

CITY OF HOMER, ALASKA

RESOLUTION NO. 89-66

A RESOLUTION OF THE CITY OF HOMER, ALASKA PROVIDING FOR THE ISSUANCE OF A NOTE IN ANTICIPATION OF THE ISSUANCE OF \$360,000 PAR VALUE OF SPECIAL ASSESSMENT BONDS FOR THE PURPOSE OF PROVIDING FUNDS NECESSARY TO ACQUIRE AND CONSTRUCT IMPROVEMENTS WITHIN THE LOCAL IMPROVEMENT AREAS; CREATING A NOTE REDEMPTION FUND; PROVIDING AND ADOPTING CERTAIN COVENANTS AND PROTECTIVE FEATURES SAFEGUARDING THE PAYMENT OF SUCH NOTE; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution Nos. 88-25, 88-42, 88-52, 88-53; 88-64, 88-65, 88-66, 88-67, 88-68-S, 88-78, 88-79, and 88-91 the City of Homer, the City determined to proceed with the construction of road improvements within West Rangeview/Mullikan, Bayview Avenue, Cityview, West Danview Road, Elderberry Drive, Gavin Court, Highland Drive/Upland Court, Soundview Avenue, Fairview Avenue, Heath Street, Calhoun Court Road Improvement Districts ("Consolidated Road Improvement Districts"), created Consolidated Road Improvement Districts, provided a method of assessment on property specially benefitted within Consolidated Road Improvement Districts, and provided for the levying of an assessment thereon; and

WHEREAS, the City has determined it to be in the best interests of the City to issue a note in the principal amount of \$360,000 in anticipation of the issuance of special assessment bonds for the purpose of providing funds necessary to acquire and construct improvements within the Consolidated Road Improvement Districts.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HOMER, ALASKA:

SECTION 1. Definitions. Within this Resolution the following definitions shall apply:

- A. The word "city" means the City of Homer.

B. The word "Note" means the special assessment bond anticipation note of the City in the principal amount of \$360,000, the issuance and sale of which is authorized herein.

C. The words "Note Fund" means the 1989 Consolidated Special Assessment Bond Anticipation Note Redemption Fund created in Section 8 of this Resolution.

D. The words "Prime Rate" means the interest rate established periodically by Security Pacific Bank Alaska, N.A. as an index rate and published by Security Pacific Bank as its prime rate.

E. The word "Project" means the street improvements within the Consolidated Road Improvement Districts.

F. The words "Consolidated Road Improvement Districts" means the special assessment districts of the City known as West Rangeview/Mullikan, Bayview Avenue, Cityview, West Danview Road, Elderberry Drive, Gavin Court, Highland Drive/Upland Court, Soundview Avenue, Fairview Avenue, Heath Street, Calhoun Court Road Improvement Areas and created by Resolution Nos. 88-25, 88-42, 88-52, 88-53;, 88-64, 88-65, 88-66, 88-67, 88-68-S, 88-78, 88-79, and 88-91

SECTION 2. Authorization of Special Assessment Bonds. The City Council hereby authorizes the issuance and sale of special assessment bonds for the purpose of financing the cost of the Project including refunding the Note. The exact amount, maturities, interest rates, covenants, and other provisions of such bonds shall be determined by further ordinance of the City.

SECTION 3. Authorization of the Note. For the purpose of financing the cost of the Project the City shall issue the \$360,000 par value Special Assessment Bond Anticipation Note, 1989A of the City (the "Note").

The Note shall be dated as of the date of delivery, shall be fully registered as to both principal and interest, shall be in the principal amount of \$360,000, shall be numbered NR-1, and shall mature within one year of the date of delivery.

The Note shall bear interest on the principal amount from the dated date or the date to which interest has been paid or duly provided for until the principal thereof shall have been paid at the rate of 72% of the Prime Rate.

Both principal of and interest on the Note shall be payable on the maturity date in lawful money of the United States of America. Interest on the Note shall be paid by check or draft mailed on the date such interest is due to the registered owner of

record who is, as of the fifteenth day of the calendar month next preceding the applicable interest payment date, recorded as the owner on the books of registration kept by the Registrar. The principal amount of the Note shall be payable upon surrender of the Note to the Registrar.

SECTION 4. Redemption of Note. The City reserves the right to redeem the Note at any time, at par plus accrued interest to the date of redemption, upon ten (10) days written notice to the registered owner of the Note.

SECTION 5. Description of Note. The Note shall be in substantially the following form:

UNITED STATES OF AMERICA

STATE OF ALASKA
CITY OF HOMER

No. _____ \$ _____

SPECIAL ASSESSMENT BOND ANTICIPATION NOTE, 1989A

Interest Rate: _____ Maturity Date: _____

Registered Owner: _____

Principal Amount: _____

The City of Homer, a municipal corporation of the State of Alaska, (hereinafter called the "City") for value received promises to pay to the Registered Owner stated above or registered assigns solely from the sources herein referred to, the Principal amount stated above and to pay interest on such principal sum from the date hereof or the most recent date to which interest has been paid or duly provided for at the rate of interest stated above payable on maturity. The Note shall mature in one year from the date of delivery of this Note.

Both principal and interest are payable in lawful money of the United States of America. Interest on this Note shall be paid by check or draft mailed to the registered owner of record who is, as of the fifteenth day of the calendar month next preceding the applicable interest payment date, recorded as the owner on the books of registration kept by the Registrar. The principal of this Note shall be payable upon surrender of this Note by the registered owner at the offices of the Registrar.

Reference is hereby made to additional provisions of this Note set forth on the reverse side hereof and such additional provisions shall for all purposes have the same effect as if set forth in this space. The Note shall not be valid or become obligatory for any purpose or be entitled to any security under Resolution No. 89-66 hereinafter called the ("Note Resolution") until the Certificate of Authentication hereon shall have been manually signed by the Registrar.

It is hereby certified and declared that this Note is issued pursuant to and in strict compliance with the laws of the State of Alaska, ordinances and resolutions of the City of Homer, and that all acts, conditions and things required to be done precedent to and in the issuance of this Note have happened, been done and performed.

IN WITNESS WHEREOF, the City of Homer, Alaska, has caused this Note to be signed by its Mayor, to be attested by its Clerk, and the official seal of the city to be impressed hereon, this 11th day of July, 1989.

CITY OF HOMER, ALASKA

BY John P. Caldwell
Mayor

ATTEST:

Patricia J. Walsh
City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This Note is the Note described in the within-referenced Note Resolution of the City of Homer, Alaska, and is the Special Assessment Bond Anticipation Note, 1989A, dated _____ of the City.

By _____
Authorized Officer

ADDITIONAL BOND PROVISIONS

This Note is the \$360,000 principal amount Special Assessment Bond Anticipation Note, 1989A.

This Note is issued pursuant to the laws of the State of Alaska and duly adopted ordinances and resolutions of the City Council of the City, for the purpose of providing funds necessary to finance the cost of improvements within the Consolidated Road Improvement Districts and is payable out of the proceeds of the sale of the special assessment bonds, special assessment bond anticipation notes, or special assessments of the City issued or levied in Consolidated Road Improvement Districts all as provided for in the Note Resolution.

The City has reserved the right to redeem the Note at any time, at par plus accrued interest to the date of redemption, upon ten (10) days written notice to the registered owner of the Note.

This Note is not a general obligation of the City. Neither the holder or owner of this Note shall have any claim against the City except for payment from the sources set forth with particularity in the Note Resolution.

The City of Homer hereby covenants and agrees with the owner and holder of this Note that it will keep and perform all the covenants of this Note and of the Note Resolution to be by it kept and performed.

Neither the holder nor the owner of any special assessment district bond, interest coupons or warrant issued against a special assessment district fund shall have any claim therefor against the City except for payment from the special assessments made for the improvements for which such special assessment district bond was issued and except for payment from the special assessment district guarantee fund of the City. The remedy of the holder or owner of such special assessment district bond shall be confined to the enforcement of such assessments and to the guarantee fund. The City shall not be liable to the holder or owner of any such bond, interest coupon or warrant for any loss to the guarantee fund occurring in the lawful operation thereof.

This Note is issued in fully registered form. Upon surrender to the Registrar, this Note is interchangeable for a note in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. This Note is transferable only on the records maintained by the Note Registrar for that purpose upon the surrender of this Note by the registered owner hereof or nominee or his/her duly authorized agent and only if endorsed in the manner provided hereon, and thereupon a new fully registered note of like principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor. Such exchange or transfer shall be without cost to the registered owner or transferee. The City may deem the person in whose name this Note is registered to be the absolute owner hereof

for the purpose of receiving payment of the principal of and interest on this Note and for any and all other purposes whatsoever.

Assignment

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the within Note and all rights thereunder and does hereby irrevocably constitute and appoint _____, or its successor, Agent to transfer such Note on the records kept by the Note Registrar for the registration thereof, with full power of substitution.

DATED: _____

(Social Security or Other Tax
Identification Number of Assignee)

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the note in every particular, without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEE:

SECTION 6. Execution of the Note. The Note shall be executed on behalf of the City with the manual signature of the Mayor and attested with the manual signature of the City Clerk and the Seal of the City impressed on the Note.

SECTION 7. Registration. The Note shall be in registered form as to both principal and interest. The City Treasurer shall act as Registrar and shall maintain the Note Register. Such Note Register shall contain the name and mailing address of the owner of the Note. The Note may be transferred only if endorsed in the manner provided herein and surrendered to the Registrar in exchange for a new Note registered in the name of the transferee. Such transfer shall be without cost to the owner or transferee.

The City Treasurer is authorized, on behalf of the City, to authenticate and deliver the Note when transferred or exchanged in accordance with the provisions of such Note and this Resolution and to carry out all of the powers and duties of Registrar under this Resolution.

SECTION 8. Redemption Fund. There is hereby created a special fund of the City known as the "1989A Special Assessment Bond Anticipation Note Redemption Fund" (herein called the "Note Fund"), which fund is created for the sole purpose of paying the principal of and interest on the Note as the same shall become due and payable.

The City hereby further obligates and binds itself to set aside and pay into the Note Fund out of the proceeds of sale of its special assessment bonds, or additional special assessment bond anticipation notes, or to the extent necessary out of special assessments, issued or levied in the Consolidated Road Improvement Districts amounts necessary to pay the principal of and interest on the Note as the same respectively become due and payable.

SECTION 9. Source of Funds for Repayment of the Note. The principal of and interest on the Note shall be payable solely from special assessment bonds, additional special assessment bond anticipation notes and from assessments issued in connection with the Consolidated Road Improvement Districts. The Note is not a general obligation of the City.

SECTION 10. Sale of the Note. The Note shall be sold to Security Pacific Bank Alaska, N.A. in accordance with its written offer to purchase. The proper City officials are authorized and directed to do everything necessary for the prompt execution, issuance and delivery of the Note.

SECTION 11. Defeasance. In the event that money and/or direct obligations of the United States of America, maturing or having guaranteed redemption prices at the option of the holder at such time or times and bearing interest to be earned thereon in amounts (together with such money, if any) sufficient to redeem and retire the Note in accordance with its terms, are hereafter irrevocably set aside in a special account and pledged and used to effect such redemption and retirement, then no further payments need be made into the Note Fund for the payment of the principal of and interest on the Note and the Note shall then cease to be entitled to any lien, benefit or security of this Resolution, except as to the funds so set aside and pledged, and such Note shall no longer be deemed to be outstanding hereunder, or under any resolution authorizing the issuance of bonds, note or other indebtedness of the City.

SECTION 12. Guarantee Fund. There has been established a special assessment district guarantee fund of the City (at times called the "guarantee fund" in this section) for the purpose of guaranteeing the payment of the principal of all special assessment bonds and notes issued upon any special assessment district funds. The money in the guarantee fund shall be kept separate from all

other money and funds of the City, shall be held in trust for the use and purposes provided in this section.

Within five years from the date of delivery of the Note, the City shall deposit in the guarantee fund a sum, which when added to existing moneys in the guarantee fund, shall be not less than five percent of the then outstanding special assessment bonds and/or warrants including the notes or bonds of the issue. Such deposit may be from the proceeds of an interfund loan or other funds legally available therefor. After the expiration of five years from the date of delivery, the City shall maintain an amount of not less than five percent of such bonds and notes then outstanding. Any moneys paid out of the guarantee fund to redeem special assessment district bonds or notes shall be replaced by the City as soon as possible out of any legally available sources.

SECTION 13. Special Designation. The Note is hereby designated as a qualified tax-exempt obligation for purposes of Section 265(b) of the Internal Revenue Code of 1986.

SECTION 14. Arbitrage Covenant. The City covenants and agrees with the owner of the Note that it will not use or invest the proceeds of the Note or any other funds or obligations of the City which may be deemed to be proceeds of such Note pursuant to Section 148 of the Internal Revenue Code of 1986 and the applicable regulations thereunder which, if such use had been reasonably expected on the date of delivery of the Note to the original purchasers thereof, would cause the Note to be "arbitrage bonds" as defined in said section and said regulations. The City will comply with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (or any successor provision thereof applicable to the Note), and the applicable regulations promulgated thereunder throughout the terms of the Note.

SECTION 15. Resolution and Laws a Contract with Note Holder. This Resolution is adopted under the authority of and in full compliance with the Constitution and laws of the State of Alaska, as amended and supplemented. In consideration of the purchase and acceptance of the Note by those who shall hold the same from time to time, the provisions of this Resolution and of said laws shall constitute a contract with the owner or owners of the Note.

SECTION 16. Effective Date. This Resolution shall be in effect from and after its adoption in accordance with law.

ADOPTED by the Council of the City of Homer, this 10th
day of July, 1989.

By John P. Culhoun
Mayor

ATTEST:

Patt J. Walsh
city clerk