Port Authority (Port of Port St. Joe) or the City of Key West (Port of Key West), City of Pensacola (Port of Pensacola) or City of St. Petersburg (Port of St. Petersburg). Under the Interlocal Agreement, additional members may be admitted upon the affirmative vote of two-thirds of the representatives of the Commission members serving on the Commission. The Commission is a



separate legal entity and public body corporate and politic and a unit of local government of the State.

Under the Interlocal Agreement, the purpose of the Commission is to enable Ports to (a) finance or refinance projects permitted by the Act on a cooperative and cost-effective basis, (b) benefit from the economies of scale associated with large scale financings which may be unrealized if separate financings were undertaken and (c) maximize the benefits derived from the availability of moneys provided by the State for funding projects. The Commission is authorized to exercise all of the privileges, benefits, powers and terms of the Act in connection with the authorization, issuance and sale of bonds. The Commission shall exist for so long as any bonds of the Commission or obligations of any participating Port under the Program remain outstanding.

For a complete copy of the Interlocal Agreement, see "APPENDIX D - FORM OF THE INTERLOCAL AGREEMENT" attached hereto.

### **Representatives**

Pursuant to the Interlocal Agreement, each member of the Commission shall appoint one or more representatives to serve on the Commission; provided, however, that in no event shall any member have more than one (1) vote on the Commission and all representatives of a member must vote in a like manner or the vote of such member shall not be counted. Each year, the Commission elects a Chairman, Vice-Chairman and Secretary-Treasurer. The present officers and representatives of the Commission, and their occupations or affiliations, are as follows:

<u>Name</u>	<u>Occupation</u>	<u>Member</u>
Michael Poole	Chief Financial Officer	Jacksonville Port Authority
J. Stanley Payne	Chief Executive Officer	Canaveral Port Authority
Phillip C. Allen	Port Director	Port Everglades (Broward County)
Faye Outlaw	County Administrator	Fort Pierce (St. Lucie County)
David L. McDonald	Executive Director	Manatee County Port Authority
Khalid A. Salahuddin	Assistant Port Director	Miami (Miami-Dade County)
Manuel Almira	Executive Director	Port of Palm Beach District
Wayne Stubbs	Executive Director	Panama City Port Authority
Clyde Mathis	Port Director	Pensacola Port Authority
Ram Kancharla	Senior Director of Planning and Development	Hillsborough County Port District

[\_\_\_\_\_,] \_\_\_\_\_, Florida is counsel to the Commission. The address of the Commission is Florida Ports Financing Commission, 502 East Jefferson Street, Tallahassee, Florida 32301.

## **Prior Financing**

In addition to the Series 1999 Bonds, on December 19, 1996, the Commission issued pursuant to a separate indenture, \$222,320,000 in aggregate principal amount of its Revenue Bonds (State Transportation Trust Fund), Series 1996 (the "Series 1996 Bonds") for the purpose of enabling the Commission to make loans to certain participating ports in Florida or the political subdivisions of the State of Florida (the "State") which own and operate such ports (each, a "1996 Borrower" and collectively, the "1996 Borrowers") to finance, refinance or reimburse the cost of approved capital projects and to pay certain costs of issuing the Series 1996 Bonds. The Series 1996 Bonds are limited and special obligations of the Commission payable solely from payments of principal and interest ("1996 Basic Payments") by the 1996 Borrowers under loan agreements between the Commission and the 1996 Borrowers (the "1996 Loan Agreements"). 1996 Basic Payments are required to be paid by the 1996 Borrowers solely from moneys due the 1996 Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(3), Florida Statutes. The Commission intends to issue refunding bonds, pursuant to a separate indenture to refund all or a portion of the Series 1996 Bonds. Neither the Series 1996 Bonds nor the proposed refunding Bonds are or will be secured by the Trust Estate which is pledged to the repayment of the Bonds described herein.

## **The Program**

The Program involves the lending of proceeds of bonds to be issued by the Commission to participating Ports in order to finance, refinance or reimburse the cost of acquiring and constructing capital projects in accordance with the Act. In order to finance the Program, the Commission has authorized the issuance of its Revenue Bonds (State Transportation Trust Fund - Intermodal Program) to be payable from moneys in the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, of which the Bonds are the first series.

The Indenture provides for the appointment of a program administrator (the "Administrator") by the Commission to provide certain services to the Commission with respect to the Program and to act as the Commission's agent as set forth in a Program Administration Agreement dated as of September 1, 1999 entered into between the Commission and such Administrator (the "Program Administration Agreement"). The Commission has appointed the Florida Ports Council as the Administrator. See "The Program Administration Agreement" below.

Proceeds of the Series 1999 Bonds were used to finance, refinance or reimburse the cost of Projects meeting the requirements of the Act, the Indenture and the Original Loan Agreements. All of the funds were committed for such Projects as of the date of delivery of the Series 1999 Bonds; subject, however, to the right of the Administrator, with the prior approval of the Florida Seaport Transportation and Economic Development Council ("FSTED Council"), to reassign all or a portion of a Loan in accordance with the provisions of the Indenture and the respective Original Loan Agreement. The Original Loan Agreements were executed and delivered by each of the Borrowers at or before issuance and delivery of the Series 1999 Bonds in an aggregate principal amount equal to the aggregate principal amount of the Series 1999 Bonds. Each Borrower committed to provide a matching share for costs of its Projects funded with a Loan. See "THE LOAN AGREEMENT - - Matching Share" herein. The responsibility

for the use and operation of the Projects rests entirely with the respective Borrowers and not with the Commission or the Administrator or any officer or director of the Commission or the Administrator in such capacity.

### **The Program Administration Agreement**

Under the provisions of the Program Administration Agreement, the Administrator agrees to (1) provide general administrative services to the Commission, (2) perform all responsibilities required of it by the Indenture and the Loan Agreements, as well as perform, on behalf of the Commission, all responsibilities of the Commission under the Indenture and the Loan Agreements, except to the extent the Commission determines to perform such responsibilities itself, and (3) be responsible for working with Ports desiring to participate in the Program to develop documentation required to enter into the Loan Agreement and to make draws under such Loan Agreements, assimilating all information required to be delivered to the Commission, the Trustee or the Department in connection with the purposes of the Commission, working with and providing direction to investment bankers and the financial community to provide the lowest cost of funds practicable to Ports participating in the Program and performing any and all other services necessary to carry out the objectives of the Program. See “THE INDENTURE — The Administrator” herein.

### **Loans from Proceeds of the Series 1999 Bonds**

Hereinafter set forth is a brief description of the port facilities of each Borrower, its Projects and the amount of the Loan made to such Borrower.

***Broward County (Port Everglades).*** Located in Fort Lauderdale, Hollywood, and Dania Beach, and governed by the Broward County Board of County Commissioners, Broward County (Port Everglades) is one of the nation’s top container and cruise ports. It handles breakbulk and containerized cargo, as well as petroleum products, other liquid and bulk cargos, vehicles and equipment. The State’s largest operating foreign trade zone is at Broward County (Port Everglades). Its Projects included major upgrades to its security infrastructure, including gates at the major roadway entrances to the Port, a local area network for security communications and a security operations center, a closed circuit television security surveillance system, fencing and automated access control systems. Only the intermodal project that remained after the diversion of funds to the security enhancements was the feasibility study for the Intracoastal Waterway widening and navigational improvements. The final Loan amount to Broward County (Port Everglades) was \$18,236,715.65, which includes interest.

***Canaveral Port Authority (Port Canaveral).*** Located on the mid-Florida Atlantic coast, Canaveral Port Authority (Port Canaveral), governed by the Canaveral Port Authority (Port Canaveral), services both cargo and cruise markets and operates a foreign trade zone. Primary cargos are liquid (petroleum) and dry (cement and scrap steel) bulk products, and breakbulk, including lumber, salt, newsprint and citrus. Canaveral Port Authority (Port Canaveral) is one of the three busiest cruise ports in the world. Its Projects included construction of cargo and cruise access road improvements, including a new interchange, overpasses, and intermodal gates, entry security control to various buildings, the widening of the Port’s existing channel widener, and

turning basins and other intermodal infrastructure improvements. The final Loan amount to the Canaveral Port Authority (Port Canaveral) was \$21,659,822.37, which includes interest.

***Hillsborough County Port District (Port of Tampa).*** The Hillsborough County Port District (Port of Tampa), governed by the Hillsborough County Port District (Port of Tampa), handles bulk products such as phosphate rock, fertilizer products, petroleum, and coal as well as general cargo. Inbound and outbound traffic closely reflect its ties with the nearby phosphate industry. The Hillsborough County Port District (Port of Tampa) is also one of the State's major cruise ports. Its Projects included construction and reconstruction of berths, channel deepening, spoil island development and construction of a security building and entrance gates, acquisition of security lighting and a local area network and remote gate security system, and intermodal infrastructure improvements. The final Loan amount to the Hillsborough County Port District (Port of Tampa) was \$26,624,977.00, which includes interest.

***Jacksonville Port Authority (Port of Jacksonville).*** Located on Florida's north Atlantic coast, the Jacksonville Port Authority (Port of Jacksonville), governed by the Jacksonville Port Authority (Port of Jacksonville), serves as a southeastern focal point for the intermodal movement of commodities on the world market. Leading cargos include containerized and roll-on/roll-off general cargo, automobiles, breakbulk cargos and dry and liquid bulk products, including petroleum and phosphate. Its Projects included construction of rail and road improvements, wharf and crane rail rehabilitation, harbor deepening, and other intermodal facility improvements, including equipment acquisition. The final Loan amount to the Jacksonville Port Authority (Port of Jacksonville) was \$35,057,055.48, which includes interest.

***Manatee County Port Authority (Port Manatee).*** Located near the entrance to Tampa Bay, Manatee County Port Authority (Port Manatee) handles containerized, breakbulk and liquid and dry bulk cargoes, including juices, petroleum products, cement, and phosphate. Manatee County Port Authority (Port Manatee) also offers seasonal cruises to Mexico and the Western Caribbean. The members of its governing body, the Manatee County Port Authority (Port Manatee), also serve as the Board of County Commissioners of Manatee County. Its Projects included construction of access improvements, new security access control, lighting and fencing, new berths and adjacent channel deepening as well as other intermodal facility development. The final Loan amount to the Manatee County Port Authority (Port Manatee) was \$13,065,785.60, which includes interest.

***Miami-Dade County (Port of Miami).*** Miami-Dade County (Port of Miami) is the world's busiest cruise port, and one of the country's fastest growing container ports, serving markets in the Far East and Europe as well as Central and South America. In addition, the Miami-Dade County (Port of Miami), which is under the jurisdiction of the Board of County Commissioners of Miami-Dade County (Port of Miami), handles breakbulk and general cargo, automobiles and heavy equipment. Its Projects included construction of access road improvements, rail improvements, development of an intermodal logistics transfer facility, container storage yard improvements, harbor dredging, security enhancements such as a closed circuit television system, a cruise access control system and a cargo gateway complex, and other intermodal improvements. The final Loan amount to Miami-Dade County (Port of Miami) was \$32,604,208.09, which includes interest.

***Ocean Highway and Port Authority, Nassau County (Port of Fernandina).*** The Ocean Highway and Port Authority, Nassau County (Port of Fernandina), Florida's northernmost seaport, governed by the Ocean Highway and Port Authority, Nassau County, (Port of Fernandina) serves the Southeastern United States, including Florida's major metropolitan areas. It handles both breakbulk, predominantly forest product exports, and containerized cargo. The latter is moved via on-port rail connections. Its Projects included road and other intermodal improvements including repairs to the Port's middle pier ramp. The final Loan amount to the Ocean Highway and Port Authority, Nassau County (Port of Fernandina) was \$617,275.24, which includes interest.

***Port of Palm Beach District (Port of Palm Beach).*** The Port of Palm Beach District (Port of Palm Beach), located on Florida's southeast coast, is governed by an elected Board of Port Commissioners. The Port of Palm Beach District (Port of Palm Beach) serves as an important distribution center to the Caribbean and Central America. The Port of Palm Beach District (Port of Palm Beach) handles a diversified cargo base including container, breakbulk, liquid and dry bulk cargoes (including petroleum, molasses, sugar and cement), with cruises rounding out operations. Its Projects included construction of a bridge and approach roads, road and rail infrastructure improvements, a container marshalling yard, and main gate relocation and security improvements. The final Loan amount to the Port of Palm Beach District (Port of Palm Beach) was \$14,168,988.45, which includes interest.

***Panama City Port Authority (Port of Panama City).*** Located on the Gulf Coast in Florida's panhandle, the Panama City Port Authority (Port of Panama City) is an industrial port, serving the needs of regional manufacturers and other businesses. It handles breakbulk cargo plus some dry bulk products, with markets in the Mediterranean, Central and South America, Europe and the Far East. Its Projects included bulkhead rehabilitation and dredging and harbor deepening, fencing, and redesign of entrance to Port, construction of other intermodal infrastructure improvements. The final Loan amount to the Panama City Port Authority (Port of Panama City) was \$6,391,003.54, which includes interest.

***City of Pensacola (Port of Pensacola).*** Located in Florida's panhandle, this Port handles general cargo and liquid bulk products. The westernmost deepwater port in Florida, the City of Pensacola (Port of Pensacola) is currently governed by the City of Pensacola (Port of Pensacola). Its Projects include access, bulkhead, site, rail-facility and security improvements. The final Loan amount to the City of Pensacola (Port of Pensacola) was \$2,119,016.89, which includes interest.

## **FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT PROGRAM**

The Florida Seaport Transportation and Economic Development Program has been successful in achieving its State public policy objective of building seaport facilities in order to enhance economic growth and job creation. According to the Department and the Florida Ports Council in 2009, the maritime cargo activities of the Ports were responsible for generating 550,000 direct and indirect jobs and \$66 billion in total economic value, contributing \$1.7 billion in state and local tax revenues, of the \$56.9 billion in water borne international trade, \$27.6 billion were imports and \$29.2 billion were exports. Imports represented 48.6 percent of such

trade value, down from 49.7 percent in 2008, while exports represented 51.4 percent, up from 50.3 percent in 2008.

## **BONDHOLDERS' RISKS**

[Except to the extent payable pursuant to the Bond Insurance Policy,] [T]he ability of the Commission to pay debt service on the Series 2011 Bonds depends upon the receipt by the Commission of sufficient amounts from the State Transportation Trust Fund. The primary risk which could prevent the Commission from receiving such amounts is the collection by the State of insufficient revenues from Motor Vehicle License Taxes to satisfy hereinbefore described prior obligations under Section 320.20, Florida Statutes, and the payments due the Borrowers thereunder. The ability of the State to generate sufficient revenues from Motor Vehicle License Taxes is dependent upon a number of conditions, each of which is unpredictable.

In Section 320.20(4), Florida Statutes, the State covenants with the holders of the Bonds that it will not repeal or impair or amend such subsection in any manner which will materially and adversely affect such holders so long as the Bonds remain outstanding. Such covenant may not necessarily preclude the State Legislature from amending Section 320.20, Florida Statutes, in the future to create or enlarge prior distributions of the Motor Vehicle License Taxes. See "SECURITY FOR THE SERIES 2011 BONDS - Motor Vehicle Taxes - Historical and Projected Collections" herein.

[The long-term ratings on the Series 2011 Bonds are dependent in part on the financial strength of the Bond Insurer and its claim paying ability. The Bond Insurer's financial strength and claims paying ability are predicated upon a number of factors which could change over time. No assurance is given that the long-term ratings of the Bond Insurer and of the ratings on the Series 2011 Bonds insured by the Bond Insurer will not be subject to downgrade and such event could adversely affect the market price of the Series 2011 Bonds or the marketability (liquidity) for the Series 2011 Bonds. See "RATINGS" herein.]

[The obligations of the Bond Insurer are contractual obligations and in an event of default by the Bond Insurer, the remedies available may be limited by applicable bankruptcy law or state law related to insolvency of insurance companies.

Neither the Commission nor the Underwriters have made independent investigation into the claims paying ability of the Bond Insurer and no assurance or representation regarding the financial strength or projected financial strength of the Bond Insurer is given. Thus, when making an investment decision, potential investors should carefully consider the ability of the Commission to pay principal and interest on the Series 2011 Bonds and the claims paying ability of the Bond Insurer, particularly over the life of the investment.]

## **THE LOAN AGREEMENT**

### **General**

The Commission has made Loans to each of the Borrowers in order to either finance the Cost of Projects by such Borrowers, refinance existing indebtedness, or provide reimbursements for the Cost of Projects. See "THE COMMISSION--The Program" and "THE COMMISSION--

Loans from Proceeds of the Series 1999 Bonds” herein. The following is a description of certain provisions of the Original Loan Agreement executed by each of the Borrowers. This description is qualified in its entirety by reference to the form of the Loan Agreement, a copy of which is included in APPENDIX B attached hereto.

EACH BORROWER’S LIABILITY IS THE SEVERAL LIABILITY OF THAT BORROWER. SUCH LIABILITY SHALL BE EXPRESSLY LIMITED TO THE RESPECTIVE LOAN REPAYMENTS AND NO BORROWER HAS JOINT LIABILITY WITH ANY OTHER BORROWER OR THE COMMISSION FOR ANY OF THEIR RESPECTIVE LIABILITIES. NO BORROWER MAY BE DECLARED IN DEFAULT AS A RESULT OF ANY OTHER BORROWER’S FAILURE TO MEET THE TERMS OF ITS OBLIGATIONS UNDER ITS LOAN AGREEMENT.

## **Projects**

The Projects of each Borrower may be such capital improvements and facilities and such other governmental undertakings approved by the governing board of the Borrower and which have been approved by the FSTED Council as capital improvements which may be financed from the proceeds of the Bonds. A Borrower may, from time to time, modify or substitute Projects if it provides the Commission, the Administrator and the Trustee (a) a description of the modified or substituted Project, (b) a certificate of an Authorized Representative of the Borrower to the effect that the Project modification or substitution (i) will not adversely affect the Borrower’s ability to satisfy the matching share requirement pursuant to the Loan Agreement, (ii) has been approved by the FSTED Council, and (iii) may be financed pursuant to the Master Agreement, (c) an opinion of Bond Counsel to the effect that such Project modification or substitution (i) will not adversely affect the exclusion of interest on the Bonds from gross income for purposes of Federal income taxation and (ii) is permitted by the Act and the Original Loan Agreement, and (d) such other documentation as may be required by FSTED Council or the Commission.

## **Loan Repayments**

Each Borrower is required to make Loan Repayments consisting of Basic Payments and Additional Payments as described below.

**Basic Payments.** Each Borrower will repay the Loan in semiannual payments of principal and interest on each Loan Repayment Date as set forth in Exhibit D to the Loan Agreement. Such Basic Payments shall be paid solely from moneys in the State Transportation Trust Fund directly to the Trustee pursuant to Section 320.20(4), Florida Statutes, and in accordance with the terms of the Master Agreement.

**Additional Payments.** In addition to Basic Payments, each Borrower agrees to pay on demand of the Commission or the Trustee Additional Payments constituting (a) its Proportionate Share of certain ongoing Program fees, costs and expenses, (b) all reasonable fees and expenses of the Commission, the Administrator or the Trustee relating to the Loan Agreement, (c) its Proportionate Share of rebate obligations relating to the Bonds pursuant to Section 148(f) of the Code, and (d) any unallowable Costs (plus interest) required to be repaid by the Borrower under

the Loan Agreement. Additional Payments do not include amounts which will be used to pay debt service on the Bonds when due.

***Credits.*** On or prior to each Interest Payment Date, each Borrower shall be entitled to a credit against its obligation to pay Basic Payments and Additional Payments equal to its Proportionate Share of any earnings which were received during the prior Interest Period on the Revenue Fund and the Sinking Fund, in accordance with the Indenture. The Commission may in its discretion transfer investment earnings or moneys in the Revenue Fund and Sinking Fund to the Administrative Expense Fund or the Rebate Fund for which the Borrower shall receive credit for its Proportionate Share of such earnings on Additional Payments due under their respective Loan Agreement.

### **Prepayment and Defeasance**

A Loan may be prepaid in whole or in part by the Borrower on the dates, in the amounts and upon the conditions on which the Bonds are subject to optional redemption pursuant to the Indenture. However, each Loan may be defeased in the manner set forth in the Loan Agreement and the Indenture if the Borrower has made “provision for payment” therefor. Deposit of sufficient cash and/or Governmental Obligations in irrevocable trust with a banking institution or trust company for the sole benefit of the Commission with respect to which such cash and/or Governmental Obligations will be sufficient to make timely payment of the principal, interest and redemption premiums, if any, on the Outstanding Bonds shall be considered “provision for payment.”

### **Security for Payments**

Anything in a Loan Agreement to the contrary notwithstanding, it is understood and agreed that the ad valorem taxing power, if any, and the full faith and credit of the Borrower has not been pledged to secure the obligations of the Borrower thereunder. Neither the Commission, the Bondholders, [the Bond Insurer,] the Administrator nor the Trustee shall have any right to compel the exercise of any ad valorem taxing power of the Borrower to pay the obligations owing thereunder,

***Security for Basic Payments.*** All Basic Payments due under each Loan Agreement shall be paid solely from moneys due to the Borrower from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes. Each Borrower assigns all rights, title and interest to such moneys to the Trustee, on behalf of the Commission, to repay its Loan. The Borrower acknowledges that such moneys shall be transferred by the Department directly to the Trustee in order to pay the debt service on the Bonds as the same becomes due. The Borrower agrees not to incur or issue any obligations payable from moneys in the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, without the express consent of the Commission. No other funds or revenues are pledged by the Borrower for the payment of the Basic Payments.

***Security for Additional Payments.*** All Additional Payments due under each Loan Agreement shall be payable from legally available non-ad valorem revenues and moneys of the Borrower, but only to the extent such revenues and moneys are derived from the operation of its



port facilities and the delivery of port services (the “Available Revenues”). Until the Additional Payments are paid or deemed paid pursuant to the provisions of the Loan Agreement, the Borrower covenants to appropriate in its annual budget, by amendment if necessary, from Available Revenues in each Fiscal Year of the Borrower in which the Additional Payments become due and payable, amounts sufficient, together with other available moneys, to pay such Additional Payments as the same become due. Such covenant and agreement on the part of the Borrower to budget and appropriate such amounts of its Available Revenues shall be cumulative to the extent not paid, and shall continue until its Available Revenues in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Borrower, the Borrower does not covenant to maintain any services or programs now provided or maintained by the Borrower which generate Available Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of Available Revenues, nor does it preclude the Borrower from pledging in the future its Available Revenues, nor does it require the Borrower to levy and collect any particular Available Revenues, nor does it give the Commission, the Administrator, [the Bond Insurer,] the Trustee or the Bondholders a prior claim on the Available Revenues as opposed to claims of general creditors of the Borrower. Such covenant to appropriate Available Revenues is subject in all respects to the payment of obligations issued by the Borrower to finance or refinance port improvements or obligations secured by a pledge of such Available Revenues (including the payment of debt service on bonds and other debt instruments). In addition, such covenant shall be subordinate in all respects to the payment obligations, if any, of the Borrower relating to any debt instrument, including any such instrument secured by a covenant by the Borrower to budget and appropriate Available Revenues. However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated in the Loan Agreement shall have the effect of making available for the payment of such Additional Payments in the manner described therein Available Revenues and placing on the Borrower a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations with respect to Additional Payments under the Loan Agreement; subject, however, in all respects to any restrictions of Florida law relating to the budgeting and appropriation of such Available Revenues; and subject, further, to the payment of services and programs which are for essential public purpose affecting the health, welfare and safety of the inhabitants located within the jurisdiction of the Borrower or which are legally mandated by applicable law.

The aforementioned covenant to budget and appropriate Available Revenues of the Borrower does not secure the Basic Payments or payment of any principal or interest on the Loan or the Bonds.

### **Compliance with Master Agreement**

Each Borrower agrees to comply with all provisions of the Master Agreement relating to itself and its Projects. Each Borrower agrees to cooperate with the Commission, the Administrator and their agents in all matters relating to enforcement of the provisions of their respective Loan Agreement and the Master Agreement.

## **Terms of Loan Agreements**

The term of each Loan Agreement commenced on the date of execution of such Loan Agreement and will terminate after payment in full of all amounts due under such Loan Agreement, and all amounts not theretofore paid shall be due and payable as provided in such Loan Agreement; provided, however, that certain covenants and obligations set forth in the Loan Agreement (e.g. indemnification provisions and obligations to pay rebatable arbitrage) shall survive the termination of the Loan Agreement and the payment in full of principal and interest under the Loan Agreement.

## **Events of Default**

The following are “Events of Default” under the Loan Agreements:

(a) Failure by the Borrower to timely pay any Loan Repayment when due, so long as Bonds are outstanding, other than failure to make Basic Payments which shall be no fault of the Borrower;

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement, other than as referred to in (a) above, to be observed or performed under the Loan Agreement, for a period of 30 days, unless the Commission, [the Bond Insurer] and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Commission, [the Bond Insurer] or the Trustee, but cannot be cured within the applicable 30 day period, the Commission, [the Bond Insurer] and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the failure is corrected;

(c) Any warranty, representation or other statement by the Borrower or by an officer or agent of the Borrower contained in the Loan Agreement or in any instrument furnished in compliance with or in reference to the Loan Agreement is false or misleading in any material adverse respect when made;

(d) A petition is filed against the Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 60 days of such filing;

(e) The Borrower files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law;

(f) The Borrower admits insolvency or bankruptcy or its inability to pay its debts as they become due, or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation, a receiver, liquidator or trustee) of the Borrower or any of its

property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than 60 days; or

(g) Any material provision of the Loan Agreement shall at any time for any reason cease to be valid and binding on the Borrower, or shall be declared to be null and void, or the validity or enforceability of the Loan Agreement shall be contested by the Borrower or any governmental agency or authority, or if the Borrower shall deny any further liability or obligation under the Loan Agreement.

## **Remedies**

Whenever any Event of Default shall have happened and be continuing, the Commission, [the Bond Insurer] or the Trustee, in addition to any other remedies in the Loan Agreement or by law provided, have the right, at its or their option without any further demand or notice, but subject to the right of the Bond Insurer, if any, to direct the enforcement of remedies pursuant to the Indenture, to take such steps and exercise such remedies as provided in the Indenture and take whatever other action, at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due under the Loan Agreement or to enforce any other of its or their rights under the Loan Agreement.

## **Amendment of Loan Agreements**

***Amendments Not Requiring Bondholder Consent.*** The Commission and the Trustee may, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of any Loan Agreement as may be required (a) by the provisions of such Loan Agreement or to conform to the provisions of the Indenture, (b) to cure any ambiguity or inconsistency or formal defect or omission, (c) to add additional rights acquired in accordance with the provisions of such Loan Agreement, or (d) in connection with any other change therein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners of the Bonds.

***Amendments Requiring Consent.*** Except for amendments, changes or modifications provided for in the preceding paragraph, neither the Commission nor the Trustee may consent to any amendment, change or modification of any Loan Agreement without the mailing of notice and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and procured as provided in the Indenture. However, nothing contained in the Indenture will permit, or be construed as permitting, a reduction in the aggregate principal amount of Bonds the Owners of which are required to consent to any amendment, change or modification of a Loan Agreement, a reduction in, or a postponement of the payments under a Loan Agreement or any changes that affect the exclusion of interest on the Bonds from the gross income of the Owners thereof for purposes of Federal income taxation, without the consent of the Owners of all the Bonds then Outstanding.

Nothing contained in the preceding paragraph shall be construed to prevent the Trustee, with the consent of the Commission [and the Bond Insurer,] from settling a default under any Loan Agreement on such terms as the Trustee may determine to be in the best interests of the Owners of the Bonds,

[NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION TO THE CONTRARY, IF THE BOND INSURER HAS HONORED ITS OBLIGATIONS UNDER THE BOND INSURANCE POLICY, THE BOND INSURER SHALL BE CONSIDERED THE SOLE OWNER OF THE BONDS FOR PURPOSES OF CONSENTING TO AMENDMENTS TO THE LOAN AGREEMENTS; PROVIDED SUCH RIGHT DOES NOT APPLY TO AMENDMENTS REQUIRING THE CONSENT OF ALL OWNERS.]

## **THE INDENTURE**

The following is a description of certain provisions of the Indenture. This description is qualified in its entirety by reference to the form of the Indenture, a copy of which is included in APPENDIX A attached hereto.

### **Funds and Accounts**

The Indenture establishes (i) the Revenue Fund, (ii) the Administrative Expense Fund and therein the Administrator's Account and the Recurring Expense Account, (iii) the Sinking Fund and therein the Interest Account, the Principal Account and the Redemption Account, (iv) the Cost of Issuance Fund and (v) the Rebate Fund. The Trustee shall maintain separate Accounts for each Borrower within each of the Revenue Fund. Moneys in the Funds and Accounts (except for moneys in the Rebate Fund and the Administrative Expense Fund), until applied in accordance with the provisions of the Indenture, shall be subject to a lien and charge in favor of the Holders of the Bonds and for the further security of such Holders.

### **Flow of Funds**

The Trustee shall deposit, immediately upon receipt, all Loan Repayments received from a Borrower into such Borrower's Account in the Revenue Fund. Basic Payments received by the Trustee from the State Transportation Trust Fund shall be deposited to the Borrower's Accounts of the Revenue Fund in accordance with the requirements of Exhibit D to the Loan Agreements and the Master Agreement, as the same may be amended from time to time. The Trustee agrees to draw moneys from the Florida Ports Escrow Account established pursuant to the Master Agreement in the amounts provided therein. Such moneys are the Basic Payments to be made by the Borrowers and shall be transferred to the Revenue Fund as soon as they become available pursuant to the terms of the Master Agreement. Additional Payments in a Borrower's Account of the Revenue Fund representing such Borrower's Proportionate Share of obligations owing to the Rebate Fund shall be deposited as soon as practicable into such Fund. All other Additional Payments in each Borrower's Account of the Revenue Fund shall be deposited as soon as practicable into the Administrative Expense Fund. The moneys in the Accounts of the Revenue Fund of the Borrowers representing Basic Payments shall be maintained in such Accounts and deposited in the Interest Account and Principal Account as follows:

***Interest Account.*** On each Interest Payment Date, the Trustee shall transfer to the Interest Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all moneys on deposit in the Interest Account, shall be sufficient to pay the interest on all Outstanding Bonds due on such Interest Payment Date. Moneys in the Interest Account shall be used for the payment of interest on the Bonds when the same become

due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Interest Account at such times and in such amounts (a) to pay interest on the Bonds which has become due and for which insufficient moneys have been deposited, and (b) to pay interest on Bonds which shall be purchased or redeemed in accordance with the terms of the Indenture to the extent insufficient moneys are on deposit therein.

***Principal Account.*** On each Principal Payment Date, the Trustee shall transfer to the Principal Account of the Sinking Fund from Basic Payments in the Accounts of the Revenue Fund an amount which, together with all amounts on deposit in the Principal Account, shall be sufficient to pay the principal or Amortization Installment due on such Principal Payment Date. Moneys in the Principal Account shall be used for the payment of principal of or Amortization Installment on the Bonds when the same become due and payable. Moneys in the Revenue Fund representing Basic Payments shall also be transferred to the Principal Account at such times and in such amounts (a) to pay the principal of the Bonds which has become due and for which insufficient moneys have been deposited, and (b) to pay principal on Bonds which shall be purchased or redeemed in accordance with the terms of the Indenture, Amounts accumulated in the Principal Account with respect to any Amortization Installment (together with amounts accumulated in the Interest Account with respect to interest, if any, on the Term Bonds for which such Amortization Installment was established) shall be applied by the Trustee, at the direction of the Commission, on or prior to the 35th day preceding the due date of such Amortization Installment (i) to the purchase of Term Bonds of the maturity for which such Amortization Installment was established at a price not exceeding par plus accrued interest, or (ii) to the redemption at the applicable Redemption Prices of such Term Bonds, if then redeemable by their terms at a price not exceeding par plus accrued interest. The applicable Redemption Price (or principal amount of maturing Term Bonds) of any Term Bonds so purchased or redeemed shall be deemed to constitute part of the Principal Account or Redemption Account until such Amortization Installment date, for the purposes of calculating the amount of such Account. As soon as practicable after the 35th day preceding the due date of any Amortization Installment, the Trustee shall proceed to call for redemption on such due date, by causing notice to be given as provided in the Indenture, Term Bonds of the maturity for which such Amortization Installment was established (except in the case of Term Bonds maturing on an Amortization Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Amortization Installment. The Trustee shall withdraw out of the Principal Account and the Interest Account on or before the day preceding such redemption date (or maturity date), the amount required for the redemption (or for the payment of such Term Bonds then maturing), and such amount shall be applied by the Trustee to such redemption (or payment). All expenses in connection with the purchase or redemption of Term Bonds shall be paid by the Trustee from the Administrative Expense Fund.

## **The Administrator**

The Florida Ports Council is the Administrator for the Program. If such Administrator shall be removed, the Commission shall by resolution appoint as Administrator any person to act in such capacity as it deems appropriate.

The Administrator has agreed in the Program Administration Agreement to all the duties and obligations of the Administrator in the Indenture and the Program Administration

Agreement, such agreement to be enforceable by the Trustee. The Program Administration Agreement provides that any of the duties, rights, obligations and responsibilities of the Commission provided under the Indenture and in the Loan Agreements are assigned by the Commission to the Administrator, except to the extent that the Commission determines to perform such duties itself.

The Commission appoints the Administrator to provide various services with respect to the Loans and the Program and the Administrator agrees to provide such services pursuant to the terms of the Indenture and of the Program Administration Agreement.

Under the provisions of the Program Administration Agreement, the Florida Seaports Council, a Florida not-for-profit corporation d/b/a the Florida Ports Council (the "Florida Ports Council"), is serving as the Administrator under the Indenture. In addition to serving as Administrator under the Program Administration Agreement and the Indenture, the Florida Ports Council provides administrative support services to the FSTED Council.

### **Investment of Moneys**

All moneys in any of the Funds and Accounts shall be invested by the Trustee in Investment Securities. All Investment Securities shall be acquired (subject to the limitations set forth in the Indenture) at the direction of the Commission.

Investment Securities acquired as an investment of moneys in any Fund or Account shall be credited to such Fund or Account. All interest, profits and other income earned From investment of all moneys in any Fund or Account shall be retained in such Fund or Account; provided, however, investment earnings on moneys in the Revenue Fund and Sinking Fund may be transferred, at the direction of the Commission, to the Administrative Expense Fund or Rebate Fund.

In determining the amount in any Fund or Account, all Investment Securities credited to such Fund or Account shall be valued at cost.

### **Additional Bonds**

The Commission, pursuant to the Indenture, has agreed that is will not issue obligations including Additional Bonds under the Indenture which are payable, directly or indirectly, from the State Transportation Trust Fund as provided in Section 320.20(4), Florida Statutes, unless an Authorized Representative of the Commission certifies to the Trustee that (a) no Event of Default has occurred and is ongoing and (b) the maximum annual amount of moneys available in the State Transportation Trust Fund to pay debt service on the Outstanding Bonds and any other obligations of the Commission and Ports which are payable principally from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, including the obligations or Additional Bonds proposed to be issued, will be sufficient for such purpose.

### **Defeasance and Discharge of Lien of Indenture**

If the Commission pays or causes to be paid to the Owner of any Bond the principal of and interest due and to become due thereon, or any portion of such Bond in the principal amount

of \$5,000 or any integral multiple thereof, such Bond or portion thereof shall cease to be entitled to any lien, benefit or security under the Indenture. If the Commission pays or causes to be paid to the Owners of all Bonds secured by the Indenture the principal of and interest due and payable, and thereafter to become due and payable as set forth therein and shall pay or cause to be paid all other sums of money payable under the Indenture by the Commission, then the right, title and interest of the Trustee and the Bondholders in the Trust Estate shall cease, terminate and become void. In such event, the Trustee shall assign, transfer and turn over to the Commission the Trust Estate.

Any Bond or portion thereof shall be deemed to be paid within the meaning of the preceding paragraph when (1) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such date is by reason of maturity or upon redemption as provided in the Indenture), either (a) has been made or has been caused to be made in accordance with the terms of the Indenture, or (b) has been provided for by irrevocably depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment (i) moneys sufficient to make such payment, and/or (ii) Governmental Obligations maturing as to principal and interest in such amounts and at such time as will insure the availability of sufficient moneys to make such payment, and (2) all necessary and proper fees, compensation and expenses of the Trustee and the Commission pertaining to such Bonds with respect to which such deposit is made have been paid or payment thereof has been provided for to the satisfaction of the Trustee. The sufficiency of moneys and Governmental Obligations deposited with the Trustee will be verified by a nationally recognized Accountant. At such time as a Bond is deemed to be paid, as aforesaid, it will no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of payment from such moneys or Governmental Obligations.

## **Defaults and Remedies**

If any of the following events occurs with respect to the Bonds it shall constitute an “Event of Default” under the Indenture:

(1) Default in the payment of the principal of or interest on any Bond after the principal or interest has become due, whether at maturity or upon call for redemption;

(2) Default in the performance or observance of any covenant, agreement or condition on the part of the Commission contained in the Indenture or in the Bonds (other than defaults mentioned in subparagraphs (1) or (3)) and failure to remedy the same after notice of such default has been given in accordance with the provisions of the Indenture; or

(3) If the Commission shall file a petition seeking a composition of indebtedness under the federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State, or the commission by the Commission of any act of bankruptcy, or adjudication of the Commission as a bankrupt, or assignment by the Commission for the benefit of its creditors or the approval by a court of competent jurisdiction of a petition applicable to the Commission in any proceeding for its reorganization instituted under federal bankruptcy laws, or under any other applicable law or statute of the United States of America or of the State.

In determining whether a payment default has occurred as described in (1) above or whether a payment on the Bonds has been made under the Indenture, no effect shall be given to payments made under the Bond Insurance Policy.

Upon the occurrence of any such Event of Default under the Indenture, the Trustee will have the following rights and remedies:

(a) The Trustee may, and in the case of an Event of Default under subparagraph (3) above, shall, pursue any available remedy at law or in equity or by statute, including the federal bankruptcy laws or other applicable law or statute of the United States of America or of the State, to enforce the payment of the principal of and interest on the Bonds then Outstanding, including enforcement of any rights of the Commission or the Trustee under the Loan Agreements.

(b) The Trustee may by action or suit in equity require the Commission to account as if it were the trustee of an express trust for the Owners of the Bonds and may then take such action with respect to the related Loan Agreements as the Trustee deems necessary or appropriate and in the best interest of the Bondholders, subject to the terms of the Loan Agreements.

(c) Upon the filing of a suit or other commencement of judicial proceeding to enforce any rights of the Trustee and of the Bondholders under the Indenture, the Trustee will be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the Revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

(d) The Trustee shall give written notice of any Event of Default to the Commission and the Bond Insurer, if any, as promptly as practicable after the occurrence of an Event of Default becomes known to the Trustee.

If an Event of Default shall have occurred, and if requested so to do by [the Bond Insurer or by] the Owners of a majority in aggregate principal amount of Outstanding Bonds affected thereby and indemnified as provided in the Indenture, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders. No acceleration of the Bonds may occur under the Indenture.

No right or remedy conferred upon or reserved to the Trustee by the Indenture (or to the Bondholders [or the Bond Insurer]) is intended to be exclusive of any other right or remedy, but each and every right or remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders under the Indenture or existing at law or in equity or by statute. The assertion or employment of any right or remedy shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

No delay or omission in exercising any right or remedy accruing upon any default or Event of Default shall impair any such right or remedy or shall be construed to be a waiver of such default or Event of Default or acquiescence therein; and every such right or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any default



or Event of Default, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon. [No waiver of any default or Event of Default under the Indenture by the Trustee shall be effective without the approval of the Bond Insurer.]

### **Application of Moneys Upon Event of Default**

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture upon the occurrence of an Event of Default, including by virtue of actions taken under provisions of any Loan Agreement, shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees (including reasonable Trustee's fees), expenses, liabilities and advances payable to, incurred or made by the Trustee (including reasonable fees and disbursements of its counsel), be applied, along with any other moneys available for such purposes, as follows:

(a) Unless the principal of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST--To the payment to the persons entitled to unpaid installments of interest due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND--To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due at stated maturity or pursuant to a call for redemption (other than such Bonds called for redemption for the payment of which moneys are held pursuant to the other provisions of the Indenture), in the order of their due dates and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

THIRD--To payment to the persons entitled thereto of all administrative expenses payable pursuant to the Indenture; and

FOURTH--To be held as provided in the Indenture for the payment to the persons entitled thereto as the same shall become due of the amounts payable pursuant to the Indenture (including principal of such Bonds due upon call for redemption) and, if the amount available shall not be sufficient to pay in full amounts due on any particular date, payment shall be made ratably according to the priorities set forth in subparagraphs FIRST, SECOND and THIRD above,

(b) If the principal of all the Bonds shall have become due, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid upon the Bonds and administrative expenses payable pursuant to the Indenture, with Bond principal and interest to be paid first, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, and

with the administrative expenses to be paid second to the persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the above provisions, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal and past-due interest to be paid on such date shall cease to accrue. Defaulted interest on a Bond shall be payable to the person in whose name such Bond is registered at the close of business on a Special Record Date for the payment of defaulted interest established by notice mailed by the Trustee to the registered Owners of Bonds not more than 15 days preceding such Special Record Date. Such notice shall be mailed to the person in whose name the Bonds are registered at the close of business on the fifth day preceding the date of mailing. The Trustee shall not be required to make payment of principal of any Bond to the Owner of such Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of and interest on all Bonds have been paid under the above provisions and all expenses and charges of the Trustee [and the Bond Insurer] have been paid, any balance remaining in the Funds and Accounts shall be transferred to the Commission.

### **Waivers of Event of Default**

The Trustee may, at its discretion, waive any Event of Default (other than an Event of Default described under subparagraph (3) of the caption "THE INDENTURE- Defaults and Remedies" herein) and its consequences, and will do so upon the written request of the Bond Insurer, if any, or the registered owners of (1) more than two-thirds in aggregate principal amount of all Outstanding Bonds affected thereby [(with the consent of the Bond Insurer unless the Bond Insurer is in default under the Bond Insurance Policy)] in the case of default in the payment of principal or interest, or (2) more than a majority in aggregate principal amount of all Outstanding Bonds affected thereby [(with the consent of the Bond Insurer unless the Bond Insurer is in default under the Bond Insurance Policy)] in the case of any other default; provided, however, that there shall not be waived (a) any default in the payment of the principal of any such Outstanding Bond at the date of maturity specified therein, or (b) any default in the payment when due of the interest on any such Outstanding Bond, unless prior to such waiver all arrears of interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then, and in every such case, the Commission, the Trustee, [the Bond Insurer] and the Bondholders shall be restored to their former positions and rights under the Indenture but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. No such waiver shall affect the rights of third parties to payment of amounts provided for in the Indenture.

## **Rights and Remedies of Bondholders**

No Owner of any Bond or the Bond Insurer, if any, will have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy under the Indenture unless (1) a default has occurred, (2) the default has become an Event of Default and the Owners of not less than a majority in aggregate principal amount of Outstanding Bonds affected thereby[, with the consent of the Bond Insurer, or the Bond Insurer] shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers granted in the Indenture or to institute such action, suit or proceeding in its own name, (3) [the Bond Insurer or] the Owners of such Bonds have offered to the Trustee indemnity as provided in the Indenture, and (4) the Trustee for 60 days after receipt of such request and indemnification fails or refuses to exercise the rights and remedies granted in the Indenture, or to institute such action, suit or proceeding in its own name; and such request and offer of indemnity are, in every case at the option of the Trustee, conditions precedent to the execution of the powers and trusts of the Indenture, and to any action or cause of action for the enforcement of the Indenture, or for the appointment of a receiver or for any other remedy thereunder; it being understood and intended that no one or more Owners of the Bonds [or the Bond Insurer] shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of the Indenture by its, his or their action or to enforce any right under the Indenture except in the manner provided in the Indenture, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner provided in the Indenture and for the equal and ratable benefit of the Owners of all Outstanding Bonds affected thereby. However, nothing contained in the Indenture will affect or impair the right of any Owner of Bonds to enforce the payment of the principal of or interest on any Bond at and after the maturity or redemption date thereof or the obligation of the Commission to pay the principal of and interest on each of the Bonds to the respective Owners thereof at the time and place and from the source and in the manner in the Indenture and in the Bonds expressed,

## **Bond Insurer Deemed Bondowner; Rights of Bond Insurer**

[Notwithstanding any provisions of the Indenture to the contrary, the Bond Insurer shall at all times, unless it is in default under the Bond Insurance Policy, be deemed the exclusive Owner of all Bonds for all purposes except for the purpose of payment of the principal of and premium, if any, and interest on the Bonds prior to the payment by the Bond Insurer of the principal of and interest on the Bonds. THE BOND INSURER SHALL HAVE THE EXCLUSIVE RIGHT TO DIRECT ANY ACTION OR REMEDY TO BE UNDERTAKEN BY THE TRUSTEE, BY THE OWNERS OR BY ANY OTHER PARTY PURSUANT TO THE INDENTURE AND THE LOAN AGREEMENTS, AND NO EVENT OF DEFAULT SHALL BE WAIVED, WITHOUT THE BOND INSURER'S CONSENT. Provided, however, that a Bond Insurer will have no rights as a Bondholder under the Indenture if it is in default under its Bond Insurance Policy or its ratings for insured obligations have dropped below \_\_\_\_ by Moody's or \_\_\_\_ by S&P.]

## Supplemental Indenture

***Not Requiring Bondholder Consent.*** The Commission and the Trustee may, without the consent of or notice to any of the Bondholders[, but only with notice to the Bond Insurer,] enter into any indenture or indentures supplemental to the Indenture for any one or more of the following purposes:

- (1) To cure or correct any ambiguity or omission or formal defect in the Indenture;
- (2) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or the Trustee, or to make any change which, in the judgment of the Trustee, is not to the material prejudice of the Bondholders;
- (3) To subject to the Indenture additional revenues, properties or collateral;
- (4) To make such changes as shall be necessary to issue refunding obligations pursuant to the Indenture; or
- (5) To modify, amend or supplement the Indenture or any indenture supplemental thereto in such manner as to permit its qualification under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to the Indenture or any indenture supplemental thereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

Amendments to the Indenture resulting from reassignment of Loans or modification of Projects as provided in the Indenture shall not require the consent of [either the Bond Insurer or] the Owners of the Bonds.

***Requiring Consent.*** Exclusive of Supplemental Indentures described above under “Supplemental Indentures Not Requiring Bondholder Consent,” the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding which are affected, will have the right, from time to time, to consent to and approve the execution by the Commission and the Trustee of any Supplemental Indenture or Indentures deemed necessary and desirable by the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular manner, any of the terms or provisions contained in the Indenture or in any Supplemental Indenture; provided, however, that no Supplemental Indenture will permit, or be construed as permitting (1) without the consent of the Owners of all then Outstanding Bonds affected thereby, (a) an extension of the maturity date of the principal of, or the due date of interest on, any Bond, or (b) a reduction in the principal amount of any Bond or the rate of interest thereon, or (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds; or (d) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, or (e) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding, or (2) any modification of the trusts, powers, rights,

obligations, duties, remedies, immunities and privileges of the Trustee, without the written consent of the Trustee. [Any Supplemental Indenture entered into pursuant to the provisions of this paragraph shall require the consent of the Bond Insurer if such Bond Insurer has satisfied its obligations under the Bond Insurance Policy.]

[NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION TO THE CONTRARY, IF THE BOND INSURER HAS HONORED ITS OBLIGATIONS UNDER THE BOND INSURANCE POLICY, THE COMMISSION AND THE TRUSTEE MAY ENTER INTO ONE OR MORE SUPPLEMENTAL INDENTURES WHICH AMENDS ALL OR ANY PART OF THE INDENTURE WITH THE WRITTEN CONSENT OF THE BOND INSURER. THE CONSENT OF THE OWNERS OF THE BONDS SHALL NOT BE NECESSARY. THE FOREGOING DOES NOT APPLY TO AMENDMENTS TO THE TAX COVENANTS CONTAINED IN THE INDENTURE NOR MAY SUCH AMENDMENTS PERMIT MODIFICATIONS DESCRIBED IN (1) OR (2) ABOVE.]

### **CONTINUING DISCLOSURE**

The Commission and the Department are each agreeing, under separate certificates to be executed for the benefit of the Bondholders at the time of issuance of the Series 2011 Bonds, to provide certain financial information and operating data in each year (each an “Annual Report”), and to provide notices of the occurrence of certain enumerated events, if material. Such agreements shall only apply so long as the Series 2011 Bonds remain outstanding under the Indenture. The agreements shall also cease upon the termination of the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 (the “Rule”) by legislative, judicial or administrative action. The Commission and the Department will each provide, or cause a dissemination agent to provide, its Annual Report to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System (“EMMA”) described in the Continuing Disclosure Certificates attached hereto as APPENDIX E. The notices of material events will be provided by the Commission or the Department, or a dissemination agent, as applicable, to EMMA. The Commission has appointed the Florida Ports Council as its initial dissemination agent. The specific nature of the information to be contained in each Annual Report and the notices of material events are described in “APPENDIX E-- FORM OF THE CONTINUING DISCLOSURE CERTIFICATES” attached hereto. These agreements have been made in order to assist the Underwriters in complying with the Rule.

With respect to the Series 2011 Bonds, no party other than the Commission and the Department is obligated to provide, nor is expected to provide, any continuing disclosure information with respect to the Rule.

The Commission and the Department are in compliance and have been in compliance with its disclosure undertakings within the last five years.

### **FINANCIAL STATEMENTS**

The audited financial statements of the Commission for the fiscal year ended September 30, [\_\_\_\_], appended hereto as APPENDIX H-1, have been audited by [\_\_\_\_\_] C.P.A., P.A.] Such audited financial statements of

the Commission, including the auditor's report thereon, have been included in this Official Statement as public documents and the consent of the auditors was not requested. The auditors have not performed any services relating thereto, and are therefore not associated with the issuance of the Bonds.

The audited financial statements of the State of Florida for the fiscal year ended June 30, [\_\_\_\_], appended hereto as APPENDIX H-2, have been audited by the Auditor General of the State of Florida. Such audited financial statements of the State, including the auditor's report thereon, have been included in this Official Statement as public documents and the consent of the auditors was not requested. The auditors have not performed any services relating thereto, and are therefore not associated with the issuance of the Bonds.

The Series 2011 Bonds are obligations of the Commission payable solely from moneys due the Borrowers from the State Transportation Trust Fund pursuant to Section 320.20(4), Florida Statutes, and payable to the Commission as described herein, and no other revenues or assets of the Commission or the State reflected in such financial statements may be used to pay the principal of or interest on the Series 2011 Bonds.

## **ENFORCEABILITY OF REMEDIES**

The remedies available to the Trustee or the Commission or the Owners of the Series 2011 Bonds upon an Event of Default under the Indenture or the Loan Agreements [or upon nonpayment by the Bond Insurer under its Bond Insurance Policy] are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including specifically Title ii of the United States Code (the Federal Bankruptcy Code), the remedies provided in the Indenture and the Loan Agreements may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2011 Bonds and the delivery of the Loan Agreements will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the rights of creditors generally.

## **TAX MATTERS**

### **General**

The Internal Revenue Code of 1986, as amended (the "Code"), contains a number of requirements and restrictions which apply to the Series 2011 Bonds, including investment restrictions, a requirement of periodic payments of arbitrage profits to the Treasury of the United States of America, requirements regarding the timely and proper use of bond proceeds and the facilities financed therewith, and certain other matters. The Commission has covenanted to comply with all requirements of the Code that must be satisfied in order for the interest on the Series 2011 Bonds to be excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements could cause interest on the Series 2011 Bonds to be included in gross income retroactive to the date of issuance of the Series 2011 Bonds.

Subject to the condition that the Commission will comply with the pertinent requirements of the Code, in the opinion of Bond Counsel, under present law, (1) interest on the Series 2011

Bonds is not included in the gross income of the holders thereof for federal income tax purposes, except during any period while a Series 2011B Bond is held by a “substantial user” of the facilities refinanced by the Series 2011B Bonds or a “related person” within the meaning of Section 147(a) of the Code, (2) interest on the Series 2011A Bonds will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; provided, however, with respect to certain corporations, interest on the Series 2011A Bonds is taken into account in determining adjusted current earnings for purposes of the alternative minimum tax and (3) interest on the Series 2011B Bonds is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations.

As to questions of fact material to the opinion of Bond Counsel, Bond Counsel will rely upon representations and covenants made on behalf of the Commission in the Indenture, other finance documents, certificates of appropriate officers of the Commission and certificates of public officials (including certifications as to the use of Series 2011 Bond proceeds and of the property refinanced thereby), without undertaking to verify the same by independent investigation.

The Code contains numerous provisions which could affect the economic value of the Series 2011 Bonds to certain Series 2011 Bondholders. Prospective Series 2011 Bondholders, however, should consult their own tax advisors with respect to the impact of such provisions on their own tax situations.

The Series 2011 Bonds will not be “qualified tax-exempt obligations” within the meaning of Section 265(b) of the Code. Interest or indebtedness incurred or continued to purchase or carry the Series 2011 Bonds, or in the case of banks and certain other financial institutions, interest expense allocated to interest on the Series 2011 Bonds, will not be deductible for federal income tax purposes.

### **Internal Revenue Code of 1986**

The Code contains a number of provisions that apply to the Series 2011 Bonds, including, among other things, restrictions relating to the use or investment of the proceeds of the Series 2011 Bonds and the payment of certain arbitrage earnings in excess of the “yield” on the Series 2011 Bonds to the Treasury of the United States of America. Noncompliance with such provisions may result in interest on the Series 2011 Bonds being included in gross income for federal income tax purposes retroactive to their date of issuance.

### **Collateral Tax Consequences**

Except as described above, Bond Counsel will express no opinion regarding the federal income tax consequences resulting from the ownership of, receipt or accrual of interest on, or disposition of, the Series 2011 Bonds. Prospective purchasers of Series 2011 Bonds should be aware that the ownership of Series 2011 Bonds may result in other collateral federal tax consequences. For example, ownership of the Series 2011 Bonds may result in collateral tax consequences to various types of corporations relating to (1) denial of interest deduction to purchase or carry such Series 2011 Bonds, (2) the branch profits tax, and (3) the inclusion of interest on the Series 2011 Bonds in passive income for certain Subchapter S corporations. In

addition, the interest on the Series 2011 Bonds may be included in gross income by recipients of certain Social Security and Railroad Retirement benefits.

PURCHASE, OWNERSHIP, SALE OR DISPOSITION OF THE SERIES 2011 BONDS AND THE RECEIPT OR ACCRUAL OF THE INTEREST THEREON MAY HAVE ADVERSE FEDERAL TAX CONSEQUENCES FOR CERTAIN INDIVIDUAL AND CORPORATE BONDHOLDERS, INCLUDING, BUT NOT LIMITED TO, THE CONSEQUENCES REFERRED TO ABOVE. PROSPECTIVE BONDHOLDERS SHOULD CONSULT WITH THEIR TAX ADVISORS FOR INFORMATION IN THAT REGARD.

### **Other Tax Matters**

Interest on the Series 2011 Bonds may be subject to state or local income taxation under applicable state or local laws in some jurisdictions. Purchasers of the Series 2011 Bonds should consult their own tax advisors as to the income tax status of interest on the Series 2011 Bonds in their particular state or local jurisdiction.

During recent years, legislative proposals have been introduced in Congress, and in some cases enacted, that altered certain federal tax consequences resulting from the ownership of obligations that are similar to the Series 2011 Bonds. In some cases, these proposals have contained provisions that altered these consequences on a retroactive basis. Such alterations of federal tax consequences may have affected the market value of obligations similar to the Series 2011 Bonds. From time to time, legislative proposals are pending which could have an effect on both the federal tax consequences resulting from ownership of the Series 2011 Bonds and their market value. No assurance can be given that additional legislative proposals will not be introduced or enacted that would or might apply to, or have an adverse effect upon, the Series 2011 Bonds.

### **Tax Treatment of Original Issue Discount**

Bond Counsel is further of the opinion that the difference between the principal amount of the Series 2011A Bonds maturing on October 1, 20\_\_, 20\_\_ and 20\_\_ and the Series 2011B Bonds maturing on October 1, 20\_\_, 20\_\_ and 20\_\_ (collectively, the “Series 2011 Discount Bonds”) and the initial offering price to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of such Series 2011 Discount Bonds of the same maturity was sold constitutes original issue discount which is excludable from gross income for federal income tax purposes to the same extent as interest on the Series 2011 Bonds. Further, such original issue discount accrues actuarially on a constant interest rate basis over the term of each Series 2011 Discount Bond and the basis of each Series 2011 Discount Bond acquired at such initial offering price by an initial purchaser thereof will be increased by the amount of such accrued original issue discount. The accrual of original issue discount may be taken into account as an increase in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Series 2011 Discount Bonds, even though there will not be a corresponding cash payment. Owners of the Series 2011 Discount Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Series 2011 Discount Bonds.



## **Tax Treatment of Bond Premium**

The difference between the principal amount of the Series 2011A Bonds maturing on October 1, 20\_\_ through and including October 1, 20\_\_ and the Series 2011B Bonds maturing on October 1, 20\_\_ through and including October 1, 20\_\_ (collectively, the “Non-Callable Premium Bonds”) and the Series 2011A Bonds maturing on October 1, 20\_\_ and the Series 2011B Bonds maturing on October 1, 20\_\_ (collectively, the “Callable Premium Bonds” and together with the Non-Callable Premium Bonds the “Premium Bonds”) and the initial offering price to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of such Premium Bonds of the same maturity was sold constitutes to an initial purchaser amortizable bond premium which is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Non-Callable Premium Bond and to the first call date in the case of the Callable Premium Bonds. For the purposes of determining gain and loss on the sale or other disposition of a Premium Bond, an initial purchaser who acquires such obligation in the initial offering to the public at the initial offering price is required to decrease such purchaser's adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for the purposes of determining various other tax consequences of owning such Premium Bonds. Owners of Premium Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Premium Bonds.

## **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

The accuracy of the mathematical computation of the adequacy of the maturing principal amounts of and interest on the securities and cash, if any, to be held by an escrow holder to pay, when due, the principal of, applicable premium, and interest on the Refunded Bonds to the date of their maturities or earlier redemption has been verified by \_\_\_\_\_, whose verification report with respect thereto will be available at delivery of the Series 2011 Bonds.

## **UNDERWRITING**

The Underwriters named on the cover hereof have agreed to purchase the Series 2011 Bonds at an aggregate purchase price of \$\_\_\_\_\_ (par amount of \$\_\_\_\_\_ less an Underwriters' discount of \$\_\_\_\_\_ and [less][plus] net original issue [discount][premium] of \$\_\_\_\_\_ ). The Underwriters will not be obligated to purchase any Series 2011 Bonds unless all of such Series 2011 Bonds are available for purchase. The obligations of the Underwriters to accept delivery of the Series 2011 Bonds are subject to numerous conditions which are set forth in the Purchase Contract.

The Underwriters may offer and sell the Series 2011 Bonds to other dealers and other purchasers at prices lower than the public offering prices stated on the inside cover hereof. The initial public offering prices may be changed from time to time by the Underwriters.

## **FINANCIAL ADVISOR TO THE COMMISSION**

First Southwest Company, Aventura, Florida is serving as Financial Advisor to the Commission, and assisted in matters relating to the planning, structuring and issuance of the Bonds and provided other advice.

## **LEGAL MATTERS**

Legal matters incident to the authorization and issuance of the Series 2011 Bonds are subject to the final approving opinion of Nabors, Giblin & Nickerson, P.A., Tampa, Florida, Bond Counsel, substantially in the form attached hereto as APPENDIX F. Certain legal matters will be passed upon for the Commission by its counsel, [\_\_\_\_\_, \_\_\_\_\_, Florida]. Certain legal matters will also be passed upon for the Underwriters by their counsel, Squire, Sanders & Dempsey (US) LLP. Copies of the executed opinion of Bond Counsel will be available at the time of the delivery of the Series 2011 Bonds.

## **FEES OF ADVISORS, COUNSEL AND/OR CONSULTANTS**

Payment of the fees of Bond Counsel, Counsel to the Commission, the Underwriters (and their counsel) and the Financial Advisor are contingent upon the issuance of the Series 2011 Bonds.

## **RATINGS**

The Series 2011 Bonds will be rated “\_\_\_” by Moody’s Investors Service (“Moody’s”), “\_\_\_” by Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc. (“S&P”), and “\_\_\_” by Fitch Ratings (“Fitch”)[, based upon the Bond Insurance Policy insuring the timely payment of principal of and interest on the Series 2011 Bonds being issued by the Bond Insurer on the date of delivery of the Series 2011 Bonds. The Series 2011 Bonds have been assigned underlying, unenhanced ratings of “\_\_\_” by Moody’s, “\_\_\_” by S&P and “\_\_\_-” by Fitch]. Such ratings reflect only the views of such organizations at the time such ratings were issued and an explanation of the significance of such ratings may be obtained from the rating agencies. There is no assurance that such ratings will continue For any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, or any of them, if, in their judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings can be expected to have an adverse effect on the market price of the Series 2011 Bonds. The Underwriters have taken no obligation to oppose any proposed downward revision, or withdrawal, of such ratings or to notify any Bondholder or other persons of any such proposed downward revision or withdrawal.

## **LITIGATION**

There is not now pending or, to the knowledge of the Commission, threatened, any litigation restraining or enjoining the issuance or delivery of the Series 2011 Bonds or questioning or affecting the validity of the Series 2011 Bonds or the proceedings or authority under which they are to be issued. There is no litigation pending or, to the Commission’s knowledge, threatened, which in any manner questions the right of the Commission to enter into the Indenture, the Master Agreement, the Loan Agreements, the Program Administration

Agreement and its Continuing Disclosure Certificate or to secure the Series 2011 Bonds in the manner provided in the Indenture and the Act.

Simultaneously with the issuance of the Series 2011 Bonds and as a condition to the acceptance of the Series 2011 Bonds by the Underwriters, each Borrower shall deliver to the Commission an opinion of its counsel to the effect that to the best of their knowledge, there is no litigation or legal or governmental action, proceeding, inquiry or investigation pending or threatened by judicial or governmental authorities to which the Borrower is a party or any property of the Borrower is subject which, if determined adversely to the Borrower, would individually or in the aggregate (1) materially and adversely affect the validity or the enforceability of the Loan Agreement or the Loan, (2) otherwise materially and adversely affect the ability of the Borrower to comply with its obligations under the Loan Agreement, or (3) materially and adversely affect the Projects.

### **DISCLOSURE UNDER FLORIDA BLUE SKY LAWS**

Florida law requires that the Commission make a full and fair disclosure of any bonds or other debt obligations that it has issued or guaranteed and that are or have been in default as to principal or interest at any time after December 31, 1975 (including bonds or other debt obligations for which it has served as a conduit issuer such as the Series 2011 Bonds). The Commission is not and has not since December 31, 1975 been in default as to principal of and interest on its bonds or other debt obligations, including bonds or other debt obligations for which it has served as conduit issuer.

### **AUTHORIZATION OF AND CERTIFICATION CONCERNING OFFICIAL STATEMENT**

Concurrently with the delivery of the Series 2011 Bonds, the Chairman or Vice-Chairman of the Commission will furnish his or her certificate to the effect that, to the best of his or her knowledge, this Official Statement did not, as of its date, and does not as of the date of delivery of the Series 2011 Bonds, contain any untrue statement of a material fact or omit to state a material fact that should be included herein, or necessary to make the statements herein, in light of the circumstances under which they were made, not misleading (except that no certification will be given with respect to the information under the caption[s] “THE SERIES 2011 BONDS--Book-Entry-Only System” [and “MUNICIPAL BOND INSURANCE”] herein).

### **MISCELLANEOUS**

So far as any statements made in this Official Statement or in the Appendices attached hereto involve matters of opinion, projections or of estimates, whether or not expressly stated, they are set forth as such and not as representations of facts. No representation is made that any of the statements will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the holders of the Series 2011 Bonds.

The Commission has reviewed the information herein and approved this Official Statement.

**FLORIDA PORTS FINANCING  
COMMISSION**

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

APPENDIX A  
FORM OF THE INDENTURE

APPENDIX B  
FORM OF THE LOAN AGREEMENT

APPENDIX C  
FORM OF THE MASTER AGREEMENT

APPENDIX D  
FORM OF THE INTERLOCAL AGREEMENT



APPENDIX E

FORM OF THE CONTINUING DISCLOSURE CERTIFICATES

APPENDIX F  
FORM OF OPINION OF BOND COUNSEL

APPENDIX G  
SPECIMEN COPY OF BOND INSURANCE

APPENDIX H-1

FLORIDA PORTS FINANCING COMMISSION AUDITED FINANCIAL STATEMENTS

APPENDIX H-2

STATE OF FLORIDA AUDITED FINANCIAL STATEMENTS

**EXHIBIT F**

**FORM OF CONTINUING DISCLOSURE CERTIFICATE**

## CONTINUING DISCLOSURE CERTIFICATE OF COMMISSION

THIS CONTINUING DISCLOSURE CERTIFICATE, dated as of January \_\_, 2011 (the “Certificate”), is signed and delivered by the Florida Ports Financing Commission (the “Commission”) in connection with the issuance by the Commission of its \$\_\_\_\_\_ principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 2011 (NON-AMT) and \$\_\_\_\_\_ principal amount of Florida Ports Financing Commission Refunding Revenue Bonds (State Transportation Trust Fund – Intermodal Program), Series 2011B (AMT) (collectively, the “Series 2011 Bonds”) for the benefit of the Holders and Beneficial Owners (as defined herein) from time to time of the Series 2011 Bonds.

### RECITAL

The Commission has determined to issue the Series 2011 Bonds and the Series 2011 Bonds are being issued pursuant to that certain First Amended and Restated Indenture of Trust, dated as of January 1, 2011, as supplemented between the Commission and \_\_\_\_\_, as trustee (the “Trustee”). The Series 2011 Bonds are payable solely from moneys due the Borrowers (as defined in the Official Statement relating to the Series 2011 Bonds) pursuant to Section 320.20(4), Florida Statutes, which moneys have been assigned by such Borrowers to the Trustee, on behalf of the Commission, and shall be transferred by the Department directly to the Trustee pursuant to that certain Second Master Agreement, as amended, dated as of September 29, 1999 (the “Master Agreement”) between the Commission and the State of Florida Department of Transportation (the “Department”). Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., Incorporated and Siebert Brandford, Shank & Co., L.L.C. (collectively, the “Participating Underwriters”) have agreed to provide funds to the Commission by purchasing the Series 2011 Bonds. As a condition to the purchase of the Series 2011 Bonds from the Commission and the sale of Series 2011 Bonds to Holders and Beneficial Owners, the Participating Underwriters are required to reasonably determine that the Commission and any Obligated Person has undertaken, in a written document for the benefit of Holders and Beneficial Owners of the Series 2011 Bonds, to provide certain information in accordance with the Rule (as defined herein).

NOW, THEREFORE, in accordance with the Indenture, the Commission covenants and agrees as set forth in this Continuing Disclosure Certificate.

**Section 1. Purpose of Continuing Disclosure Certificate.** This Certificate is being entered into, signed and delivered for the benefit of the Holders and Beneficial Owners of the Series 2011 Bonds and in order to assist the Participating Underwriters of the Series 2011 Bonds in complying with Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission (SEC) pursuant to the Securities Exchange Act of 1934, as may be amended from time to time (the Rule).

**Section 2. Definitions.** In addition to the definitions set forth above, the following capitalized terms shall have the following meanings in this Certificate, unless the context clearly otherwise requires. Reference to “Sections” shall mean sections of this Certificate.

“Annual Filing” means any Annual Information Filing provided by the Commission pursuant to, and as described in, Sections 3 and 4.

“Audited Financial Statements” means the audited basic financial statements of the Commission, prepared in conformity with generally accepted accounting principles.

“Beneficial Owner” means any person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2011 Bonds (including persons holding Series 2011 Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series 2011 Bonds for federal income tax purposes.

“EMMA” means the Electronic Municipal Market Access system of the MSRB; information regarding submissions to EMMA is available at <http://emma.msrb.org>.

“Filing Date” means the last day of the seventh month following the end of each Fiscal Year (or the next succeeding business day if that day is not a business day), beginning April 30, 2011.

“Fiscal Year” means the 12-month period beginning on October 1 of each year or such other 12-month period as the Commission shall adopt as its fiscal year.

“Holder” means, with respect to the Series 2011 Bonds, the person in whose name a Series 2011 Bond is registered in accordance with the Indenture.

“MSRB” means the Municipal Securities Rulemaking Board.

“Obligated Person” means (as defined in the Rule), the Department and the Commission are the only Obligated Persons for the Series 2011 Bonds.

“Official Statement” means the Official Statement for the Series 2011 Bonds dated \_\_\_\_\_, 2011.

“Participating Underwriters” means any of the original underwriters of the Series 2011 Bonds required to comply with the Rule in connection with offering of the Series 2011 Bonds, as identified in the Recitals herein.

“Specified Events” means any of the events with respect to the Series 2011 Bonds as set forth in Section 5(a).

“State” means the State of Florida.

### **Section 3. Provision of Annual Information.**

(a) The Commission shall provide (or cause to be provided) not later than the Filing Date to the MSRB through EMMA an Annual Filing, which is consistent with the requirements of Section 4. The Annual Filing shall be submitted in an electronic format and contain such identifying information as is prescribed by the MSRB through EMMA, and may be submitted as a single document or as separate documents comprising a package, and may cross-reference



other information as provided in Section 4; provided that the Audited Financial Statements of the Commission may be submitted separately from the balance of the Annual Filing and later than the Filing Date if they are not available by that date. If the Commission's Fiscal Year changes, it shall give notice of such change in the same manner as for a Specified Event under Section 5.

(b) If the Commission is unable to provide to the MSRB an Annual Filing by the Filing Date, the Commission shall, in a timely manner, send a notice to the MSRB in an electronic format as prescribed by the MSRB.

**Section 4. Content of Annual Filing.** The Commission's Annual Filing shall contain or include by reference the following:

(a) Financial information and other data included in the Official Statement, as follows:

- (1) Updates of information in Official Statement relating to collections of Motor Vehicle License Taxes (as defined in the Official Statement) and distribution thereof to education; amount of outstanding bonds or other obligations on behalf of any school district or college pursuant to the School Capital Outlay Amendment (as defined in the Official Statement).
- (2) Description of any indebtedness of the Commission other than the Series 2011 Bonds payable in whole or in part from the State Transportation Trust Fund (as defined in the Official Statement) as provided in Section 320.20(4), Florida Statutes.
- (3) Any material litigation which would have been disclosed in the Official Statement.
- (4) Any other material financial information or operating data of the Commission.

(b) The Audited Financial Statements of the Commission utilizing [generally accepted] accounting principles applicable to governmental units as described in the Official Statement, except as may be modified from time to time and described in such financial statements.

The foregoing shall not obligate the Commission to prepare or update projections of any financial information or operating data.

Any or all of the items listed above may be included by specific reference to other documents, including annual informational statements of the Commission or official statements of debt issues of the Commission or related public entities, which have been submitted to the MSRB, EMMA or the Securities and Exchange Commission. The Commission shall clearly identify each such other document so included by reference.

## **Section 5. Reporting Specified Events.**

(a) The Commission shall provide to the MSRB, in an electronic format through EMMA and containing such identifying information as is prescribed by the MSRB and in a timely manner but not later than ten business days after the occurrence of the event, notice of any of the following events with respect to the Series 2011 Bonds, as specified by the Rule:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;<sup>(a)</sup>
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;<sup>(a)</sup>
- (5) Substitution of credit or liquidity providers, or their failure to perform;<sup>(a)</sup>
- (6) Issuance of Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders, if material;
- (8) Bond calls, if material, and tender offers;<sup>(b)</sup>
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.<sup>(c)</sup>
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the obligated person; *Note: For the purposes of the event identified in this subparagraph, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an Obligated Person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental*

*authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.*

- (13) The consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of a successor or additional Trustee or the change of name of a Trustee, if material.

*Note:*

- (a) *The Commission has not obtained or provided, and does not expect to obtain or provide, any debt service reserves, credit enhancements or credit or liquidity providers for the Series 2011 Bonds.*
- (b) *Any scheduled redemption of Series 2011 Bonds pursuant to mandatory sinking fund redemption requirements does not constitute a specified event within the meaning of the Rule.*
- (c) *Repayment of the Series 2011 Bonds is not secured by a lien on any property capable of release or sale or for which other property may be substituted*

**Section 6. Amendments.** The Commission reserves the right to amend this Agreement, and noncompliance with any provision of this Agreement may be waived, as may be necessary or appropriate to achieve its compliance with any applicable federal securities law or rule, to cure any ambiguity, inconsistency or formal defect or omission, and to address any change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of the Commission, or type of business conducted by the Commission. Any such amendment or waiver shall not be effective unless the Commission shall have received a written opinion of qualified independent special counsel selected by the Commission that the Agreement (as amended or taking into account such waiver) would have materially complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any applicable amendments to or official interpretations of the Rule, as well as any change in circumstances. An Annual Filing containing any revised operating data or financial information shall explain, in narrative form, the reasons for any such amendment or waiver and the impact of the change on the type of operating data or financial information being provided. If the amendment relates to the accounting principles to be followed in preparing Audited Financial Statements, the Commission shall provide notice of such change in the same manner as for a Specified Event under Section 5.

**Section 7. Additional Information.** Nothing in this Certificate shall be deemed to prevent the Commission from disseminating any other information, using the means of dissemination set forth in this Certificate or providing any other means of communication, or including any other information in any Annual Filing or providing notice of the occurrence of an event, in addition to that which is required by this Certificate. If the Commission chooses to include any information in any document or notice of occurrence of an event in addition to that which is specifically required by this Certificate, the Commission shall have no obligation under

this Certificate to update such information or include it in any future Annual Filing or notice of occurrence of a Specified Event.

**Section 8. Remedy for Breach.** This Certificate shall be solely for the benefit of the Holders and Beneficial Owners from time to time of the Series 2011 Bonds. The exclusive remedy for any breach of this Certificate by the Commission shall be limited, to the extent permitted by law, to a right of Holders and Beneficial Owners to institute and maintain, or to cause to be instituted and maintained, such proceedings as may be authorized at law or in equity to obtain the specific performance by the Commission of its obligations under this Certificate. Any Beneficial Owner seeking to require the Commission to comply with this Certificate shall first provide at least 30 days' prior written notice to the Commission of the Commission's failure, giving reasonable detail of such failure, following which notice the Commission shall have 30 days to comply. A default under this Certificate shall not be deemed an event of default under the Indenture, and the sole remedy under this Certificate in the event of any failure of the Commission to comply with this Certificate shall be an action to compel performance.

**Section 9. Appropriation.** The performance by the Commission of its obligations under this Certificate shall be subject to the availability of funds and their annual appropriation to meet costs that the Commission would be required to incur to perform those obligations.

**Section 10. Termination.** The obligations of the Commission under the Certificate shall remain in effect only for such period that the Series 2011 Bonds are outstanding in accordance with their terms and the Commission remains an Obligated Person with respect to the Series 2011 Bonds within the meaning of the Rule. The obligation of the Commission to provide the information and notices of the events described above shall terminate, if and when the Commission no longer remains such an Obligated Person. If any person, other than the Commission, becomes an Obligated Person relating to the Series 2011 Bonds, the Commission shall use its best efforts to require such Obligated Person to comply with all provisions of the Rule applicable to such Obligated Person.

**Section 11. Dissemination Agent.** The Commission may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under this Certificate, and may discharge any such agent, with or without appointing a successor dissemination agent.

**Section 12. Beneficiaries.** This Certificate shall inure solely to the benefit of the Commission, any dissemination agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the Series 2011 Bonds, and shall create no rights in any other person or entity.

**Section 13. Recordkeeping.** The Commission shall maintain records of all Annual Filings and notice of Specified Events including the content of such disclosure, the names of the entities with whom such disclosures were filed and the date of filing such disclosure.

**Section 14. Governing Law.** This Certificate shall be governed by the laws of the State.

IN WITNESS WHEREOF, the Commission has caused this Continuing Disclosure Certificate to be duly signed and delivered to the Participating Underwriters, as part of the Series 2011 Bond proceedings and in connection with the original delivery of the Series 2011 Bonds to the Participating Underwriter, on its behalf by its official signing below, all as of the date set forth above, and the Holders and Beneficial Owners from time to time of the Series 2011 Bonds shall be deemed to have accepted this Certificate made in accordance with the Rule.

FLORIDA FINANCING COMMISSION

Dated: January \_\_, 2011

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

**TAB 9**  
**ADMINISTRATIVE REPORT**

**TO BE DISCUSSED AT MEETING**

**TAB 10**  
**OTHER ISSUES**



**TO BE DISCUSSED AT MEETING**

**TAB 11**  
**ADJOURNMENT**